

# General Terms and Conditions (GTC)

## 1 General - scope of application

1. The following business conditions in their current version are part of all supply contracts, agreements and offers in connection with the sale of products and services of WeGrow GmbH, the WeGrow KiriFarm GmbH and WeGrow Bewirtschaftungs-GmbH, each with its registered office in 47918 Tönisvorst, Germany (hereinafter referred to as „WeGrow“ or „Seller“). They shall be deemed accepted at the latest when the order is placed or the offer is accepted.

2. Consumers within the meaning of these terms and conditions are natural persons with whom a business relationship is entered into without a commercial or independent professional activity being attributable to them. Entrepreneurs within the meaning of these terms and conditions are natural or legal persons or partnerships with legal capacity with whom a business relationship is entered into, who act in the exercise of a commercial or independent professional activity. Buyers in the sense of these terms and conditions are both consumers and entrepreneurs.

3. WeGrow expressly contradicts purchasing or order conditions or other general terms and conditions which deviate from, contradict or supplement our sales and delivery conditions; even if these other conditions are known, they will not become part of the contract, unless their validity is expressly approved by us in writing.

## 2 Offer and conclusion of contract

1. Our offers are subject to change, non-binding and in accordance with our availability and unless otherwise agreed.

2. With patterns WeGrow only shows the average condition, not all plants or wood assortments turn out exactly like the pattern.

3. Our offer is subject to the condition that WeGrow may supply the nearest lower or higher grade for missing sizes at our list price.

4. With the order of a product the buyer declares bindingly that he wants to purchase the ordered product. The contract is concluded in such a way that the order transmitted by the buyer is confirmed in writing or in text form by WeGrow within 2 weeks after receipt or that WeGrow and the buyer conclude a sales contract in writing or in text form.

5. If the consumer orders the goods electronically, WeGrow will immediately confirm receipt of the order. The confirmation of receipt does not represent a binding acceptance of the order. The confirmation of receipt can be combined with the declaration of acceptance.

6. The conclusion of the contract shall be subject to correct and timely delivery by our suppliers. This shall only apply in the event that we are not responsible for non-delivery, in particular if a congruent hedging transaction is concluded with our supplier. The buyer will be informed immediately about the non-availability of the service, the consideration will be refunded immediately, if already paid.

7. If the consumer orders the goods by electronic means, the text of the contract (such as acceptance of offer) will be stored by us and sent to the purchaser by e-mail on request, together with these General Terms and Conditions.

## 3 Prices and terms of payment

1. All prices are quoted in Euro plus statutory value added tax. With new publication of the catalogue / price list the old prices lose their validity.

2. WeGrow reserves the right to deliver only against advance payment.

3. Unless the invoice is issued in this currency, foreign means of payment shall be converted into euros at the official selling rate of the respective currency quoted at the Deutsche Bundesbank on the day of invoicing.

4. The buyer undertakes to pay the purchase price within a period of 14 days after receipt of the invoice. After expiry of this period, the buyer is in default of payment. If the buyer is a consumer within the meaning of Section 1 No. 2, he shall pay interest on the money debt at a rate of 5% above the base rate during the period of default. If the buyer is an entrepreneur within the meaning of Section 1 No. 2, he shall pay interest on the debt at a rate of 8% above the base rate during the period of default. WeGrow reserves the right to prove and claim higher damages from the entrepreneur. Payment within 14 days, net without discount.

5. The consumer has a right to offset only if his counterclaims have been legally established or acknowledged by us. The assertion of a right of retention is only permissible due to circumstances arising from the same delivery. In commercial legal transactions, the exercise of a right to refuse performance or a right of retention on the part of our entrepreneur customers is excluded.

6. Cheques and bills of exchange are only accepted on account of performance under the reservation of encashment. Any expenses and costs arising therefrom shall be borne by the buyer.

## 4 Transfer of risk, dispatch and packaging

1. Place of performance and place of transfer of risk is the seat of WeGrow, unless otherwise specified.

2. The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer upon delivery, in the case of sale to destination, upon delivery of the goods to the forwarding agent, carrier or other person or institution designated to carry out the shipment.

3. The handing over of the goods is the same if the buyer is in default of acceptance.

4. Shipment is at the risk of the buyer. The buyer bears the costs, unless otherwise agreed. Transport insurance will only be taken out at the express request and expense of the purchaser.

5. If the dispatch or handover is delayed as a result of a circumstance for which the buyer is responsible, the risk shall pass to him from the day on which the delivery item is ready for dispatch and the buyer has been notified of this.

6. The seller must pack the goods properly and carefully. The individual delivery items must be clearly marked.

7. Packaging is generally not taken back by the seller, with the exception of plastic airpruning trays or reusable pallets.

8. Packaging and transport costs as well as cartage can be charged subsequently.

9. Delivery by truck can only be made via roads that are freely accessible. The buyer must ensure a suitable unloading location in accordance with legal regulations.

## 5 Delivery date and delivery obligations

1. The mentioned delivery times are not binding, unless they have been confirmed in writing by WeGrow. All other delivery dates refer to the time of handing over the goods to the third party responsible for the transport.

2. We expressly reserve the right to make partial deliveries.

3. If the buyer does not fulfill his contractual obligations to cooperate or does so belatedly, WeGrow is entitled to extend delivery and service times without prejudice to other rights.

4. WeGrow is not liable for the impossibility or delay of the service, as far as this is caused by force majeure or other events not foreseeable at the time of the conclusion of the contract (e.g. war, terrorist attacks, evacuations based on such, import and export restrictions, operational disturbances of all kinds, difficulties with the cultivation of the seedlings, transport delays, strikes, legal lockouts, lack of workers, energy or raw materials, also those affecting suppliers, the missing, incorrect or not timely delivery by suppliers, official measures and more), which WeGrow is not responsible for. If such events make it difficult or impossible for WeGrow to deliver and perform and the hindrance is not only temporary, WeGrow has the right to withdraw from the contract. In the case of hindrances of temporary duration, the delivery or service dates are extended or postponed by the period of the hindrance plus an appropriate start-up period. As far as the buyer cannot be expected to accept the delivery or service due to the delay, he can withdraw from the contract by immediate written declaration to WeGrow.

5. If delivery becomes impossible due to the circumstances mentioned, WeGrow is released from the obligation to deliver. In these cases the buyer cannot claim damages.

## 6 Growing instructions for plant purchases

1. WeGrow expressly points out to the buyer that when purchasing plants, a detailed professional site assessment

(especially soil and climate assessment) and a subsequent careful selection of the appropriate cultivation site are essential for the achievement of a high level of cultivation and yield security by the buyer and that the planting and care of the plants must be carried out by persons trained and competent in the field of plant cultivation. The buyer is obliged to inform his customers accordingly when reselling the goods.

## 7 Retention of title

1. For contracts with consumers, WeGrow reserves the right of ownership of the goods (hereinafter referred to as „reserved goods“) until full payment of the purchase price. In case of contracts with entrepreneurs, WeGrow reserves the right of ownership of the goods until the complete payment of all claims from a current business relationship including secondary claims. The retention of title also remains in force if individual claims of WeGrow are included in a current account and the balance has been drawn and accepted.

2. WeGrow's ownership of the goods subject to retention of title is not lost if the entrepreneur, as buyer, strikes or plants the delivered plants on his own or a third party's property until they are resold. The goods subject to retention of title are to be stored, cut or planted separately from other plants and to be marked in such a way that they can be identified as coming from WeGrow. The buyer is obliged to treat the goods subject to retention of title with care and free of charge. This includes in particular correct storage, planting, fertilization and irrigation.

3. The buyer is obligated to inform WeGrow immediately of any access of third parties to the goods, for example in the case of a seizure, as well as any damage or destruction of the goods, stating the name and address of the seizure creditor. The buyer has to inform WeGrow immediately about a change of ownership of the goods as well as a change of residence.

4. WeGrow has the right to withdraw from the contract and to demand the return of the goods in case of a breach of contract by the buyer, especially in case of default of payment or in case of violation of an obligation according to numbers 2 and 3 of this regulation.

5. The entrepreneur is entitled to resell the goods in the ordinary course of business. The entrepreneur hereby assigns to WeGrow the claims to which the buyer is entitled from the resale including all ancillary rights and including any balance claims. WeGrow accepts the assignment. After the assignment, the entrepreneur is authorized to collect the claim. WeGrow reserves the right to collect the claim itself as soon as the entrepreneur does not properly meet his payment obligations and is in default of payment.

6. The treatment and processing of the goods by the entrepreneur is always in the name of and on behalf of WeGrow. If there is a mixing with goods not belonging to WeGrow, WeGrow acquires the co-ownership of the mixed goods in proportion to the value of the goods delivered by WeGrow to the other goods. If a mixing with goods not belonging to WeGrow fol-

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lows, WeGrow acquires co-ownership of the mixed goods in proportion to the value of the goods delivered by WeGrow to the other goods.

7. The buyer keeps the goods subject to retention of title free of charge for WeGrow.

## 8 Guarantee and warranty

1. Subject to the following provisions, the statutory warranty for defects applies.

2. The warranty period for all services and deliveries is one year from delivery.

3. The buyer is only entitled to warranty claims if he has fulfilled his obligations to inspect and complain in accordance with §377 HGB.

4. A guarantee for the growth, the growth development and the achievable wood quality of the plants is not given.

5. The costs of the return shipment shall be borne by the consumer when exercising the right of revocation for an order value of up to 40 EURO, unless the delivered goods do not correspond to the ordered goods. In case of an order value of more than 40 EURO the consumer does not have to bear the costs of the return shipment.

6. A guarantee for the authenticity of the variety will only be given on explicit request. In the case of trees, the guarantee for the authenticity of the varieties and the required documentation shall be given until the end of the fifth year from the date of delivery.

7. In case of culpable defects of the goods caused by WeGrow, the buyer has the right to supplementary performance in the form of removal of defects or delivery of goods free of defects. If the supplementary performance fails, the buyer is entitled to reduce the purchase price according to the legal regulations.

8. The object of purchase is a living plant. WeGrow is not liable for damages and losses caused by intent, carelessness, improper handling or non-compliance with the care and cultivation instructions on the part of the buyer, the effects of nature or bite damage by game. Furthermore, the buyer or injured third parties cannot make a claim against WeGrow for reimbursement of costs or compensation for any damage caused by the plants.

9. If the buyer is an entrepreneur, WeGrow provides warranty for defects of the goods at its own discretion by repair or replacement.

10. If the buyer is a consumer, he first has the choice of whether the subsequent performance is to take place by repair or replacement. WeGrow is however entitled to refuse the type of chosen supplementary performance if it is only possible with disproportionate costs and the other type of supplementary performance is without significant disadvantages for the consumer.

11. If the supplementary performance fails, the buyer can in principle demand either a reduction of the remuneration (abatement) or rescission of the contract (withdrawal). However, in the event of a minor breach of contract, in particular in

the case of minor defects, the purchaser shall not be entitled to withdraw from the contract.

12. Entrepreneurs must notify WeGrow in writing of obvious defects within a period of 8 days after receipt of the goods; otherwise the assertion of warranty claims is excluded. To meet the deadline it is sufficient to send the notification in time. The entrepreneur has the full burden of proof for all conditions of claim, especially for the defect itself, for the time of discovery of the defect and for the timeliness of the notice of defects. Consumers must inform WeGrow in writing of obvious defects within a period of two months after the time at which the condition of the goods contrary to the contract was determined. Decisive for the observance of this period is the receipt of the notification by WeGrow. If the consumer fails to inform WeGrow, warranty rights expire two months after the defect has been detected. The burden of proof for the time of the discovery of the defect lies with the consumer. If the consumer was persuaded to purchase the goods by incorrect statements in the brochure, the burden of proof is on him. If a living plant is the object of purchase, the consumer has the burden of proof in the case of death, infestation with pests or any other disease of the plant that these facts are not due to improper treatment of the plant after its delivery.

13. If the buyer chooses to withdraw from the contract due to a legal or material defect after a failed supplementary performance, he shall not be entitled to any additional claims for damages due to the defect. If the buyer chooses compensation for damages after a failed supplementary performance, the goods remain with the buyer if this is reasonable. The compensation is limited to the difference between the purchase price and the value of the defective item. This does not apply if WeGrow has maliciously caused the breach of contract.

14. For entrepreneurs the warranty period is one year from delivery of the goods. For consumers, the period of limitation is two years from delivery of the goods. This does not apply if the buyer has not notified WeGrow of the defect in time (paragraph 6 of this provision).

## 9 Limitations of liability

1. WeGrow is only liable for damages which are based on a violation of an essential contractual obligation or if life, body or health are injured because of an intentional or grossly negligent behaviour by WeGrow or its assistants. A contractual obligation is essential if its fulfilment makes the proper execution of the contract possible or if the buyer has relied and was allowed to rely on its compliance. The liability according to the product liability law and for guarantees given by WeGrow remains unaffected.

2. As far as there is no intentional behaviour, this liability is limited to damages which WeGrow has foreseen as a possible consequence of a breach of contract at the time of the conclusion of the contract or which WeGrow should have foreseen when applying due diligence. Indirect damages and consequential damages of a defective performance are only replaceable as far as

such damages are typically to be expected when using the delivery item according to the intended purpose.

3. As far as WeGrow gives technical information or acts in an advisory capacity and this information or this advice does not belong to the contractually agreed scope of services owed by WeGrow, this happens free of charge and under exclusion of any liability, as far as nothing else is agreed.

4. The buyer's claims for damages due to a defect become statute-barred after one year from delivery of the goods. This does not apply if WeGrow can be accused of gross negligence, as well as in case of bodily harm and damage to health attributable to WeGrow or in case of loss of life of the buyer.

## 10 Prohibition of breeding and reproduction

1. The purchase of Kiribaumsorten (Paulownia) protected by patent and plant variety rights, as well as those whose names are protected by trademark rights, obliges the entrepreneur as buyer to resell the varieties exclusively with the original labels supplied with the plants, and not to use the purchased plants or parts thereof for propagation and to refrain from any sale of such plants abroad. The entrepreneur as buyer undertakes to impose this measure also on his buyers in cases of resale.

2. The buyer is expressly prohibited, under threat of claims for damages, from passing on the acquired plant or biological plant or genetic material to third parties for commercial breeding purposes, either in whole or in part. It is also forbidden to reproduce, multiply, clone, reproduce in any other way or genetically modify the plant material in any form.

3. In case of a violation of this prohibition by the buyer, WeGrow is entitled to hold the buyer liable for the omission of the behaviour contrary to the contract.

4. If the buyer violates the prohibition, WeGrow is entitled to demand a contractual penalty from the buyer, which is to be determined at its own discretion and which can be reviewed by the competent court. Further possible claims for damages and injunctive relief remain unaffected.

## 11 Right of revocation and return

Distance contract with revocation clause

1. The consumer has the right to revoke his declaration of intent to conclude the contract within two weeks of receipt of the goods, unless the goods are living plants. The revocation does not have to contain any reasons and is to be declared to the seller in text form or by returning the goods.

2. When exercising the right of withdrawal, the consumer is obliged to return the goods if they can be sent by parcel. The costs of the return shipment shall be borne by the consumer when exercising the right of revocation for an order value of up to 40 EURO, unless the delivered goods do not correspond to the ordered goods. In the case of an order value of more than

40 EURO the consumer does not have to bear the costs of the return shipment.

3. The consumer must pay compensation for any deterioration of the goods caused by proper use. The consumer may examine the goods carefully and cautiously. The consumer must bear the loss of value which, due to use beyond mere examination, results in the goods no longer being able to be sold as „new“.

## 12 Final provisions

1. The law of the Federal Republic of Germany shall apply exclusively, excluding the UN Convention on Contracts for the International Sale of Goods.

2. If the buyer is a merchant, a legal entity under public law or a special fund under public law, or if the buyer has no general place of jurisdiction in the Federal Republic of Germany or has relocated its place of jurisdiction abroad, Krefeld shall be the exclusive place of jurisdiction.

3. Insofar as the contract or these General Terms and Conditions of Sale and Delivery have been drawn up in several languages, only the German version is legally binding.

4. If the contract or these General Terms and Conditions of Sale and Delivery contain loopholes, this shall not affect the validity of the remaining provisions. In order to fill these loopholes, those legally effective regulations shall be deemed agreed upon which the contracting parties would have agreed upon in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Business if they had been aware of the loophole.

5. Data from this contractual relationship will be processed for the purpose of implementing the contract (Art. 6 para. 1 lit. F GDPR).

## 13 Our contact information

These general terms and conditions apply to the following companies of the WeGrow group: WeGrow GmbH, WeGrow Bewirtschaftungs-GmbH and WeGrow KiriFarm GmbH. Our contact details are:

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