

Preamble

The terms and conditions below shall be applicable to all the contracts relating to the sale and delivery – without any obligation of commissioning – of the user's products (hereinafter the "Supplier") to the contractual partner (CP).

I. Contractual bases

1. The terms and conditions of sale of the Supplier shall be applicable on an exclusive basis. They shall also be applicable to all future business relationships, even though they may not be specifically agreed upon each time. We hereby object to any counter-confirmations of the CP in which it makes reference to its terms and conditions of business. The foregoing shall also be applicable if the Supplier were to be caused to submit or accept any offer in which reference is made to the prior-ranking applicability of the CP's terms and conditions of business.
2. The terms and conditions of sale of the Supplier shall only be applicable to enterprises as defined in Sec. 310 (1) of the BGB (German Civil Code). No further arrangements have been made.
3. This document is a translation from the original German version, which the customer shall obtain from the contractor upon request. In cases where the translation differ in meaning from the original German version the German version takes precedence.

II. Contents of the Supplier's Performance

1. The purchase order signed by the CP is a binding offer which the Supplier is eligible to accept within four weeks. Contents and scope of the contract shall be exclusively subject to the respective confirmation of order of the Supplier.
2. The Supplier's offers shall be subject to the availability of supply and shall not be binding as to term and amount of delivery. Product descriptions shall only be considered to be guarantees to the extent and only for such specific characteristics as explicitly agreed upon in writing between the parties. Any details used for identification or advertisement purposes shall not be binding.

III. Terms of Payment, Retention

1. The applicable prices are given in the Supplier's price lists as amended at the time of signing the contract, unless the parties agree on any alternative prices.
2. Unless otherwise agreed upon, all the prices are exclusive of value added tax which must be added at the legal rate as applicable from time to time, except for packaging and loading. Payments shall be made in EURO only.
3. Subject to any diverging instructions in the confirmation of order; the purchase price shall be due at net value (without any discount) within 14 days of the invoice date. If the CP defaults in payment, the Supplier shall have the right to claim default interest at a rate of 8 % above the respective base rate p.a., unless any higher default damage is proved by the Supplier; or any lower default damage is proved by the CP, respectively.
4. Retention of payments and setting off against any counterclaims of the CP denied by the Supplier; especially for defects, shall not be permitted unless such counter-claims have been recognised by declaratory judgement, are uncontested, or accepted by the Supplier.

IV. Term of Delivery

1. The coordination of all the technical issues as well as the due performance of all the obligations by the CP is conditional for the start of the delivery term stated by the Supplier and the compliance with all the obligations relating to delivery. We reserve the right to put forward defence for non-performance of the contract.
2. If the CP should default in acceptance or breach any other obligations to cooperate, the Supplier shall be entitled to claim compensation for any damages it may incur in this connection, including additional expenses, if any. We reserve the right to assert any further reaching claims.
3. If the conditions described in sub-clause 2 above are given, the risk of accidental loss or accidental deterioration of the object of purchase shall pass to the CP in the moment in which the CP gets in default of acceptance or payment.
4. For compliance with the term of delivery it shall be sufficient that the object to be supplied has left the business premises of the manufacturer; or readiness for dispatch has been announced by the lapse of such term. Partial deliveries shall be accepted at any time.
5. The Supplier shall not be liable for delays in delivery due to unforeseeable events not under the control of the Supplier and significantly impeding or rendering impossible the delivery. The Supplier shall not assume any procurement risk. The Supplier shall be released from its obligation to supply and/or perform on time if it does not receive the object of delivery or any part(s) required for its manufacture in due time without any fault on its part.
6. If the Supplier is in default, the CP shall be entitled to compensation for default in the amount of the proved damage incurred, however – subject to subsection 7 hereunder – limited to a maximum 0.6 % for each completed week of default, but not exceeding a maximum 6 % of the value of the object of purchase in default.
7. Any damage claim exceeding the foregoing shall be excluded, provided, however; that the Supplier caused the default in acting with gross negligence, or breaching an essential obligation (cardinal obligation) in the meaning of Section VII (1) hereunder. In the latter case such damage claims are, however; limited to typically occurring damages foreseeable at the date of the contract. Section VII (2) sentence 2 shall be applicable accordingly.
8. If in case of an aggregate plant the parties agreed on a contractual penalty or lump-sum compensation for the event of any Supplier's default, such penalty or lump-sum compensation shall not be applicable if the time for finishing the aggregate plant should be met despite the Supplier's default.

V. Allocation of Risk and Responsibility for Packing

1. Unless otherwise provided for in the confirmation of order; delivery "ex works" shall be agreed, excepting shipment and packing.
2. Shipment packing and any other packing materials pursuant to the packing specification will not be accepted back. The CP is obliged to arrange for disposal of packing materials at its own expense.

VI. Warranty

1. The warranty rights of the CP shall be subject to its due compliance with the requirements of inspection and making complaints according to Sec. 377 of the HGB (German Commercial Code).
2. In case of a defect to the object of purchase the Supplier is liable for; the Supplier may opt for remedy of the defect or for effecting a replacement delivery. The Supplier shall pay only the costs of dismounting and remounting, as well as of the replacement parts and the shipment to the initial destination.
3. While the Supplier meets its obligations to remedy the defects, the CP shall not be entitled to reduce the purchase price, or rescind the contract, unless the rectification of defects failed. The party suffering the defect has no right to remedy the defect itself.
4. Unless setting of a deadline is not required by law, the CP may rescind the contract, reduce the price or claim damage compensation instead of performance only if it has previously requested the Supplier without success to render performance or rectify defects by setting a reasonable deadline and threatening that once such deadline has expired it will reject to accept performance or rectification of defects.
5. To the extent the Supplier is liable for damages pursuant to the legal regulations, the limitations of liability as defined in Section VII hereunder shall apply.
6. Unless otherwise agreed between the parties, the warranty period shall be 1 year as of the date of delivery. Any and all claims of the CP for any other breaches of contract and tort of the Supplier shall become statute-barred one year after the legally stipulated beginning of the prescription period. The statutory prescription period shall apply if the Supplier is proved to have acted grossly negligent or willfully, as well as in case of personal injuries.
7. The mere notice of defects or proposal of negotiations shall not suspend the running of the warranty period.

VII. The Supplier's Liability

1. The Supplier shall be liable for damages to the CP only with limitation to damages caused intentionally or by gross negligence. If, however, the obligation affected is of the essence for a regular performance of the contract which, if not complied with, would lead to failure of the contractual performance in the common understanding of either party (known as cardinal obligation), as well as in case of personal injuries, the Supplier shall also be liable in case of simple negligence.
2. If severe fault is not imputable to the Supplier or its executive officers, the amount of the CP's damage claims shall be limited to the replacement of the damage typically foreseeable at the date of signing the contract. If in individual cases a major damage was not foreseeable, or if the parties did not agree on any other regulation, the amount of such damage shall not exceed 1.5 times the order volume for financial losses in each damage case.
3. The limitation of liability as set forth in paragraphs 1 and 2 above shall be applicable both to contractual and non-contractual liability grounds. The Supplier's liability under the Produkthaftungsgesetz (German Product Liability Act), however, shall not be affected by the foregoing to the extent such liability is mandatory.

VIII. Reservation of Title, Rights to Documentation

1. The Supplier shall retain title to the supplied plants, parts of plants and other objects (goods under reservation) until all the requirements the Supplier is or will be entitled to claim from the CP have been fully complied with. To the extent the value of the securities in place for the Supplier should exceed the Supplier's claims by more than 20 % for a sustained period of time, the Supplier shall on request release securities at its option in an adequate amount.
2. In processing or reprocessing, the Supplier shall always be the manufacturer, although without incurring any obligation. In case the (co-) ownership of the Supplier ceases due to combination of elements, it is hereby agreed that the CP's (co-) ownership to a uniform object shall pass to the Supplier at the proportional value (invoice value). Pledging and transfer by way of security is not permitted. The CP shall be entitled to resale the object of purchase in the ordinary course of business only; however, the CP hereby assigns to the Supplier all claims in the amount of the total invoice amount (incl. VAT) of the Supplier's claim accruing to the CP against its customers or third parties from a resale. Save as provided in paragraph 4 hereunder, the CP shall keep the right to collect the claim.
3. In the event of third party attachments of the goods under reservation, especially seizures, the CP shall point out to the Supplier's title and inform the Supplier without undue delay.
4. Should the CP act in breach of contract – especially in case of default in payment – the Supplier shall be eligible to take back the goods under reservation, or – if applicable – demand assignment of the CP's claims for return against third parties, and to revoke the direct debit authorisation. Both withdrawal of goods and seizure of the goods under reservation by the Supplier shall not imply any rescission of the contract.
5. The Supplier reserves its title and copyright to illustrations, drawings, calculations and any other documentation. The same applies to written documentation marked "confidential". Prior to disclosing such documents to any third party, the CP requires the explicit written consent of the Supplier.

IX. Choice of Law and Venue, Effectiveness

1. The entire business relationship between the CP and the Supplier shall be exclusively governed by the laws of the Federal Republic of Germany, excluding the conflict of laws provision, the Hague Conventions Relating to a Uniform Law on the International Sale of Goods, and the Vienna UN Sales Convention.
2. If the CP is a merchant under German law entered in the commercial register, the place of business of the Supplier shall be the exclusive venue for any disputes arising directly or indirectly from the contractual relationship.
3. If any of the provisions of these terms and conditions of business or any additionally made, individual agreements should be or become ineffective as a whole or in part, that will not affect the effectiveness of the remaining provisions.