

General Terms of Purchase (AGB Purchase)

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§ 1 Terms

- (1) These terms (AGB Purchase) shall be valid for all contracts concluded by Josef Drathen GmbH & Co. KG – herein after named “**Buyer**” – as a buyer or customer in so far as no other term was explicitly agreed in writing. For all other circumstances the General Terms of Sale shall be valid.
- (2) Counterclaims on the part of the Seller based on his own general terms of business or general terms of sale or delivery are herewith revoked. Any respective terms of business from the Seller/Supplier which deviate from these general terms of purchase shall not constitute any contractual content even if the Buyer has not explicitly revoked them. The general terms of purchase shall also be valid when the Buyer accepts a shipment of the Seller/Supplier unconditionally and the Buyer knows that the conditions of the supplier can be contrary or deviant from these general terms of purchase.
- (3) The terms of purchase shall be valid in the corresponding current version for all future business with the supplier. Former terms of purchase shall lose their validity thereby.
- (4) The Buyer is entitled at any time to modify or supplement these general terms of sale within a reasonable period of notice.
- (5) Any deviations from these terms shall only be binding if they are agreed for each individual transaction and formulated in writing.
- (6) The employees of the Buyer are not authorized to conclude ancillary agreements or to give any verbal warranty which would go beyond the contents of the written contract. Any such declarations shall not justify an obligation on the part of the Buyer.

§ 2 Offers, Orders, Written Form, Availability

- (1) Orders or respective modifications or supplements as well as any agreements concluded with regard to this contract shall only be binding if the Buyer has stated or confirmed this in writing.
- (2) The contract shall come into existence through the order or the on call delivery of the Buyer if the supplier does not revoke in writing within one week from receipt of order or on call delivery or does not quote a counteroffer.
- (3) The Buyer is entitled to dispute the contract or withdraw in the case of errors in writing, print or calculations in the orders.

- (4) In the case that a particular vintage named in the price list or in any agreement, or any quality may not be available at the supplier's/seller's, he shall ask for written approval prior to fulfilling the order with any other vintage or quality.

§ 3 Prices

- (1) The price named in the given price list is binding. Mistakes in writing, errors or any errors in calculations shall qualify the right to dispute.
- (2) Prices are quoted, if not otherwise agreed, free to door. This is valid for all deliveries and services for which the supplier/Buyer has to perform in order to fulfil his duties up to and at the agreed place of reception.
- (3) Should the delivery not be in conformity with the contract, especially on delivery of faulty goods, the Buyer is entitled to withhold payment without loss of early settlement discounts, discounts or similar payment benefits until proper fulfilment has been completed.
- (4) In as far as no other agreement has been made settlement of the invoice shall occur either within 30 days after receipt of the invoice with a deduction of 3 % of the net price or within 60 calendar days after receipt of the invoice and performance and quid pro quo. Payment shall be made subject to invoice controlling. The negotiation of a bill of exchange instead of settlement is subject to reservation; without special prior agreement this shall not affect the legal consequences for default regarding the claim for the purchase price.

§ 4 Special Delivery and Transport Conditions

- (1) For every delivery the Buyer shall receive an exact delivery note on the shipping day. The contractor shall be liable for incorrect issue of freight notes.
- (2) The transport insurance policy shall be taken out by the contractor on his own account in as far as no other arrangement has been agreed upon.
- (3) The contractor shall take back the packaging materials at the destination free of charge.
- (4) The criteria for the adherence to agreed delivery dates and deadlines is the delivery free from any faults or defects at the domicile of the Buyer or at the agreed destination.
- (5) Part deliveries or part performances shall require prior written approval of the Buyer. The acceptance of part deliveries or part performances shall not incur early maturity of payment obligations or any other obligations. On surplus delivery the Buyer shall be entitled to refuse delivery and to store or return the goods at the cost of the contractor.

§ 5 Passage of Risk

Any risk shall be passed over on delivery of the goods to the Buyer or to any recipient named by the Buyer.

§ 6 Payments

- (1) Payment of correctly issued invoices shall take place according to § 3 section IV. The term of time limit shall commence on receipt of the invoice, however, not before perfect fulfilment of contract.
- (2) Should an official authority take samples (planned samples, post samples or samples for specific reasons) of the goods for examination at the institutes for food chemicals and being in the possession of the Buyer representing products according to the wine laws, the term of time limit shall commence with the notice of the sample results in as far as no complaints have been received.
- (3) Payments shall be considered made when the bank has been ordered to pay on the last day of the time limit or if a cheque has been issued and sent by regular mail respectively.

§ 7 Claims for Defects

- (1) Within the framework of business requirements for the notice of examinations and defects the Buyer's obligation is limited to the examination of the goods based on the delivery note concerning the quality, identity and externally visible defects. In case of doubt about number of pieces, weights and measurement the determined values as measured during receipt of goods controlling at the Buyer's shall count.
- (2) The period of limitation for guarantee claims shall be suspended as long as the goods are being examined for defects or are in the possession of the supplier/Seller or his representative for the purpose of improvement.
- (3) The supplier/seller shall guarantee that the object of the contract conforms to any legal regulations (EU Law and laws of the Federal Republic of Germany), which belong to the (EG) regulations for the determination of highest levels of certain contaminants in foodstuffs and also the food and consumer goods stipulations of the wine law with corresponding regulations on execution.
- (4) The period of limitation regarding claims for defects shall run for a period of 36 months beginning with delivery.

Should a defect appear with the period of limitation the following legal right of purchase according to §§ 433 BGB (German Civil Code) shall apply:

If the subsequent performance on the part of the Seller does not take place within a reasonable legal period of grace, or fails, or if the period of grace was superfluous, the Buyer may withdraw from the contract without further ado according to the legal regulations and may demand damages instead of

performance, compensation for losses and/or abatement of the purchase price.

- (5) The supplier/seller shall guarantee that the Buyer does not breach any copyright, patents or other protective measures of third parties through the contractual use or sale of his deliveries. He shall release the Buyer from all claims which may arise due to breach of industrial property rights and shall assume the cost for the compliance to laws.
- (6) In any case the Buyer shall have the right to set-off and the right of retention even when pleas indisputably refer back to any other contractual relationship. It is not necessary that the corresponding counterclaims or pleas be indisputable or legally valid.

§ 8 Product Liability

- (1) The supplier/seller shall release the Buyer from all claims resulting from product liability when the respective defects may be traced to any of his deliveries and/or performances.
- (2) Should the Buyer be claimed on for reasons of product liability, the supplier/seller shall be obliged to release the Buyer from such claims, if and when the damage has been caused by a mistake in the object delivered by the supplier. In the case of liability independent of blame this shall not apply in as far as the supplier/seller is not to blame. The supplier shall bear the burden of proof.

§ 9 Rights of Ownership

The regulation of ownership rights shall be revoked herewith in as far as these shall exceed any simple right of ownership. Respective rights of ownership shall be agreed upon in advance and in writing and in each individual case.

§ 10 Applicable Law, Jurisdiction, Part Invalidity

- (1) These terms of business and the entire legal relationship between the Seller and the Buyer shall be interpreted in accordance to the laws of the Federal Republic of Germany. The UN Convention of Contracts for the International Sale of Goods is not applicable.
- (2) In as far as the Buyer is a merchant and legal person under public law or public assets the exclusive place of jurisdiction shall be 56859 Zell for all direct and indirect disputes relating to this contract.
- (3) Should any stipulation of these terms of business or any stipulation within the framework of other agreements be ineffective or become ineffective the remaining stipulations or agreements shall not be affected.