



**Allgemeine Geschäftsbedingungen (AGB) der Firma Stender GmbH, Alte Poststraße 121, 46514 Schermbeck**

- 1. Validity of our GTC**
- 1.1 Our offers, the acceptance of orders and all deliveries shall be made exclusively on the basis of our General Terms and Conditions (hereinafter: GTC) in the version valid at the time of the customer's order or, in any case, in the version last notified to him in text form. Any deviating GTC of the customer are hereby expressly rejected. Our General Terms and Conditions shall also apply if we carry out deliveries without reservation in the knowledge of terms and conditions that are contrary to or deviate from our General Terms and Conditions. The exclusive validity of our GTC is hereby also agreed for the conclusion of future transactions with the customer without our having to refer to them again in each individual case.
- 1.2 Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and to the extent that we have expressly agreed to their validity in writing. This requirement of consent shall also apply if the customer refers to its general terms and conditions within the scope of the order and we do not expressly object to this.
- 2. Offers**
- 2.1 Our offers are subject to change, in particular with regard to price, quantity and delivery time.
- 2.2 The order of the goods by the customer shall be deemed to be a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 4 weeks of its receipt by sending an order confirmation or by delivering the goods to the customer.
- 3. Delivery**
- 3.1 Delivery is ex works, which is also the place of performance for the delivery and any subsequent performance. At the customer's request and expense, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves. We do not assume any liability for the most favourable mode of dispatch. In commercial transactions, the place of performance does not have to be the place of dispatch; this shall take place at the expense and risk of the customer from a place to be determined by us.
- 3.2 The risk of accidental loss and accidental deterioration (loss of weight, loss of volume, confiscation, etc.) of the goods shall pass to the customer upon handover of the goods. In the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the customer upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. This shall also apply in the case of carriage paid or cif delivery.
- 3.3 In the case of delivery with our own road trains, delivery to the place of use shall only take place to the extent that the road or the company premises are passable for the road train used. Transport shall only be insured at the express request and expense of the customer. The conclusion of a transport insurance policy requires the written form. A deposit based on the

- current market price shall be charged for Euro pallets. Euro pallets must be returned immediately. If the customer is in default with the return, we are entitled to refuse the return and to charge the deposit as cost price.
- 3.4. Delivery periods shall only be set in motion when the customer has fulfilled all obligations to cooperate, in particular has made agreed down payments. As long as the customer is in arrears with a liability within the framework of the business relationship, our obligation to deliver shall be suspended. If binding delivery deadlines cannot be met for reasons for which we are not responsible, we shall inform the customer of this without delay and at the same time notify the customer of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the customer.
- 3.5. The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder with a grace period of two weeks is required from the customer. If we are in default of delivery, the customer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each full calendar week of the delay, but in total not more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that the customer has not suffered any damage or that the damage is significantly less than the aforementioned lump sum. If the delay is not due to intent or gross negligence and if the customer is a merchant who carries out the transaction within the scope of his trade, or if he is a legal entity under public law or the holder of a special fund under public law, he can only withdraw from the contract under the conditions of §§ 286 paragraph 2, 326 BGB (German Civil Code) to the exclusion of a claim for damages.
- 3.6. All circumstances beyond our control which reasonably affect the execution of the order, in particular shortages of energy and raw materials, impeded supply of raw materials, auxiliary materials and operating materials, traffic and operational disruptions, official measures, delays in delivery on the part of our suppliers, lack of loading facilities, as well as industrial disputes shall release us from the delivery obligation for the duration of the impediment or, if the disruption lasts longer, at our discretion also definitively for the non-fulfillable part, without the customer therefore being entitled to claims for damages.
- 3.7. Partial deliveries are permissible if operational necessities force us to do so. Claims for compensation by the customer cannot be derived from this. Complaints about the partial delivery do not entitle the customer to reject the remaining delivery. In the case of contracts for similar goods, delivery shall be made in accordance with the chronological order of the contracts. The concluded quantities shall apply with a tolerance of 10 % above or below the confirmed delivery quantity. Only our factory or warehouse scales shall be decisive for the calculation of the weight. Insofar as the goods are not calculated by weight but by volume, EN 12580 shall apply, whereby the volume at the time of measurement in the production process shall be decisive. For substrates whose organic content does not exceed 12 percent by mass, i.e. for substrates consisting mainly of mineral raw materials, EN 1097-3 shall apply in deviation from the above volume calculation. Complaints by the customer against the weight/volume calculation must be noted immediately on the delivery note upon delivery. Later complaints by the customer will

- only be considered if the customer proves that the weight/volume of the goods calculated by us was based on incorrect figures.
- 3.8. If the customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses. For this purpose, we shall charge a lump-sum compensation of EUR 100.00 per calendar day, starting with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for dispatch. The proof of a higher damage and our legal claims (in particular compensation for additional expenses, reasonable compensation) are not affected by this. The customer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.
- 3.9. Insofar as we store goods on call with us for the customer, we shall not be liable for cases in which natural events - e.g. rain, wind, sun, etc. - reduce or increase the weight/volume of the goods or the quality of the goods suffers. - the weight/volume of the goods is reduced or increased or the quality of the goods suffers. Against reasonable reimbursement of costs, the customer may request that protective measures be taken against such natural events, whereby this must be requested by the customer in writing and confirmed by us in writing.
- 4 Prices and terms of payment**
- 4.1 Our prices valid at the time of the conclusion of the contract shall apply, namely ex works, plus statutory value added tax. In the case of sale by delivery to a place other than the place of performance, the customer shall bear the transport costs ex works and the costs of any transport insurance requested by the customer. Any customs duties, fees, taxes and other public charges shall be borne by the customer.
- 4.2. The purchase price is due and payable within 30 days net without deduction from the date of invoice and delivery or acceptance of the goods. However, we are entitled at any time, also within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation. Non-agreed discount deductions and security/warranty retentions are inadmissible. Our drivers and field staff are not authorised to accept payments and other remunerations without a written power of attorney.
- 4.3. Upon expiry of the aforementioned payment deadline, the customer shall be in default. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We may also claim a higher interest loss if we prove a charge with a higher interest rate, whereby the customer is at liberty to prove a lower interest charge to us. We reserve the right to claim further damage caused by default. With respect to merchants, our claim to the commercial due date interest rate (§ 353 HGB) remains unaffected.
- 4.4 We are not obliged to accept cheques and bills of exchange in payment. If we nevertheless accept such, this shall only be done on account of payment, subject to correct receipt and the charging of collection and discount charges. Passing on and prolongation shall also not be deemed as fulfilment of the purchase price. We are not liable for timely presentation of the documents given in payment. Payments shall first be credited against unsecured claims, otherwise against the oldest claims, interest and costs first. Discounts will only be accepted after payment of
- 4.5. If partial payments have been agreed, the entire remaining debt shall become due for payment immediately if a customer who is not registered as a merchant in the commercial register is in default with at least two consecutive instalments or if a customer who is registered as a merchant in the commercial register is in default with one instalment for fourteen days.
- 4.6. In the event of non-compliance with the contract - even without fault - we may, without setting a deadline and irrespective of other rights, withhold or reject further deliveries and one or more orders in whole or in part and demand immediate payment for all deliveries, advance payment and, in the event of fault, damages for non-performance.
- 4.7. If it becomes apparent after conclusion of the contract that our claim to the purchase price is jeopardised by the customer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). The delivery of an order can be refused in particular if circumstances become known which make the creditworthiness of the customer, his group companies, his shareholders or a party to a bill of exchange appear doubtful. The information from a credit agency or bank shall be deemed to be proof, without the customer being able to demand the submission of the information.
- 5. Retention of title**
- 5.1 All goods delivered shall remain our property until our claims have been met in full, even if payments are made for specially designated claims. Payment in the case of bills of exchange and cheques shall only be made when they are honoured.
- 5.2. The customer is entitled to process our goods within the scope of proper business operations. We shall acquire proportional co-ownership of the objects resulting from the processing. If our goods do not lose their legal independence through processing, we may demand their surrender. The aforementioned co-ownership shall expire to this extent. The customer shall store the goods carefully and free of charge.
- 5.3. The customer is only authorised to resell in the ordinary course of business. The customer is obliged to agree a reservation of title when selling our goods. The customer hereby assigns his claims acquired in this way to us. We accept this assignment. If the customer maintains a current account relationship with its customer, the customer's current account claim against its customer shall already now be assigned to us up to the amount of all our claims against the customer in the current account of our current account claim. The assignment shall only be disclosed in the event of default in payment or other endangerment of our claims. Until revoked, the customer shall remain entitled to collect. Upon request, the customer shall immediately inform us to whom he has sold and which claims he has acquired in this respect. If the customer has a title with regard to the assignments, he shall assign it to us upon request in legal form at his expense.
- 5.4. The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The customer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties (e.g. seizures) have access to the goods belonging to us. If we take back goods on the basis of retention of title, this shall not constitute a withdrawal from

the contract. The customer shall be liable for the lost profit or, at his option, for the reduced value amounting to at least 10% of the delivery value; if the customer proves a lower reduced value, this shall be remunerated.

5.5. If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the customer's request.

## 6. **Warranty**

6.1. Our soils, substrates and peat are prepared from the best raw materials based on many years of experience and are carefully mixed by machine. They are subject to continuous control by external testing institutes and the company's own laboratory. The statutory provisions shall apply to the customer's rights in the event of material defects and defects of title (including wrong delivery and short delivery), unless otherwise stipulated below. In all cases, the statutory provisions on the sale of consumer goods (§§ 474 ff. BGB) and the rights of the customer from separately issued guarantees, in particular on the part of the manufacturer, shall remain unaffected.

6.2. The customer must inspect the delivered goods for defects immediately upon receipt. In non-commercial business transactions, visible defects must be reported to us within 14 days of receipt of the goods, invisible defects must be reported to us immediately after discovery, enclosing receipts or samples, otherwise the assertion of the warranty claim is excluded. The same shall apply to commercial business transactions insofar as the obligation to inspect and give notice of defects pursuant to §§ 377, 378 HGB (German Commercial Code) does not apply; in this case, notifications of defects must also be made in writing, enclosing receipts or samples. The costs of the inspection shall be borne by the customer if a complaint proves to be unjustified, otherwise by us.

6.3. The warranty shall expire if the goods are used for a purpose other than that contractually intended or if treatment instructions of the manufacturer or of us are not followed, unless the damage is not causally based on the aforementioned violations. The warranty is also excluded in the event of natural wear and tear. We do not accept any liability for improper handling, storage, unforeseeable climatic or other effects. In the case of delivery according to samples, we shall not be liable for deviations that may occur despite careful selection due to raw materials.

6.3. If the customer asserts warranty claims within the warranty period, we are entitled, at our discretion, either to rectify the defect or to make a new delivery. If the rectification or new delivery fails, the customer may withdraw from the contract. By withdrawing from the contract, the services received by both parties shall be returned. The customer shall not be entitled to claim damages for loss of profit or compensation for consequential harm caused by a defect, unless we are responsible for intent or gross negligence. If the customer receives compensation for damages after subsequent performance has failed, the goods shall remain with the customer if this is reasonable for him. The compensation is limited to the difference between the purchase price and the value of the defective item. This does not apply if we have fraudulently caused the breach of contract.

6.4. For entrepreneurs, the warranty period is one year from delivery of the goods; for consumers, the statutory regulations apply. The customer does not receive any guarantees in the legal sense from us. In the case of special mixtures, our warranty obligation only applies to soils, substrates and peat, not to the aggregates requested by the customer. Advice to the customer, in particular on the use of our goods, is

given without guarantee. We shall only be liable for the suitability of the goods for certain crops if we have expressly guaranteed this in writing. For first-time use, we recommend testing our products sufficiently for suitability on the basis of smaller production batches or sets of plants.

## 7. **Liability**

We shall not be liable to entrepreneurs in the event of a slightly negligent breach of immaterial contractual obligations. Excluded from this are claims of the customer arising from product liability. Furthermore, the limitations of liability do not apply in the event of bodily injury or damage to health attributable to us or in the event of loss of life of the customer.

## 8. **Choice of law and place of jurisdiction**

8.1. The place of jurisdiction for fully commercial transactions is 46514 Schermbeck, Germany.

8.2. The law of the Federal Republic of Germany shall apply to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. This applies in particular to deliveries abroad.