

General Terms and Conditions of Agrijute Dumarché Sarl (effective from April 2010)

1. General Information

The recent version of the present General Terms and Conditions ("Terms") of Seller amended by the Seller from time to time will apply exclusively to all offers and orders, provided the respective offer or confirmation of order indicates that they are applicable and that Buyer fails to object to them in writing immediately or accepts them otherwise. At any rate, by unconditionally accepting the confirmation of order, Buyer expresses its (implied) intent to accept these Terms.

General terms and conditions or any other kind of standardized terms of Buyer ("Buyer's terms") not expressly accepted in writing by Seller are not binding even if Seller fails to object to them. If the Parties duly agree to standardized Buyer's terms, and said terms contradict the present Terms in whole or in part, then the latter will prevail over Buyer's terms even if Buyer's terms specify that they apply in the event of such conflict.

2. Offer and Acceptance; Content of the Agreement

Offers of Seller addressed to the public in brochures, catalogs, on the Internet (including the e-shop), in advertisements, etc., as well as individual offers, are always non-binding and subject to change. Seller reserves the right to amend such offers at any time and is not liable for errors or omissions in same. No warranty is made that the products offered are actually available at any given time. Illustrations are approximate and need not be identical to the product offered. Information appearing in technical documentation is only binding if it is expressly warranted by Seller in a separate, written agreement or in the confirmation of order.

Any order issued by Buyer in oral, written, or electronic form will be deemed to constitute an offer and is legally binding on Buyer. Once the order has been received, it will be confirmed by Seller in a written confirmation of order (via letter, fax, or e-mail). This confirmation of order will normally not be signed. Besides containing the confirmation of order, such confirmation will include all other components of the agreement and will make reference to the present Terms, thereby incorporating them into the agreement. Buyer shall examine the confirmation of order accurately. If Buyer does not accept the present Terms, then Buyer must immediately inform Seller to that effect in writing, i.e., via letter, fax, or e-mail. In that case, no agreement will be deemed to be concluded between Seller and Buyer. In case Buyer remains silent, such silence will be deemed to constitute acceptance of the formation of the agreement, including the content indicated in the confirmation of order. Buyer is not required to countersign the confirmation of order in order for a valid agreement to be formed. Upon expiration of this period, Seller is at liberty to produce/order and deliver the ordered product per the confirmation of order and to bill Buyer for same.

Any revisions of the terms and conditions of the agreement requested by the Buyer after such agreement has been entered into may only be considered if Seller can still agree to the change based on the status of any preparatory work that has been done thus far. Any consent will be given via a written confirmation of order. Costs and other expenses directly or indirectly associated with such subsequent changes will be billed to Buyer in full even if the modified written confirmation of order does not include such costs and expenses. Buyer accepts any and all delivery delays associated with its change requests and waives all rights that Buyer would otherwise hold in the event of delivery delays in accordance with law, the individual agreement, and the present Terms.

3. Minimum Order Value

The minimum net order value (excluding VAT and other incidental costs, as defined in sec. 5 clause 2) is CHF 150.00/€100.00. For net orders having a value between CHF 150.00/€100 and CHF 500.00/€350, a surcharge of CHF 40.00/€25.00 will apply.

4. Retention of Title

Title to the product will remain with Seller until payment has been made in full. The Parties hereby agree that the extended retention of title applies.

Buyer is obligated to take all measures required to safeguard Seller's property.

Seller has the right, with the assistance of Buyer, to cause the aforementioned retention of title to be entered in the appropriate official register, if any.

5. Prices

Unless expressly stated otherwise, all prices are stated per 100 units in CHF or EUR, as the case may be, plus legal VAT at the time of delivery ex works Switzerland or the EU, as the case may be. The costs of packaging, transportation, and insurance will be charged separately and be labeled as "shipping costs." Changes to incidental costs after the sale agreement has been made, including packaging, insurance, transportation and freight costs, export, transit, import, and other permits, fees, charges, taxes (including VAT), duties, etc. (collectively the "incidental costs"), where consignment is subject to such costs, will be charged to Buyer in full. Seller will select not only the means of transportation most suitable to both Parties but also the carrier.

6. Payment

The terms of payment will be specified with legally binding effect in the offer or in the confirmation of order and are binding. Buyer will be in default of payment immediately upon expiration of the due date as stated in this sec. 6 clause 1. If Buyer is in default, Buyer must pay interest of 7% above the three-month LIBOR/EURIBOR rate, from the agreed due date forward, even in the absence of a payment notice. Furthermore, beginning with the second payment notice, notice fees of at least CHF 30/EUR 20 per notice will be due. Seller expressly reserves the right to claim compensation of any other form of loss and damage (including but not limited to direct or indirect losses, consequential damages, notice expenses, etc.).

Seller also reserves the right to verify Buyer's credit rating and, where necessary and at its sole discretion, to demand a full or partial prepayment or other suitable security. In any case, Seller has the right to demand preliminary payment even if Buyer's credit rating is satisfactory.

7. Seller's Rights in the Event of Default by Buyer

If Buyer defaults in making payment, Seller may unilaterally at any time and at its sole discretion demand suitable security, such as preliminary payments, collateral, guarantees, etc. for subsequent deliveries to the same Buyer or may withhold performance and/or cancel the respective agreement, provided that Buyer fails to provide the demanded security.

If possession of the goods will be transferred to Buyer prior to payment, then Seller has the right to cancel the agreement and to demand that the delivered goods be retransferred. In other respects, the relevant statutory provisions will apply without limitation.

8. Personalized Products, Customised Products, and Printing Plate Costs

Preliminary payments or deposits may be required for personalized products and custom products, as well as for printing plate costs. Such payments must normally be received by Seller no later than 10 days after the date of the confirmation of order. Until these payments are received in good time and in the event of a delay in payment, Seller is free to cancel the order or to offer it on new terms and conditions and at its sole discretion. In this case, Buyer is liable for any and all losses incurred.

9. Short and Excess Deliveries

For factory refined products (goods in bulk), personalized (individually printed) products and custom products, short and excess deliveries of up to 25% are possible, depending on the batch size, and will be accepted by Buyer unconditionally.

10. Deliveries; Terms for Delivery and Delays

Unless otherwise expressly confirmed, deliveries will solely be made within Switzerland, Lichtenstein, and the European Union (EU). Deliveries within the EU will normally be carried out and invoiced by subsidiaries of Seller that are domiciled in Member States of the EU. The agreement and these Terms will apply in their unaltered form to transactions conducted with these companies. Any and all exceptions to this provision will be confirmed in the confirmation of order or in any other written form.

Shipment of goods that are in stock will be ex works and will normally take place within 48 hours after delivery of the confirmation of order, unless the confirmation of order specifies a different date or the Seller requested any kind of security as further set out in the present Terms. The delivery date for goods that are in short supply or sold out will be indicated in the confirmation of order. The delivery date indicated in the confirmation of order is an estimate and is therefore not binding. Delivery dates are stated such that they can normally be met. Unless otherwise agreed, delivery will take place as soon as possible.

However, delivery depends on several factors, some of which Seller cannot readily control, if at all. If the delivery date stated in the confirmation of order differs significantly from the date expected and communicated by Buyer, then Buyer has the right, within 24 hours of receiving the confirmation of order, to cancel the order in writing to the extent that the delivery date expected by Buyer or agreed upon with Seller cannot be met. The reason for cancellation must be stated and be objectively legitimate. The burden of proof will be borne by Buyer. Any delivery delay caused by force majeure, equipment failure, difficulties in obtaining materials, or the like will under no circumstances grant Buyer the right to cancel the agreement. Nor will any such event establish any right of compensation of direct or indirect losses resulting from delay or of losses of any other kind.

11. Partial Deliveries

Seller may, at any time and at its sole discretion, ship the ordered goods in partial deliveries, even if the confirmation of order makes no reference to such partial deliveries. If Buyer does not request partial deliveries, then the shipping costs that would apply to sending all the ordered goods in a single shipment will be due and payable in full when the first partial delivery is made. The remaining partial deliveries will be made free of shipping charges. Where partial deliveries are requested by Buyer, the shipping costs will be charged per partial delivery in the amount applicable to same.

12. Shipping and Transportation

The risk of transportation is always borne by Buyer. Complaints related to shipping or transportation must be addressed by Buyer to the last carrier immediately upon receipt of the deliveries or of the freight documents; the respective goods must be accepted with reservations. Seller must be informed at an early stage concerning special requests as to shipping, transportation, packaging, and insurance. Such requests are not binding on Seller. Furthermore, Seller has the right to bill Buyer for any additional expenses that Seller incurs in accommodating such requests. Unless otherwise agreed, packaging will not be taken back by Seller.

13. Receipt of Goods; Submitting Claims

Buyer shall inspect the goods immediately upon receipt. Any differences in quantity and external damage must be noted on the shipping note. Furthermore, any and all detected defects or differences in quantity must be notified to Seller in writing immediately upon arrival of the goods, specifying the defects, the order number, and the delivery slip number. The same also applies to hidden defects, which must be notified to Seller immediately upon their detection, but under no circumstances later than three months after the date of receipt of the goods. Once the deadline for submitting a claim has expired, or in the event of delay, any and all rights to complain of defects shall be deemed forfeited.

14. Transfer of Benefit and Risk

The benefits and risk will pass to Buyer as soon as the shipment (goods and packaging) is ready for dispatch or pickup, even if the point of shipment is not the place of performance. This provision applies no matter which party selects the carrier or who pays the freight expenses. If shipment is delayed at the request of Buyer or for other reasons that are not attributable to Seller, then the risk will pass to Buyer at the time originally planned for delivery even if the respective goods are not ready for delivery or pick-up. From that point forward, the deliverables will be stored at Buyer's risk and expense and may be insured at Buyer's expense upon Buyer's express request. Under no circumstance will Seller be liable for unpaid insurance benefits in the event of a loss.

15. Warranty and Liability

Seller warrants that the goods meet the standards of the respective international trade associations and that they have the qualities agreed upon in the individual case. Special qualities, such as food authenticity, fitness for a particular purpose, etc., will only be deemed to have been agreed upon if they are expressly stated in the confirmation of order. Any certificate will only be issued if, at the time of placing the order, Buyer expressly stated that such was required

If the product is defective, as referred to in these Terms or under mandatory provisions of law, and Buyer has given Seller notice of the respective defects in a timely and legally valid manner, then any deliveries made by Seller as a replacement for the defective product will be deemed to constitute cure of the respective defects. No extension of any warranty periods existing for other products or additional partial deliveries can be derived from the foregoing. The instances of material breach of contract by Seller, their legal consequences, and all claims of Buyer, regardless of legal basis, are governed conclusively in these Terms. Any additional liability or warranty, including but not limited to all claims not expressly mentioned with respect to compensatory damages, reduction of the purchase price, cancellation or rescission of the agreement, as well as claims for damages as a result of a delay of delivery, etc., is waived to the fullest extent of law, unless Buyer can prove that the loss resulted from gross negligence or willful misconduct on the part of Seller or its agents or assistants. Buyer may under no circumstance claim compensation for losses not suffered by the deliverable itself, including but not limited to loss of production, loss of use, loss of orders, lost profits, consulting fees, attorney's fees, and any other costs of the proceedings, as well as any and all other direct or indirect or consequential damages of any kind.

These restrictions do not apply to willful misconduct or gross negligence on the part of Seller.

No contractual breach or obligation to pay damages will exist if Seller is prevented from fulfilling its obligations on account of force majeure, including but not limited to laws, regulations, official decisions, or other official measures, fire, storm, flooding, accidents, strikes, or other industrial disputes, war and public disturbances, failure or impossibility to procure the necessary raw materials, fuel, electricity, or means of transportation, etc.

16. Seller's Right of Recourse

If active or passive acts or omissions on the party of Buyer or its agents or assistants cause harm to persons or to the property of third parties, and claims of any type whatsoever are brought against Seller as a result thereof, then Seller will have an unlimited right of recourse against Buyer, unless Buyer can prove that neither Buyer nor its agents or assistants are at fault in any way for such harm.

17. Assignment and Pledge

Without Seller's express written consent, Buyer is not permitted to assign or pledge any claim to which it may be entitled. Seller reserves the right to assign such claim to any third party without notice.

18. Intellectual Property Rights

Any and all existing intellectual property rights to the delivered goods will be retained in full by Seller. Seller reserves all ownership rights and intellectual property rights to offers and technical documents, including but not limited to drafts, drawings, descriptions, illustrations, and the like. Such items must be returned immediately upon first request. Such items may not be used or made available to any third party without prior written confirmation from Seller.

Where Seller has delivered items based on the drawings, models, samples, or other documents supplied by Buyer, Buyer warrants that no intellectual property rights of third parties have been or will be infringed upon as a result thereof. If any third party invokes intellectual property rights in order to prohibit Seller, in particular, from manufacturing and delivering such items, then Seller has the right (without being obligated to verify the legal situation) to discontinue any further activity in this respect and to claim damages in the event of fault on the part of Buyer. Furthermore, Buyer agrees to hold Seller absolutely harmless against any and all third-party claims associated with the foregoing. Copyrights, patents, and trademarks, as well as know-how and practical expertise, including such as may be expressed in drawings and projects, remain the property of Seller and may not be reproduced, utilized, or disclosed to any third party without the express consent of Seller.

19. Miscellaneous Provisions

If any provision of the present Terms proves to be void or unenforceable, whether in whole or in part, then such invalidity or unenforceability is restricted to the provision in question alone and will not affect the validity or enforceability of any other provision hereof. The void or unenforceable provision will be replaced by a provision that approximates as much as possible the intent of the respective void or unenforceable provision.

Any waiver on the part of Seller to invoke any provision of these Terms, any individual agreement, or the assertion of any contractual breach, must be made exclusively in writing and bear a legally valid signature and will not be deemed to constitute a waiver of any other provision of these Terms or any other contractually agreed right. A waiver of this sort must be interpreted narrowly and applies only to the specific instance. The fact that Seller fails, on one or more occasions, to insist on strict compliance with any provision of these Terms or any other contractually agreed right will not be deemed to constitute a waiver of such provision; nor will it prevent Seller from subsequently insisting on strict compliance with said provision or any other provision of these Terms or any contractually agreed right. Unless the present Terms specify otherwise (e.g., in sec. 2 clause 2 above), any declaration of intent by either party (including amendments to these Terms) must be made in writing. Other statements are not binding. The following are accepted forms of written declarations of intent: orders placed in the online shop, letters, faxes, and e-mails.

Buyer bears the burden of proving that a written declaration of intent was received.

Buyer agrees to treat as strictly confidential all information, including but not limited to documents, programs, appraisals, and any other know-how that is made available to Buyer in connection with this Agreement, comes to Buyer's attention, or has been otherwise disclosed to Buyer, for the duration of this Agreement and for an indefinite period after its termination, regardless of whether or not such information constitutes one or more trade secrets.

20. Applicable Law and Jurisdiction

The present legal relationship will be governed exclusively in accordance with **French law**, except for its choice of law clauses and the provisions of the Vienna Convention (UN Convention on Contracts for the International Sale of Goods, made in Vienna on April 11, 1980 (CISG)).

The **courts of ordinary jurisdiction at the domicile of Agrijute Dumarché Sarl** will have jurisdiction over all claims and disputes arising from or in connection with the present Agreement. Nevertheless, Seller reserves the right to assert its rights in Buyer's domicile.