

Efa Nienaber sugar beet herb (status as of 5/20)

## **General terms and conditions of sale – B2B -**

### **1. General - scope of application.**

- 1.1. Our following terms and conditions of sale apply exclusively and are valid for all our offers, sales, deliveries and services and become part of the contract.
- 1.2. We do not recognise any deviating terms and conditions of the customer unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Sale shall also apply if we carry out the delivery to the buyer without reservation in the knowledge of terms and conditions of the buyer that conflict with or deviate from our Terms and Conditions of Sale.
- 1.3. Our Terms and Conditions of Sale shall only apply vis-à-vis entrepreneurs within the meaning of Sections 14, 310 BGB (German Civil Code)

### **2. Offers and orders**

- 2.1. If the order qualifies as an offer in accordance with Section 145 BGB (German Civil Code), we may accept it in writing within 2 weeks. An effective contract is therefore only concluded through our acceptance of the offer (order confirmation) or the delivery of the goods. Otherwise, our offers are non-binding unless they are designated as binding in writing.
- 2.2. We reserve the property rights and copyrights to illustrations, drawings, calculations, measurements and other documents that are part of our non-binding offers. This shall also apply to such written documents which are designated as "confidential". The customer requires our express written consent before passing them on to third parties. They can only become a binding part of the contract if they are expressly confirmed by us in writing.

### **3. Prices**

- 3.1. Unless otherwise stated in the sales agreement, our prices are "ex works". Packaging, freight and customs costs are not included in the price. These shall be invoiced separately.
- 3.2. The statutory value added tax is not included in our prices and will be shown separately in the invoice at the statutory rate on the day of invoicing.
- 3.3. If there are more than 4 months between the date of conclusion of the contract and the date of delivery, without this being due to a delay in delivery for which we are responsible, and if our valid price list has changed during this period, we may demand the list price valid on the date of delivery instead

of the agreed purchase price. We shall send the Buyer a correspondingly amended order confirmation before delivery. In this case, the Buyer may withdraw from his order with respect to the goods for which the price has been increased. He must declare the withdrawal in writing no later than on the 3rd working day after receipt of the amended order confirmation. Transmission by fax or e-mail shall suffice.

- 3.4. The deduction of a cash discount requires a special written agreement.

**3.5.** The customer shall only be entitled to set-off rights if its counterclaims have been legally established, are undisputed or have been acknowledged by us. Furthermore, the customer shall be entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

**4. Doubtful solvency**

**4.1.** If, after conclusion of the contract, we become aware of circumstances that give rise to doubts about the Buyer's ability to pay, we may make further deliveries dependent on advance payment of the goods by the Buyer. We may set the seller a reasonable deadline for the advance payment of the goods and withdraw from the contract if the advance payment is not received by us within the deadline; the buyer may provide security in the form of a bank guarantee instead of the advance payment. If we have already delivered the goods, the purchase price shall be due immediately without deduction, irrespective of any agreed payment periods.

**4.2.** Doubts about the solvency of the Buyer shall be justified, for example, if an application has been made to open insolvency proceedings against its assets or if he fails to make payments to us or third parties on time.

**5. Delivery time**

**5.1.** The start of the delivery time stated by us requires the clarification of all technical questions.

**5.2.** The fulfillment of our delivery obligation further requires the timely and proper fulfillment of the Buyer's obligation. We reserve the right to plead non-performance of the contract.

**5.3.** If the customer is in default of acceptance or culpably violates other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. Further claims or rights shall remain reserved.

**5.4.** If the conditions of 5.3 are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer from the time at which the customer is in default of acceptance or debtor's delay.

**5.5.** If an expressly agreed deadline cannot be met for reasons for which the Seller is responsible, or if the Seller is in default for other reasons, the Buyer shall set a reasonable additional period for effecting delivery, which period shall commence upon written notification.

**5.6.** We shall be liable in accordance with the statutory provisions insofar as the underlying purchase contract is a transaction for delivery by a fixed date within the meaning of Section 286 II No. 4 of the German Civil Code (BGB) or Section 376 of the German Commercial Code (HGB). We shall also be liable in accordance with the statutory provisions if, as a result of a delay in delivery for which we are responsible, the customer is entitled to assert that its interest in the further performance of the contract has ceased to exist.

**5.7.** Furthermore, we shall be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; fault on the part of our representatives or vicarious agents shall be attributed to us. If the delay in delivery is due to a grossly negligent breach of contract for

which we are responsible, our liability for damages shall be limited to the foreseeable, typically occurring damage.

**5.8.** We shall also be liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is based on the culpable breach of a major contractual obligation; in this case, however, the liability for damages shall be limited to the predictable damage that typically occurs.

**5.9.** A major contractual obligation shall be deemed to exist if the breach of obligation relates to an obligation which the customer has relied on and was entitled to rely on being fulfilled.

**5.10.** If performance is temporarily impossible or considerably impeded by us due to force majeure (including natural disasters such as floods and drought), labor disputes, riots, armed or terrorist conflicts, epidemics or pandemics or due to other extraordinary circumstances for which we are not responsible, and if these thus entail unforeseeable consequences for performance, the agreed delivery time shall be extended by the duration of the impediment to performance. For the duration of the disruption and to the extent of its effect, the contracting parties shall be released from their performance obligations, even if they should be in default. An automatic termination of the contract is not associated with this. The contracting parties are obliged to notify each other of such an impediment and to adjust their obligations to the changed circumstances in good faith. The same applies to a statutory deadline or a deadline set by the purchaser for the performance of services, in particular for subsequent deadlines in the event of default.

**5.11.** Prior to the expiry of the delivery period or period of performance extended in accordance with 5.10, the Buyer shall not be entitled to withdraw from the contract or to claim damages. If the impediment to performance lasts longer than 4 weeks, both the Buyer and we shall be entitled to rescind the contract insofar as the contract has not yet been performed. If the seller is contractually or legally entitled to withdraw without setting a time limit, this right remains unaffected.

## **6. Transport**

**6.1.** The transport is carried out also for the account of the buyer. The risk shall pass to him upon loading of the goods, even if carriage paid delivery has been agreed and/or the shipment is made with our own vehicles. We are not obliged to provide transport Insurance.

**6.2.** Unless otherwise expressly agreed in writing, we shall be entitled to make partial deliveries to a reasonable extent, which shall be invoiced individually.

## **7. Payment**

**7.1.** Unless otherwise stated in the order confirmation, the netto purchase price (without deduction) shall be due for payment within 14 days from the invoice date. The statutory rules concerning the consequences of default in payment shall apply.

**7.2.** The Buyer shall be in default even without a reminder from us if he does not pay the purchase price within 14 days after the due date and receipt of the invoice or an equivalent payment schedule.

**7.3.** If the buyer defaults on a payment due to his own fault, all payment obligations arising from the business relationship with us - including those for which bills of exchange have been given - shall become due

immediately. In this case, we shall be entitled to charge interest at the statutory rate from the relevant date. The seller reserves the right to prove higher damages.

## **8. Warranty**

- 8.1.** Claims for defects on the part of the customer require that he has properly fulfilled his obligations to inspect the goods and give notice of defects in accordance with Section 77 BGB (German Civil Code). In case of violation of these obligations, the assertion of warranty claims is excluded.
- 8.2.** If there is a defect in the purchased item, the customer shall be entitled to the choice of subsequent performance in the form of rectification of the defect or delivery of a new, defect-free item. In the event of rectification of the defect or replacement delivery, we shall be obliged to bear all expenses necessary for the purpose of subsequent performance, in particular transport, travel and material costs, insofar as these are not increased by the fact that the purchased item has been taken to a place other than the place of performance.
- 8.3.** We are entitled to refuse the type of subsequent performance chosen by the purchaser if it is only associated with disproportionate costs. During the supplementary performance, the reduction of the purchase price or the withdrawal from the contract by the purchaser are excluded. A subsequent improvement shall be deemed to have failed after the second unsuccessful attempt. If the subsequent performance fails, the customer shall be entitled to demand withdrawal from the contract or reduction of the purchase price at his discretion.
- 8.4.** We shall be liable in accordance with the statutory provisions if the customer asserts compensation claims based on intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- 8.5.** We shall be liable in accordance with the statutory provisions if we culpably violate a major contractual obligation; in this case, too, the liability for damages shall be limited to the foreseeable damage that typically occurs. A major contractual obligation shall be deemed to exist if the breach of obligation relates to an obligation which the customer relied on and was entitled to rely on being fulfilled.
- 8.6.** Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply to mandatory liability under the German Product Liability Act (Produkthaftungsgesetz).
- 8.7.** Insofar as we have given a quality and/or durability guarantee with regard to the goods or parts thereof, we shall also be liable within the scope of this guarantee. However, we shall only be liable for damage based on the absence of the guaranteed quality or durability, but which does not occur directly to the goods, if the risk of such damage is obviously covered by the quality and durability guarantee.
- 8.8.** Unless otherwise stipulated above, liability is excluded. Insofar as the liability of the Seller is excluded or limited, this shall also apply to the personal liability of its employees, workers, staff, representatives or vicarious agents.
- 8.9.** The limitation period for claims for defects is 12 months, calculated from the transfer of risk.

**9. Total liability**

**9.1.** Any further liability for damages than provided for in clause 8 is excluded, irrespective of the legal nature of the claim asserted. This applies in particular to claims for damages arising from culpa in contrahendo, other breaches of duty or claims in tort for compensation for property damage pursuant to Section 823 of the German Civil Code (BGB).

**9.2.** A limitation according to para. 1 shall also apply insofar as the customer demands compensation for useless expenses instead of a claim for damages.

**10. Retention of title**

**10.1.** We retain title to the goods until receipt of all payments under the contract. The delivered goods only become the property of the buyer when he has fulfilled all his obligations from the business relationship. This also includes any additional claims and claims for damages. In case of breach of contract by the customer, in particular in case of default of payment, we shall be entitled to take back the purchased goods. The taking back of the purchased goods by us shall constitute a withdrawal from the contract. After taking back the object of sale, we shall be entitled to dispose of it; the proceeds of such disposal shall be set off against the customer's liabilities - less reasonable costs of disposal. The transport costs incurred shall be borne by the buyer.

**10.2.** The customer is obliged to handle the goods with care; in particular, he is obliged to sufficiently insure them at his own expense against damage by fire, water and theft at replacement value.

**10.3.** In the event of seizure or other interference by third parties, the customer shall notify us in writing without delay so that we can bring an action in accordance with Section 771 of the German Code of Civil Procedure (ZPO). Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to Section 771 of the German Code of Civil Procedure (ZPO), the customer shall be liable to us for the loss incurred by us.

**10.4.** The customer shall be entitled to resell the object of sale in the ordinary course of business; however, he hereby assigns to us all claims to which he is entitled against his customers or third parties from the resale, irrespective of whether the object of sale has been resold without or after processing. The customer shall remain authorized to collect this claim even after the assignment. However, we undertake not to collect the claim as long as the customer meets his payment obligations from the proceeds received, is not in default of payment and, in particular, no application for the opening of a composition or insolvency proceedings has been filed or payments have not been suspended.

**10.5.** The processing or transformation of the delivered goods by the customer shall always be carried out for us. If the goods are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the purchased item (final invoice amount, including VAT) to the other processed items at the time of processing. The same shall apply to the object created by the processing as to the object of sale delivered under reservation of title.

**10.6.** If the goods are inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the goods (invoice amount including VAT) to the other mixed items at the

time of mixing. If the mixing is carried out in such a way that the customer's item is to be regarded as the main item, it shall be deemed agreed that the customer shall transfer co-ownership to us on a pro rata basis. The customer shall hold the sole ownership or co-ownership thus created in safe custody for us.

**10.7.** We undertake to release the securities to which we are entitled at the customer's request to the extent that the realizable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released shall be at our discretion.

**11. Place of performance**

**11.1.** The place of performance for payments shall be the Seller's place of business, unless otherwise stipulated in the order confirmation.

**11.2.** The place of performance for our deliveries of goods is the respective place of dispatch.

**12. Ineffective clauses, place of jurisdiction and applicable law**

**12.1.** Should one or more provisions of these GTC be invalid, this shall not entail the invalidity of the entire contract.

**12.2.** The law of the Federal Republic of Germany shall apply to the conclusion and execution of all contracts. The validity of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded

**12.3.** The Buyer is not entitled to assign claims arising from the purchase contract without the consent of the Seller.

**12.4.** The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the Beckum Local Court. However, we are also entitled to sue the customer at his general place of jurisdiction. The same shall apply if the customer does not have a general place of jurisdiction in Germany, if the customer has moved his place of residence or habitual abode abroad after conclusion of the contract or if this is unknown at the time the complaint is filed.