

GENERAL TERMS AND CONDITIONS for the sale and supply of plant protection and other products by Certis Europe BV Niederlassung Deutschland (June 2018)

1. General

- a) Solely the following terms and conditions apply for all goods and services supplied to entrepreneurs (as defined in Section 14 of the German Civil Code - BGB). The purchaser's general terms and conditions are not recognised by us, even if we do not expressly object to these and/or supply the goods or the service to the purchaser without reservation, in full knowledge of the latter's conflicting or deviating terms and conditions. Deviations from or supplements to our terms of sale only apply if they are expressly confirmed by us in writing.
- b) Oral agreements as well as any agreements brought to us via our representatives will be binding upon us only if and to the extent that we have expressly confirmed these in writing. It is our assumption that the purchaser has unconditionally accepted our terms of sale on receipt of the goods or services at the latest, even if they have been objected to by purchaser before this.

2. Prices and their calculation; payment

- a) Our products are delivered carriage paid to the receiving address from the goods values specified in our conditions letter, both for shipments ex works and ex distribution warehouse. Carriage paid delivery applies only in respect of the receiving point stated by the purchaser when placing the order, and does not cover any additional forwarding from this delivery point onwards, or any distribution costs. Any drayage costs will be borne solely by the purchaser. In the event of express or expedited shipments, the freight or postage difference will be charged. Original packaging is included in the price. For dawn shipments, a labour and packaging surcharge of €5.00 per box will be charged.
- b) The dimensions and weights of the goods, as determined at our works or warehouse prior to their dispatch, will apply for the purposes of the calculation.
- c) Any customs and excise dues payable on the goods and fixed through legislative measures after the date on which the contract was concluded will be borne by the purchaser.
- d) Our invoices are payable immediately, unless otherwise expressly agreed. Discounts such as early payment discounts are not permitted. The purchaser will be in default if the relevant outstanding amount is not paid by the agreed payment date. If no date is agreed, the buyer will automatically be in default if the invoice amount is not paid into our account within 14 days of receipt of the invoice. In this respect, the date on which the payment is received by us is the deciding factor. Default at an earlier date, in accordance with the statutory provisions and particularly as a result of a reminder, remains unaffected.
- e) During the default period, amounts outstanding to us will be subject to interest on arrears at the average rate charged by German banks on current account overdrafts. The purchaser is entitled to provide evidence that no loss at all or a substantially smaller loss was caused by the delayed payment. We reserve the right to assert further damages. The statutory provisions with regard to the minimum interest rate remain unaffected.
- f) If the purchaser falls into arrears or if, after concluding the contract, we become aware of circumstances, which cast doubt on the creditworthiness of the purchaser – for example payment arrears on the part of the purchaser in respect of other amounts due under the business relationship, the suspension of payments by the purchaser or the dishonouring of cheques that it has issued – we reserve the right to revoke all and any extension agreements and payment periods granted, including those relating to all other outstanding amounts due under the business relationship, and to demand immediate payment of the amounts due. We reserve all statutory rights, particularly the right to rescind the contract, to refrain from fulfilling our delivery commitments until payment has been made in full, and the rights pursuant to Section 321 BGB.
- g) The purchaser will have the right to offset and retain payments only if its counter-claims are res judicata, or if they are uncontested or recognised by us.

3. Transfer of risk, transport insurance

- a) Risk is transferred when the products are loaded for dispatch at our Hamburg factory. The goods are transported at the risk of the purchaser. Part deliveries are permissible, where appropriate.
- b) The purchaser is obliged to show the driver any transport damage when accepting the goods, to make a note of this damage on the transport documents, and to immediately request a written report from the carrier responsible.

4. Delivery/delay

- a) Binding delivery periods or deadlines must be agreed in writing. If the purchaser does not fulfil its obligations to cooperate (e.g. approvals, provision of necessary documents, compliance with payment terms) in good time, the delivery periods will not start running and/or the deadlines will be extended appropriately.

- b) Delivery is subject to the proviso that we ourselves are properly supplied in good time by our suppliers.
- c) Delivery is subject to the provisos that the planned volume of production is achieved without interruption, and that the necessary primary materials are supplied on schedule on the basis of existing supply contracts. Our performance obligation will be suspended and extended appropriately if and for as long as we are prevented from rendering performance due to unforeseen circumstances or events, for which we are not responsible and which could not have been avoided by exercising due commercial diligence. Such circumstances and events include, for example, war, natural phenomena, operational or transport disruptions, strikes, lockouts, shipping disruptions, official decrees, production stoppages and missing supplies of raw materials. This also applies if these circumstances arise at our supplies. In important cases, we will inform the purchaser as quickly as possible of the start and end of any impediments of this type. Price agreements for quantities lost due to the impediment will apply to the first quantities corresponding to those lost that are delivered after the impediment's removal. No new prices will be agreed during the period of the impediment.
- d) If delays arising from the above circumstances exceed six months, or if it is unreasonable for one of the parties to continue to adhere to the contract, both parties will be entitled to rescind the contract with regard to the scope of performance concerned, unless we have offered an appropriate alternative solution. In this event, the purchaser is entitled to request the repayment of any amounts paid in advance. All other claims are excluded.
- e) In the event of delay on our part, the purchaser can rescind the contract only after setting us a reasonable deadline for performance via a registered letter with return receipt containing the irrevocable declaration that it will refuse to accept performance after the deadline has expired, and the performance fails within the period set. Any further claims based on delay, particularly compensation claims of any kind, may be derived by the purchaser only subject to the conditions of Item 6.
- f) The requirement to set a deadline with a threat of refusal as per e) above also applies where a fixed delivery period or a fixed delivery deadline has been agreed.

5. Performance specification, defects

- a) The instructions that are printed on or supplied with the packs are the authoritative guide for using the compounds and must be followed precisely.
- b) We also wish to point out that many conditions influence the way that plant protection products, plant fortifiers and fertilisers work – for example the condition of the plants, the quality of the soil, crop management, interaction with other compounds or products, and the weather. Given that we can neither control nor influence these conditions, we can only be held liable for the consistent quality of the plant protection product, plant fortifier or fertiliser. We cannot exclude the possibility of the use of plant protection products and fertilisers producing a weakened effect or causing damage – even if the instructions for use are followed – if various circumstances interact. This does not constitute a defect on the part of our products, and any warranty or liability is excluded in such cases. To reduce this risk, we recommend that small-scale tests are conducted to gather empirical knowledge of the locality.
- c) In order to safeguard claims for defects, we must be notified of any complaints regarding the goods within ten days of their receipt, and immediately upon discovery in the case of hidden defects. Comments on delivery notes do not constitute notices of defects. Transport staff are not authorised to accept notices of defects.
- d) Where defects are proven, we will repair these free of charge or make an additional delivery (supplementary performance), at our discretion. We are entitled to ask the purchaser to return the defective goods to us beforehand, in order to verify the complaint and to carry out the repair or additional delivery as appropriate. We will bear the necessary transport costs relating to the return of the goods (only) in the event that the notice of defects is justified. The purchaser can rescind the contract or reduce the purchase price only if we make no attempt to render supplementary performance within a reasonable deadline that has been set via a registered letter with return receipt, or if the supplementary performance is impossible, refused, unsuccessful or unreasonable. The period allowed for supplementary performance must be at least four weeks, unless this is opposed by legitimate interests on the part of the purchaser. In case of doubt, the supplementary performance will be deemed to have failed only after the third unsuccessful attempt. The purchaser has no right of rescission due to minor defects. For compensation claims due to defects, the special provisions in Item 6 apply in addition to the statutory conditions.
- e) Any further claims, particularly compensation claims, can only be asserted subject to the conditions in Item 6 below.
- f) Warranties will be deemed to have been provided only if we have expressly declared that this is the case in writing, using this term. Without any indications of this sort, information in catalogues, quality sheets and certificates, and certificates of analysis for example will not be considered to be warranties in the legal sense.
- g) The limitation period for defect claims is one year after delivery/acceptance.
- h) The purchaser may only withhold payments due to defects to an extent that is reasonable in relation to the defects. Item 2e) additionally applies.

6. Limitation of liability

- a) With respect of the right to rescind the contract, the statutory provisions apply – subject to the proviso that the purchaser can rescind the contract due to a breach of duty that is not attributable to a defect only if we are responsible for that breach of duty.
- b) The purchaser can claim compensation instead of performance only after setting us a reasonable deadline for performance or supplementary performance via a registered letter with return receipt containing the irrevocable declaration that it will refuse to accept performance or supplementary performance after the deadline has expired, and the performance or supplementary performance fails within the period set.
- c) Providing the other prerequisites for claiming are in place, claims for compensation of any kind can be made only if we have acted with gross negligence or wilful intent. In the case of slight negligence, we will be liable if we violate an obligation, whose fulfilment is a prerequisite for the proper fulfilment of the contract, and on whose observance the purchaser may rely as a matter of course (cardinal obligation). For the rest, liability for compensation for losses or damages of any kind, regardless of the basis of the claim – particularly liability in tort, liability for any damage not caused to the delivery item itself, and liability pursuant to culpa in contrahendo – is excluded.
- d) To the extent that we are liable for negligent conduct, our liability is limited to the loss or damage, whose occurrence we would have typically anticipated given the known circumstances at the time of the contract's conclusion. In the case of slight negligence, we are not liable for any damage not caused to the delivery item itself, consequential damage, loss of profit, or other financial losses or damage suffered by the purchaser. Our liability for losses or damages caused by delay is limited to a maximum of 0.5 per cent of the value of the delayed performance for each completed week of delay, capped at a total of five per cent of the value of the delayed performance.
- e) If we have provided a warranty, the above exclusions and limitations of liability do not apply to losses or damage, for which compensation is due under the German Product Liability Act (Produkthaftungsgesetz). Neither do they apply in respect of damages due to loss of life, bodily injury or damage to health.
- f) The above exclusions and limitations of liability also apply in favour of our employees, agents, and other third parties whose services we use for the purposes of fulfilling the contract.
- g) In the relationship between us and the purchaser, it is solely the task of the purchaser to monitor products supplied by us after they have been placed on the market (product monitoring obligation) and to respond to any risks or hazards. The purchaser is obliged to inform us without delay of all errors, problems and/or risks in connection with the products supplied by us. If any loss, damage or injury is caused as a result of a breach of this product monitoring obligation, the purchaser will be solely liable.
- h) No liability exists for losses or damage arising as a result of unauthorised use or of use that is not in compliance with the instruction manual. Likewise, no liability exists for instances where the effect is weaker or damage is caused due to the interaction of other factors, as these do not constitute a defect in our product.

7. Reservation of title

- a) Our deliveries are made subject to reservation of title. We reserve title to the goods supplied until the purchase price has been paid in full and all other existing or (at the time of the contract's conclusion) future claims (including all current account balance claims) against the purchaser under the business relationship have been satisfied in full. Title to the goods passes automatically to the purchaser as soon as the purchase price is settled and no further claims from the business relationship exist (current account reservation).
- b) Any treatment or processing by the purchaser of the goods subject to reservation of title ('reserved goods') is always performed for us as processor within the meaning of Section 950 BGB. If the reserved goods are processed by the purchaser, it is agreed that the processing will take place on our behalf and on our account as manufacturer, and that we will immediately acquire title to the newly created item. If the goods are processed with other items not belonging to us, we will acquire joint ownership of the new item in the proportion of the value of the reserved goods (invoice value inc. VAT) to the other processed item at the time of processing. If the reserved goods are inseparably combined or mixed with other items not belonging to us, we will acquire joint ownership of the new item in the proportion of the value of the reserved goods (invoice value inc. VAT) to the other combined or mixed items at the time of combining or mixing. If the reserved goods are combined or mixed in such a way that the purchaser's item is regarded as the main item, we hereby agree with the purchaser that the purchaser will transfer proportional joint ownership to us (in the proportion of the value of the source materials). We accept this transfer. The provisions regarding reserved goods apply, mutatis mutandis, to the products resulting from such processing, mixing or combining to the extent that we hold title to them.

- c) The purchaser is obliged to look after the reserved goods at its own expense, to store them for us with care, to insure them at their new replacement value against the usual risks (theft, breakage, fire and water) and to provide evidence, upon request, that an insurance policy has been taken out. We are entitled to insure the reserved goods at the purchaser's expense. We are entitled to request at any time that the purchaser draw up an inventory of the goods delivered by us at their respective storage location and identifies the goods as belonging to us. Any insurance claims or claims against third parties as a result of damage, destruction, theft or loss of the goods are hereby assigned to us by the purchaser by way of security. We hereby accept this assignment.
- d) The purchaser must inform us without delay of any attachments or other impairments of our rights by third parties.
- e) The purchaser is entitled to sell the reserved goods in the ordinary course of its business. Attachments and assignments as security are only permissible with our prior, written approval. Authorisation expires automatically if the purchaser defaults on its payment, insolvency proceedings are initiated against its assets or it is obliged to apply for insolvency proceedings to be opened. If the reserved goods are resold on credit, the purchaser must sell the goods only if sufficient guarantees are provided (e.g. agreement regarding a reservation of title on its part, etc.).
- f) The purchaser hereby assigns to us by way of security a share of any claims against third parties arising from the resale of reserved goods corresponding to our ownership proportion. In addition, this assignment is capped at an amount equalling the invoice value of our claims (including VAT) against the purchaser from the business relationship at the time of the resale, plus a security surcharge in the amount of 20 per cent.
- g) The purchaser is authorised to collect the claims from the resale that are assigned to us. The revenues to which we are entitled must be forwarded to us immediately upon receipt. The purchaser must, at our request, disclose to us the names of the debtors associated with the assigned claims and inform these parties of the assignment. We are authorised to disclose this assignment to the debtors on the purchaser's behalf. This authorisation to collect claims expires automatically if the purchaser defaults on its payment, insolvency proceedings are initiated against its assets or it is obliged to apply for insolvency proceedings to be opened.
- h) Regardless of any automatic expiry, we are entitled to rescind the resale and/or reprocessing authorisation and/or the authorisation to collect claims if the purchaser breaches its obligations to us, and in particular if it does not properly discharge its payment obligations under the business relationship, falls into arrears, or breaches its obligations as a conditional purchase. We also have a right to rescission if it becomes apparent, after the conclusion of the contract, that our payment claims under our business relationship with the purchaser are jeopardised as a result of the latter's lack of solvency. In the event that the authorisation to collect claims is terminated, the purchaser must forward to us all the information on the claims that is required for their collection, and must support us in recovering these amounts where necessary.
- i) Furthermore we are entitled to repossess the reserved goods in the event that the purchaser acts in a way that is contrary to the contract. The purchaser will bear the transport costs incurred in connection with this repossession. If we take back the reserved goods, this will constitute a rescission of the contract. The contract will also be deemed to have been rescinded if we seize the reserved goods. We are entitled to dispose of the reserved goods that we have repossessed. The proceeds from this disposal will be set against the amounts owed to us by the purchaser, after we have deducted a reasonable sum for the costs of this disposal.
- j) The purchaser must inform us without delay if the reserved goods are seized by third parties and must give us all the information and documents required for an intervention. The purchaser will be liable for the costs incurred in cancelling the seizure, particularly through the institution of third-party proceedings, if these cannot be recovered from the prosecuting creditor.

8. Resale

The resale of our products is permitted only in our original packaging.

9. Place of performance/applicable law/place of jurisdiction

- a) The place of performance for delivery is the shipping location and for payment is Hamburg.
- b) The contractual relationship is governed solely by the laws of the Federal Republic of Germany, to the exclusion of all conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- c) The place of jurisdiction is Hamburg, and also the registered office of the purchaser, at our discretion.