

GENERAL TERMS AND CONDITIONS TRANSAGRO BOUTON BVBA

1. Application areas

Unless otherwise agreed upon in writing, these General Terms and Conditions of Sale will apply to all offers and price quotations drawn up by TRANSAGRO BOUTON BVBA, Kleine Branderstraat 4a, 8900 Vlamertinge, 0461.803.043 (hereafter referred to as: "Transagro Bouton"), to each concluded agreement between Transagro Bouton and its customer (hereafter referred to as: "Customer") and to all of Transagro Bouton's invoices, regardless of whether the Customer's registered office is located in Belgium or abroad and whether the delivery is to be carried out in Belgium or abroad.

The Customer acknowledges that he has taken note of these General Terms and Conditions of Sale and has accepted them before placing the order.

The general terms and conditions of the Customer are only valid if they were explicitly accepted by Transagro Bouton in writing. In the event of a discrepancy between these general terms and conditions and the Customer's explicit written acceptance of the general terms and conditions, these general terms and conditions will prevail.

2. Quotations

2.1 Transagro Bouton's offers, quotations and contract proposals are always without any obligation. Offers, quotations and contract proposals, drawn up in any form whatsoever, will be valid for thirty days as from the date that they are drawn up, unless explicitly stated otherwise in the document.

2.2 The Customer must specify in writing in his order which information, specifications and documents are required in accordance with the regulations of the country in which delivery will take place, such as invoicing, phytosanitary requirements, international certificates, other import documents or import declarations and that at Transagro Bouton's first request. The Customer is responsible for the accuracy and completeness of the information provided by him and Transagro Bouton will only be liable with respect to an obligation of means and cannot be held liable for eventual damage in any way whatsoever that is caused by incorrect or incomplete information communicated by the Customer.

2.3 An agreement between Transagro Bouton and the Customer will only be concluded at the time of Transagro Bouton's written confirmation of the Customer's order or at the start of the implementation thereof.

2.4 An order, implemented in whatever way, cannot be cancelled and the Customer will be liable for a complete payment.

3. Prices

All prices are in Euros. Unless otherwise explicitly agreed upon in writing, prices are exclusive of VAT, shipping, packaging and insurance costs and all eventual levies or taxes are exclusively for the account of the Customer.

Specified weights and numbers are nett after tax.

Transagro Bouton reserves the right to adjust its prices proportionally, as long as there is a simple notification, should changes occur after the conclusion of the agreement in the price of energy, raw materials, wages, exchange rates or in one of the components of the cost price.

4. Payment

4.1 Unless otherwise agreed upon in writing, all invoices are payable in cash at Transagro Bouton's registered office, by cheque or by bank transfer, without discount.

Each invoice will be deemed as being accepted if no objection is received by registered letter within five working days after receipt. An objection to the invoice does not suspend the Customer's payment obligation.

4.2 In the event of full or partial non-payment of the invoice on the due date, the invoice amount will be increased by law with a late-payment interest of 15% per annum from the due date and that without any notification. The interest payable by the Customer will be capitalized annually.

In the event of full or partial non-payment of the invoice on the due date, the outstanding balance will be increased by law with a flat-rate compensation of 15% of the invoiced amount, with a minimum of 75 Euros and a maximum of 1.750 Euros, even in case of the granting of forbearance periods and without prejudice to Transagro Bouton's right to claim higher compensation, provided the supplying of evidence of higher damages actually suffered.

In addition, without prejudice to the right to reimbursement of court fees, Transagro Bouton has the right to a reasonable compensation from the Customer for all relevant collection costs arising from non-payment.

4.3 In the case of non-payment of one single invoice on the due date, (i) Transagro Bouton is entitled to suspend all other orders of the Customer and obligations with respect to the Customer, without prior notification or without owing compensation for damages, until total payment by the Customer and (ii) all outstanding claims on the Customer will be due immediately and without notification.

If Transagro Bouton's confidence in the Customer's creditworthiness is upset by judicial settlements and/or identifiable other events that will question and/or render the proper execution of Customer's commitments impossible, Transagro Bouton will have the right to suspend all or part of the order, even if the goods have already been partially or wholly delivered, and to demand appropriate guarantees from the Customer. If the Customer should refuse to adhere to this, Transagro Bouton will have the right to cancel the entire order or part thereof without being liable for damages and without prejudice to Transagro Bouton's right to compensation for damages.

4.4 In the event of invoicing in the name of a legal entity, the directors, together with the legal entity, will be held jointly and severally liable for payment.

Settlement by offsetting by the Customer is explicitly out of the question. The acceptance of a bill of exchange or other negotiable documents, payment by bank transfer or any other way otherwise, will not result in debt renewal, so that the current terms and conditions will remain fully applicable. All associated costs will be borne by the Client and will be payable in cash.

5. Delivery, harvest preservation, preservation of ownership

5.1 The agreed upon delivery terms are merely indicative. Delivery takes place under the usual harvest preservation. Exceeding the delivery period for any reason whatsoever cannot give rise to any liability with regards to Transagro Bouton, or to the termination of the agreement, or to any form of damage compensation for the Customer. The Customer declares to accept the order in multiple deliveries. Transagro Bouton has the right to invoice partial deliveries separately. Delivery of the goods occurs ex works.

The Customer is obliged to collect the goods, or have them collected, on the specified delivery dates. The Customer will owe a flat-rate compensation of 1% of the invoice amount for each week's delay of collection. If no complete collection has occurred one month after the agreed upon delivery date, Transagro Bouton will have the right to dissolve the agreement with immediate effect, without judicial authorization, without prior notification and without owing any damage compensation and the customer will owe a flat-rate damage compensation amounting to 30% of the invoice amount of the goods that have not been collected yet, without prejudice to Transagro Bouton's right to claim a higher compensation, provided the supplying of evidence of higher damages actually suffered.

Collection or delivery is at the expense and risk of the Customer. If it is explicitly agreed upon that Transagro Bouton will take care of the transport of the goods sold, Transagro Bouton will arrange the transport at its sole discretion and the risk of storage, loading, transport and unloading will remain with the Customer and Transagro Bouton will not be held liable for this.

5.2 The goods supplied by Transagro Bouton to the Customer will remain the property of Transagro Bouton, under all circumstances and notwithstanding Article 1583 of the Civil Code, until all amounts owed by the Customer to Transagro Bouton, including interests, costs and charges, have been paid. Nevertheless, the risk of loss or destruction of the goods will be fully borne by the Customer from the moment that the sold goods have been delivered. The Customer has a duty of care with regards to the goods subject to proprietary preservation and should store them in a suitable and clean place and preserve them in accordance with the standards and safety regulations that are applicable in the sector and in such a way that the goods will be easy identifiable as the property of Transagro Bouton. Until the time of full payment, the Customer is expressly forbidden to dispose of the goods delivered, use them as a means of payment or to encumber them with any security interest.

5.3 At all times Transagro Bouton reserves the right to deliver the ordered quantity of the products with a tolerance of 5%.

6. Intellectual property rights et al

All know-how, utilized programs, intellectual or other property rights relating to or used in the manufacture of the products provided by Transagro Bouton will always belong to Transagro Bouton or to the third party legitimate owner.

7. Complaints

The Customer must thoroughly inspect all of Transagro Bouton's deliveries (or have them inspected) upon receipt of the goods. Goods are irrevocably deemed to be accepted in each case as soon as they are used in full or in part or put into service.

Complaints regarding the quantity, weight or number of the delivered, or relating to, visible defects must be reported to Transagro Bouton by means of a registered letter within 2 working days of receipt of the goods and in any event before being used by the Customer.

Complaints regarding hidden defects must be reported by the Customer to Transagro Bouton by registered letter no later than 5 working days after receipt of the goods with a detailed description of the defect.

Complaints filed after this period will not be accepted. In the absence of timely protest pursuant to this Article, the Customer will be irrevocably deemed to have accepted and approved the delivery.

Complaints will not suspend the Customer's payment obligation.

In the event of an admissible and legitimate complaint regarding defects in the goods, Transagro Bouton will replace the delivered goods. Transagro Bouton can never be held liable for any other damage compensation, nor can any other sanctions be imposed on it.

8. Liability, force majeure, imprevision

8.1 Transagro Bouton will only be liable for damage due to non-compliance with its contractual obligations insofar such damage is caused by fraud, deception or deliberate error. Transagro Bouton will not be liable for other errors (including gross errors).

Transagro Bouton cannot be held liable for defects, shortcomings or negligence by third parties, such as, but not limited to, its manufacturers and suppliers.

The Customer explicitly accepts that Transagro Bouton cannot be held liable and that the Customer is not entitled to claim the termination of the agreement or damage compensation in case of (i) inaccuracies in the information provided by or on behalf of the Customer, (ii) non-delivery due to insufficient or failed harvest or a shortage of supplies at Transagro Bouton's suppliers (iii) damage resulting from an infringement by Transagro Bouton's manufacturer or supplier of the regulations concerning GMOs or concerning the phytosanitary and/or other regulations (iv) defects with regards to the phytosanitary and/or other applicable regulations in the country of destination of the goods and (v) damage caused by a different use of the goods other than fodder.

The liability of Transagro Bouton will always be limited maximally to the part of the invoice value of the Customer's order to which the liability relates. If the damage is covered by insurance, Transagro Bouton's liability will be limited to the amount actually paid out by the insurer. Transagro Bouton will never be liable for indirect damages, including, but not limited to, consequential loss, loss of profits, loss of savings, production restrictions, administrative or personnel expenses, an increase in the general costs, loss of clientele, third party claims or damage to third parties. The Customer will exclusively be responsible for the use that he makes of the goods.

8.2 Transagro Bouton's liability cannot be invoked when, in whole or in part, non-compliance with its obligations is due to force majeure, even if this circumstance was already to be foreseen at the time of the agreement's conclusion, such as war, extreme weather conditions, riots, general or partial strikes, general or partial lock-out, infectious diseases, failed harvest, operating accidents, fire, machine failure, bankruptcy of suppliers, lack of raw materials, exhaustion of inventory, delays in or non-occurrence of deliveries by suppliers, floods, extreme absenteeism due to illness, electronic, information technology, internet or telecommunications disruptions, decisions or interventions by the government (including the refusal or cancellation of a permit or license), fuel shortages, etc. As the Customer's commitments with regards to Transagro Bouton is essentially a payment commitment, force majeure on the part of the Client will be explicitly excluded.

Transagro Bouton has the right to terminate the agreement in case of force majeure without being liable for damage compensation.

8.3 If the fulfilment of an agreement has become more objectionable for a party, this party is nevertheless obliged to fulfil its obligation, subject to the following provisions regarding excessive aggravation.

In the event that a fundamental change in the economic conditions - which was unforeseeable at the time of the conclusion of the contract and which is not attributable to the intention of Transagro Bouton - will entail excessive encumbrance of the execution of the contract and an unreasonable or disproportionate impediment will consequently ensue for Transagro Bouton, the parties will consult to reach an equitable and reasonable adjustment of the terms of the contract jointly and in good faith.

Changes in economic circumstances include the following events (non-exhaustive): war, exceptional weather events (such as: extreme drought or floods), natural disasters, riots, general or partial strikes, general or partial lockouts, cases of epidemics, pandemics or infectious diseases, crop failures, due to extreme weather conditions, plagues and diseases, operating accidents, fire, machine failure, supplier bankruptcy, lack of raw materials, stock depletion, delays in, or the absence of deliveries by the supplier, high absenteeism due to illness, electronic, IT, internet or telecommunications failures, governmental decisions or interventions (including refusal or cancellation of a permit or license, general or partial lock down), fuel shortages, etc.

In the event of rejection, or failure, of the renegotiations within a reasonable period, Transagro Bouton will be able to appeal to the competent court, to either have the contract terminated on a specific date and under specific conditions, or to amend the contract in order to restore the contractual balance between the parties.

9. Contractual relationship, dissolution

9.1 All agreements between Transagro Bouton and the Customer form part of one global contractual relationship. If the Customer fails to fulfil his obligations under a particular agreement, Transagro Bouton can suspend the further execution of both the relevant and other current agreements.

9.2 Transagro Bouton will have the right to dissolve the agreement with the Customer at all times, with immediate effect, without judicial authorization, without prior notification and without owing any damage compensation in the following cases: (i) if the Customer fails to comply with the (timely) compliance of one or more of the commitments arising from the agreement; (ii) upon cessation of payment or (the application of) bankruptcy or reorganization under the Law of 31 January 2009 regarding the continuity of the company by the Customer; (iii) upon liquidation or termination of the Customer's activities; or (iv) seizure of (part of) the Customer's assets.

Upon dissolution, all Transagro Bouton's claims with regards to the Customer will be immediately due and the Customer will owe Transagro Bouton a flat-rate compensation of 30% of the goods that have not been collected yet, without prejudice to Transagro Bouton's right to claim a higher compensation, provided the supplying of evidence of higher damages actually suffered.

10. Term of limitation

All claims against Transagro Bouton, for any reason whatsoever, will expire after 6 months from the date of delivery. This period cannot be suspended and can only be arrested by legal action.

11. Applicable law, dispute settlement

Only the Belgian law is applicable in the case of disputes, without prejudice to the Convention of 11 April 1980 on the right to international buying-selling of movable property and only the courts of the Ypres district will have jurisdiction, unless Transagro Bouton should prefer to address the competent court of the place of establishment of the Customer.

12. Various

12.1 If a (part of a) provision of these General Terms and Conditions would be invalid or unenforceable, it would not affect the validity and enforceability of the other provisions. Where appropriate, the Parties will agree to submit the null or void clause to the court that will moderate the clause in question in accordance with the maximum statutory provisions.

12.2 Transagro Bouton's non-exercise of its rights, at any time whatsoever, does not imply a waiver of those rights.

12.3 The rights and obligations arising from the agreement will not be transferred in full or in part without the prior written consent of Transagro Bouton.

12.4 In the event of a dispute concerning the interpretation of these general terms and conditions, the Dutch text will prevail.

*Version française disponible sur simple demande
Een vertaling in het Nederlands is beschikbaar op aanvraag
Eine deutsche Übersetzung ist auf Anfrage erhältlich*