

GENERAL TERMS AND CONDITIONS OF CONTRACT (GTC)

of HERZOG.BAUM Samen und Pflanzen GmbH

1. General

HERZOG.BAUM Samen und Pflanzen GmbH (hereinafter referred to as HERZOG) concludes contracts exclusively on the basis of these GTC. They shall be a material component of the present contract and of any and all future contracts between HERZOG and its customers. Should any provisions of these GTC be invalid this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced with a valid provision coming as close as possible to the commercial intention of the original provision. The place of performance shall be A-4810 Gmunden, Koaserbauerstrasse 10.

2. Prices

Unless otherwise agreed upon, all prices are net prices. Deducting any discount shall be subject to an explicit prior contractual agreement.

3. Terms of payment

Unless otherwise agreed upon, the purchase price shall be paid upon delivery. HERZOG shall be entitled to refuse delivery until the purchase price has been received (in cash or in its bank account). In the event that the customer is in default of payment of the purchase price or acceptance of the object of purchase for whatever reason the customer undertakes to pay default interest at a rate of 1.25 % per month. In case of default, HERZOG shall be entitled to refuse any performance until the purchase price plus interest and expenses has been paid in full, and to withhold any goods in its custody. Any payments shall be counted first towards costs, any other ancillary claims and interest, and only then towards principal. In case of default the customer undertakes to fully reimburse HERZOG for any and all ancillary claims such as dunning charges, out-of-pocket expenses and any other costs incurred in connection with collecting the purchase price or enforcing the retention of title, and to indemnify and hold harmless HERZOG in this respect. In the event of rescission of contract due to default on the part of the purchaser HERZOG shall be entitled to demand liquidated damages of 20 % of the purchase price irrespective of any fault on the part of the purchaser and without prejudice to any further claim for damages. Any offsetting against claims of HERZOG shall be excluded. The purchaser shall not be entitled to withhold any amount due for payment on the ground of any claims against HERZOG. If payment by instalments has been agreed upon, the entire outstanding amount shall fall due upon failure to make timely payment or to make payment in full even of a single instalment without HERZOG being required to grant a grace period.

4. Retention of title

HERZOG shall remain the owner of the goods until the purchase price has been paid in full. Reselling or using the goods before having paid the purchase price plus interest and any ancillary costs (transportation, etc.) in full shall be subject to the explicit consent of HERZOG. In case of resale the customer assigns any and all claims against third parties arising out of such resale to HERZOG already at this point.

5. Transport risk

Unless explicitly agreed upon otherwise in writing, transportation of the goods shall take place exclusively at the cost and risk of the purchaser.

6. Right of rescission:

Apart from the grounds explicitly set forth in the law, HERZOG may rescind the contract if it has serious doubts about the solvency of the customer and if the customer is unwilling to secure payment of the purchase price by advance payment or by a bank guarantee despite having been requested to do so by HERZOG.

7. Defects, obligations concerning complaints:

Quality data stated in the seed price lists are approximate values for guidance. The decisive data are those stated in the delivery documents. In case of tree seeds the tolerance with respect to purity is 3 % and the tolerance with respect to germination capacity is 10 %. In case of plants it is not possible to warrant their growth since this requires proper treatment of the plants after taking delivery. Any claim for damages for consequential loss shall be excluded. Any visible defects must be complained about in writing immediately upon delivery, but in any case no later than 48 hours after delivery. The goods shall be deemed accepted in any case unless the purchaser submits a complaint accompanied by the results of an examination by an official testing institution within 30 days from receipt of goods.

8. Limitation of liability:

Since the availability of seeds and plants also depends on external factors (weather etc.) HERZOG generally does not assume liability that any seeds or plants ordered will actually be available. In addition, HERZOG does not assume liability in case of slight negligence. In case of gross negligence the liability of HERZOG shall be limited to twice the contract value.

9. Choice of law:

Any and all contacts and relations between HERZOG and the customer shall be subject to Austrian law without application of the United Nations Convention on Contracts for the International Sale of Goods.

10. Place of Jurisdiction:

Any disputes arising out of or in connection with a contract between HERZOG and the customer shall be settled by the court of law having subject-matter jurisdiction for Gmunden, Austria.