

## **AGERIO GMBH – General Terms and Conditions**

### **1. General Provisions**

By placing an order or accepting delivery - even conditionally - the client accepts the following terms and conditions as binding, both for the current and for future transactions. Differing conditions set by the client, which have not expressly been agreed to in writing by AGERIO GmbH, are not binding, an explicit objection on the part of the contractor - hereinafter referred to as AGERIO - is not necessary. This also applies if AGERIO is aware of these differing conditions. AGERIO expressly rejects any conditions of purchase set by the buyer. AGERIO supplies and provides its goods and services only under the following conditions, even if in individual cases an explicit reference to these conditions is lacking.

### **2. Orders**

Orders can be placed orally, either in person or by telephone, via fax and e-mail. Orders placed by AGERIO become valid once we have sent a written confirmation. Orders placed with AGERIO become valid upon our acceptance of a written order confirmation given by the client or a pro forma invoice. Should such a written confirmation deviate from the customer's original order and should such deviations not be objected to, then the order confirmation or proforma invoice is considered legally binding. The date of delivery is the invoice date. The person or company selling goods to AGERIO confirms that the goods are intended for the German market, that the goods are free from any rights of, or obligations to, third parties, that they have been duly taxed, that they are marketable, healthy and free from faults or defects. DSD fees were properly paid. The goods are on flawless, tested Euro or Chep pallets. Due taxes, duties and disposal costs for the aforementioned goods and repacking costs due to defective pallets, will be borne in full by the seller.

### **3. Special Offers**

Special offers made by AGERIO are subject to change without notice, the correct and punctual delivery to AGERIO, prior sale and errors. A contract of sale only becomes valid through a written order confirmation or a pro forma invoice and is always subject to the correct and punctual supply to AGERIO. Unless otherwise agreed, the customary contractual formulas (e.g. fob, cif, etc.) apply in their latest version as determined by INCOTERMS and as amended by the International Chamber of Commerce. The documents which AGERIO uses to show and/or describe the special offers and which may include images, drawings and indications of weight and size are to be regarded as approximations unless we have expressly designated them as binding.

#### **4. Prices and Payment**

Prices: Orders for which fixed prices have not been expressly agreed will be invoiced at the list price valid on the day of delivery on net / net basis plus statutory VAT. All changes to the agreed currency or the exchange rate to the euro occurring after conclusion of the contract (date of order confirmation) will affect the customer. If there is no separate written agreement, the agreed purchase price is due at the time of delivery. Place of fulfilment for this is the registered office of Agerio GmbH.

Payment: If the payment due date is exceeded, interest, calculated at a rate of 5 percentage points above the base rate of the Deutsche Bundesbank or a comparable interest rate of the European Central Bank, will be charged. Bills of exchange are only accepted for performance without liability for protest and only by agreement and on the condition that they are bankable. Discount charges will be charged from the due date of the invoice.

#### **5. Delivery times**

The agreed delivery time is only an approximation. The period of delivery starts on the day the order confirmation is sent and is considered to have been met if the goods have left the warehouse by the end of the delivery period or if notification has been made that the goods are ready for shipment. In the case of early delivery, the actual date of delivery and not the originally agreed date of delivery is applicable. Performance is always subject to the correct and punctual delivery to us. The delivery period shall be extended - even within a delay in delivery - in the event of unforeseen circumstances that AGERIO's supplier or AGERIO itself was unable to avert despite taking reasonable care as defined by the circumstances of the case. The same applies in the case of strikes and lockouts. AGERIO must immediately notify the customer of such obstacles. In the event of later amendments to the contract which may affect the delivery period, the delivery period shall be extended accordingly, unless special agreements are made about this. The customer is aware that the goods given by AGERIO for the purpose of concluding the contract are goods which normally have to be purchased by AGERIO itself at the time of the conclusion of the contract. AGERIO expressly confirms that it is acting with the due diligence of a proper merchant at this time. However, if there is a late delivery, shortage or non-delivery by the subcontractor, AGERIO cannot be held responsible for this. The delivery period changes as described above, or the supplier can withdraw from the contract with immediate notice. Claims for damages do not arise from this.

## **6. Logistics, Freight and Risk Transfer**

The delivery will be carried out as agreed – free delivery or pick up. Partial deliveries are permitted. Unloading and storage is the responsibility of the buyer. If the goods are shipped to the customer at the customer's request, the risk of accidental loss and accidental deterioration of the goods shall pass to the customer from that moment at which the goods are given to the AGERIO shipping agent or at the latest when the goods leave the warehouse, irrespective of whether the shipment is from the place of performance or some other location and irrespective of who bears the shipping costs. If the goods are ready for dispatch and the shipment or acceptance is delayed for reasons for which AGERIO is not responsible, the risk shall pass to the customer upon receipt of the notification of readiness for dispatch.

## **7. Retention of Title**

The delivered goods remain the property of AGERIO until full payment of all claims arising from the business relationship between AGERIO and the customer. The cessation of individual claims in a current account and the settling of a balance and their recognition do not affect the retention of title. Payment is only considered to have been carried out upon the receipt of the equivalent value of the entire order by the supplier. Ownership of goods purchased by the customer and invoiced by AGERIO without German excise duties, even if the purchase price has already been paid, is only transferred to the buyer once AGERIO receives the customs documents that exempt AGERIO from liability for the applicable national excise tax as determined in the in the excise tax suspension procedure. AGERIO is entitled to resell the reserved goods in the normal course of business; however, AGERIO is not permitted to pledge the goods as collateral or assign them as security. The customer is obliged to secure the rights of the conditional seller on the resale of retained goods on credit. The customer hereby assigns the claims of the customer from the resale of the reserved goods to AGERIO; AGERIO accepts this assignment. Irrespective of the assignment and the right of collection of AGERIO, the customer is entitled to collect as long as he fulfils his obligations towards AGERIO and does not fall into financial collapse. At the request of AGERIO, the customer must provide the information required for collection of the assigned claims of AGERIO and notify the debtors of the assignment. Any processing of the reserved goods is carried out by the customer for AGERIO, without any obligations arising for the latter. The customer must immediately inform AGERIO of foreclosure measures by third parties with respect to retained goods or claims assigned in advance and supply the

documents necessary for an intervention. AGERIO undertakes, at its discretion, to release the securities it is entitled to under the above provisions at the request of the customer to the extent that their value exceeds the claims to be secured by 20% or more. The customer is obliged to insure the reserved goods against any risks at his expense.

### **8. Warranty, Liability and Notification of Defects**

If the delivered goods are defective or if they lack promised features, AGERIO shall, at its discretion, replace or repair the defective product under the exclusion of any further warranty claims by the customer. The detection of such defects must be reported to AGERIO in writing immediately, in the case of identifiable defects at the latest within 10 days after receipt, in the case of non-identifiable defects immediately once the defect has been recognised. The warranty period begins with the delivery of the goods to the customer and ends no later than one month after the goods have left AGERIO's warehouse. If AGERIO allows a reasonable grace period granted to it to elapse without having repaired or replaced the defect, or if the repair fails, the customer has a right of withdrawal to the exclusion of all other claims. AGERIO shall be liable for replacement deliveries and repair work to the same extent as for the original delivery item; for replacement deliveries, the warranty period is the same as if it were a new delivery.

Claims for damages due to impossibility of performance, delay, positive violation of contractual duties, culpa in contrahendo and tort are excluded, unless they are based on wilful intent or gross negligence on the part of AGERIO or its officers. In such a case, the customer has a right of withdrawal, to the exclusion of all other claims.

The customer cannot refuse or withhold performance for any counterclaims, nor offset performance against counterclaims, unless these counterclaims are acknowledged by AGERIO or are judicially determined.

### **9. Special Provisions**

It is expressly and mutually agreed that with respect to the delivery, payment and purchase commitments that exist between the companies concerned here, that there are no and can be no offsets with other companies whose owners are partly or wholly identical with the owners of AGERIO. Such offsets are null and void.

### **10. Place of Performance and Place of Jurisdiction**

Place of performance for all obligations arising from the contractual relationship is the registered office of AGERIO, place of jurisdiction is Wesel, Germany. The contractual

relationship is subject to the law of the Federal Republic of Germany, with the exception of the Uniform Law of Sale.

AGERIO is entitled to assert claims in other courts. Contract language is German. This agreement is subject exclusively to German law. Should there be a disagreement between the original German Terms and Conditions and the English language version, then the authoritative version is the German version.

#### **11. Severability Clause**

Should one of the above provisions, for whatever reason, be invalid, this does not affect the validity of the other clauses and sub-clauses of the contract. The invalid provision is replaced by a new provision which fulfils the same economic purpose.

**Effective as of October 2018**