

General Terms and Conditions of Sale and Delivery of Normag GmbH

§ 1 Scope of Application

- (1) Any supplies, deliveries, services and offers by Normag GmbH (hereinafter referred to as "Seller") shall be subject exclusively to these General Terms and Conditions of Sale and Delivery (hereinafter referred to as "General Terms") unless Seller has given his express written approval to other terms and conditions. These General Terms apply in case Seller implicitly supplies the goods or accepts the order knowing that buyer's general terms contradict or differ from Seller's General Terms.
- (2) These General Terms only apply if buyer is an entrepreneur (as defined in § 14 German Civil Code (Bürgerliches Gesetzbuch)), a legal entity under public law or a special fund under public law.
- (3) These General Terms also apply to all future contracts with buyer on the sale and/or supply of movable items without Seller having to refer to them in each individual case.

§ 2 Offer, Conclusion of Contract

- (1) Seller's offers are non-binding and subject to confirmation unless otherwise indicated in the offer.
- (2) Any statements made by Seller about the goods, for example in brochures etc., in particular but not limited to colours, dimensions, resilience and weights as well as visual representations (e.g., drawings and illustrations), are of only approximately representative value unless the contractually agreed purpose for which the goods are intended requires precise compliance. They do not constitute guaranteed attributes (garantierte Beschaffenheit) but only mere descriptions or designations of the goods. Discrepancies which are customary in trade and discrepancies arising as a result of legal requirements, due to the production technology or which constitute a technical improvement are permitted as far as they do not adversely affect the suitability for the intended and contractually agreed purpose. In case that the Buyer orders natural raw materials, the Buyer acknowledges that the features of the natural raw materials are subject to a natural range of fluctuation.
- (3) Buyer's order is a legally binding invitation to enter into a contract.
- (4) A contract is not concluded until Seller has confirmed the order by way of a written order confirmation (Auftragsbestätigung), which Seller may issue within two weeks upon receipt of buyer's order. The content of such order confirmation is binding for the content of the contract; if buyer does not object without undue delay (unverzüglich), the content of the order confirmation shall form the basis of the contract. In case Seller does not issue a written order confirmation, a contract (to which these General Terms are applicable) is formed by the Seller's making the goods available for pick-up.
- (5) Seller's sales employees are not authorised to make verbal side agreements or to give guarantees in oral form which go beyond the content of the written contract.

§ 3 Prices / Terms of Payment

- (1) Unless otherwise agreed between Seller and buyer, all of the Seller's prices shall be deemed to be "FAS Tianjin (Xingang)" (Incoterms 2010) plus the statutory VAT rate applicable at the time of the invoice.
- (2) In general, the prices applicable at the time of conclusion of the contracts shall apply. Changes in prices are permitted if the period between the date on which the contract has been entered into and the agreed date of delivery is more than four (4) months. In case wages, costs of material (including, but not limited to, e.g., due to changes of the currency exchange rate between Euro (EUR, €) and the respective currency in the country from which Seller procures the materials), or (due to technically caused discrepancies) other costs increase after such six-week-period but prior to the completion of the delivery, Seller shall be entitled to reasonably increase the price in relation to the increased costs. The Seller reserves the right to negotiate again with the Buyer about the price, if a price increase is caused prior to the expiring of four months between the conclusion of the agreement and the agreed date of delivery by unforeseeable occurrences for which the Seller is not responsible (e.g. imitations imposed by governments, administrative interventions, restrictions of customs office, currency- or trade-related political actions, or price increase of electricity, water or gas in the country/region from which the Seller procures the materials).
- (3) Invoices are payable within 30 days of delivery of the goods and receipt of invoice without any deductions. Notwithstanding the above, Seller is entitled to make delivery dependent on concurrent payment without giving reasons.
- (4) Buyer is in default upon expiry of the term for payment (30 days) stated in para. (3) above. If buyer is in default Seller may demand interests for delay of eight (8) percentage points above the base interest rate. Seller's entitlement to commercial maturity interest (§ 353 German Commercial Code (Handelsgesetzbuch) remains unaffected. Seller's right to assert further damages – e.g., costs of pursuing his legal rights, in particular attorney fees – shall not be excluded. Moreover, in case the buyer is in default of a (partial) payment Seller may declare the entire residual debt due for immediate payment.
- (5) Buyer has no set-off or retention rights unless buyer's counterclaims have been affirmed in a final (rechtskräftig) court judgement, are undisputed or acknowledged by Seller. Furthermore, buyer may exercise a right of retention only to the extent his counterclaim arises from the same contractual relationship.
- (6) Seller shall be entitled to deliver or render outstanding goods or services only against payment in advance or against security if Seller becomes aware of any circumstances justifying a significant decrease of the buyer's credit worthiness and jeopardizing the payment of the outstanding debts of the Seller by the buyer arising from the respective contract.
- (7) All payments must be in Euros.

- (8) Seller's receivables against buyer shall be fully assignable to third parties.

§ 4 Retention of Title

- (1) Seller retains title (ownership) to the goods supplied until all receivables against the buyer outstanding at the time of conclusion of the respective contract have been paid.
- (2) Buyer shall, at his own costs, adequately insure the goods subject to retention of title against the risk of fire, water and theft damage on a replacement-value (Neuwert) basis.
- (3) Buyer shall store the goods subject to retention of title separately from other goods belonging to the buyer or third parties and shall label and mark them as being the property of Seller.
- (4) Buyer is entitled to re-sell and/or process the goods subject to retention of title in the ordinary course of business.
- (5) Buyer hereby assigns to Seller as collateral any future claims he may have from reselling the goods subject to retention of title (including other claims like amounts due from insurance claims or claims arising from tortious acts in the event of loss or destruction). Seller accepts such assignment. Buyer may collect on the assigned claims as long as he fulfils his payment obligations. If buyer is in delay with any payment, Seller may revoke buyer's right to collect. In this case, at Seller's request, buyer shall provide all necessary information to Seller enabling the latter to collect. Further, buyer shall upon Seller's request (i) permit a person acting on Seller's behalf to verify the validity of the assigned claims by inspecting the buyer's records and files and (ii) inform the debtors of the assignment.
- (6) If buyer processes the goods subject to retention of title the parties herewith agree that such processing shall be carried out in the name and for the account of the Seller as manufacturer and that the Seller shall directly acquire title or – if the processing involves materials of more than one owner or if the value of the processed product is higher than the value of the goods supplied – co-title (Miteigentum (Bruchteileigentum)) in the newly created product on a pro rata basis relative to the value of the goods supplied and the value of the newly created product. If Seller loses his title as a result of combining (assembling) or blending or if, in the event of processing, he does not acquire title to the newly created product, buyer hereby transfers to Seller in advance co-title in the newly created product on a pro rata basis relative to the value of the goods supplied by Seller. Seller hereby accepts this offer. Handing-over shall be replaced by custody free-of-charge.
- (7) The goods subject to retention of title may neither be pledged to third parties nor may title to them be transferred as collateral (Sicherungs-übereignung) until Seller's secured claims have been fully paid. Buyer shall inform Seller in writing without undue delay (unverzüglich) about any third party's action aimed at Seller's goods and shall, in coordination with the Seller, take suitable legal actions against such intervention at buyer's own initiative and cost. As far as the third party is unable to reimburse Seller for court-related or other legal fees arising out of or in connection with this matter buyer shall be held liable therefore.
- (8) In the event of buyers' default (delayed payment), an application for opening of insolvency proceedings over the buyer's assets, the transfer of a remainder (Anwartschaft) to a third party, or the transfer of buyer's business to a third party, Seller may cancel the contract in accordance with statutory provisions and demand repossession of the goods supplied. As far as the buyer does not pay the due purchase price, Seller may only exercise these rights if he has previously set buyer a reasonable deadline for payment and such deadline has passed without success or if such deadline is dispensable under statutory law. Seller may enter buyer's business premises for the purpose of repossessing the goods supplied. After repossession, Seller shall be entitled to privately dispose of the reserved goods (freihändige Verwertung). The proceeds shall be set off against buyer's liabilities (less reasonable realisation costs).
- (9) Seller shall release his collateral upon buyer's request as far as the collateral's value exceeds the value of the outstanding secured claims by more than 20%. The collateral to be released shall be selected by Seller.
- (10) Buyer shall take all required actions to secure and exercise his statutory lien pursuant to § 1 of the Act to Secure the Supply of Fertilizers and Seeds. Buyer hereby assigns to Seller all of his claims arising from such lien; Seller hereby accepts the assignment. Buyer may collect on the assigned claims as long as he fulfils his payment obligations. If buyer is in delay with any payment, Seller may revoke buyer's right to collect. In this case, at Seller's request, buyer shall provide all necessary information to Seller enabling the latter to collect. Further, buyer shall upon Seller's request (i) permit a person acting on Seller's behalf to verify the validity of the assigned claims by inspecting the buyer's records and files and (ii) inform the debtors of the assignment.

§ 5 Shipping

- (1) Unless otherwise agreed between buyer and Seller, shipping of the goods shall be effected "FAS Tianjin (Xingang)" (Incoterms 2010). Upon request and at the buyer's expense Seller shall take out insurance against the usual transport risks.
- (2) If delivery is delayed and this delay is attributable to buyer or if the parties have agreed that delivery shall be made on demand in an individual case and buyer does not demand delivery within 14 days after having been notified that the goods are ready for delivery, the goods will be kept and stored at Seller's premises, in each case at the risk and cost of buyer, and the goods will be invoiced as delivered EXW according to Incoterms 2010.
- (3) Type of packaging shall be chosen by Seller.

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§ 6 Deliveries / Delivery Time

(1) The dates of deliveries shall be agreed by the parties. If the parties have agreed on a delivery deadline, it shall commence on the date of the order confirmation.

(2) Adhering to the agreed delivery and performance dates requires the timely receipt of all necessary documents to be provided by buyer, furnishing of all necessary information and fulfilment of all other obligations by buyer. If these prerequisites are not fulfilled on time, any deadline or other applicable time period will adequately be extended; this shall not apply if the delay is attributable to Seller.

(3) If Seller realises that an agreed date cannot be adhered to, buyer shall be notified without undue delay (unverzüglich).

(4) Seller shall not be liable for delays in delivery due to force majeure or due to other occurrences concerning the Seller or one of his suppliers which were not foreseeable at the time the contract was concluded and which Seller is legally irresponsible for (e.g., strike, lock-out, disruption in business operations, failure to receive supplies in due time, delays in transport, unfavourable weather conditions, limitations imposed by governments, administrative interventions, currency- or trade-related political actions, natural disasters, fire, flood, piracy, obstruction of transportation routes, etc.). The delivery deadline shall be extended by the duration of the temporary occurrence which prevents Seller from performing without Seller's bearing the legal responsibility for that.

(5) Seller may deliver partial shipments provided that (i) buyer can use the partial shipment for the intended purpose contractually agreed upon, (ii) shipment of the remaining goods is provided for and (iii) no additional costs accrue for buyer therefrom.

(6) Claims for damages based on the impossibility to deliver or owing to delays in delivery are limited pursuant to § 8 (6) of these General Terms.

§ 7 Withdrawal from Contract

(1) Seller may cancel the contract if force majeure, strike, or natural disaster, or failure of Seller's suppliers to supply, to supply correctly or in time have a material adverse effect on Seller's ability to supply or prevent Seller from supplying and if this disruption, for which Seller is legally irresponsible, is not only temporary.

(2) Seller may also cancel the contract if the information provided by buyer regarding his credit-worthiness is incorrect or incomplete.

§ 8 Warranty / Compensation / Liability

Unless otherwise provided for hereinafter, statutory law with respect to defects in material and title (Sach- oder Rechtsmängel) shall apply.

(1) Upon receipt buyer shall inspect the goods for defects without undue delay (unverzüglich). Buyer shall without undue delay (unverzüglich) report any obvious defects to Seller, however no later than ten (10) working days (Monday to Friday) after receipt of the shipment; latent defects shall be reported in writing without undue delay (unverzüglich) no more than seven (7) working days after discovery. Otherwise the shipment shall be deemed approved.

(2) Buyer shall give Seller the opportunity to investigate the complaint; buyer shall in particular make the goods and packaging in question available for inspection by Seller. Upon request, the goods in question shall be returned to Seller free of charge within 14 days. If the complaint is justified Seller shall reimburse the costs of the return in the amount of the most inexpensive transport alternative. This shall not apply if the goods are located at a location other than that of their designated use.

(3) If there is a defect in the goods Seller may choose to remedy the defect or to deliver new goods free from defects (Nacherfüllung).

(4) The warranty does not apply if buyer, without Seller's consent, alters the goods or has them altered by third parties and if this makes it impossible or unreasonably difficult to remedy the defect. In any event buyer shall bear any additional costs for remedying the defect caused by the alteration.

(5) If remedying the goods or supply of goods free from defects is not possible or being refused by Seller, or does not take place or fails for other reasons within Seller's sphere of responsibility and within an adequate deadline set by buyer, buyer may at his own discretion cancel the contract or reduce the purchase price (Minderung). A deadline is not necessary unless statutorily required.

(6) Any further claims of the buyer - in particular but not limited to claims for compensation in lieu of performance or for compensation of other direct or indirect damages, including concomitant or consequential damages, for whatever legal reason - shall be excluded. This shall not apply if

a) Seller fraudulently fails to disclose a defect in material or title or has warranted that the goods do not contain any such defect or has fraudulently given wrong specifications as to the attributes of the goods;

b) the damage is due to intent or gross negligence or a negligent breach of material contractual duties on the part of Seller, one of its legal representatives or vicarious agents; material contractual duties shall be understood as obligations whose fulfilment is necessarily required for the proper implementation of the contract and on whose fulfilment the other party usually relies and may reasonably rely;

c) culpable breach of duty by Seller or its legal representatives or vicarious agents has led to a body injury or damage to health;

d) Seller is liable under the German Product Liability Act (Produkthaftungsgesetz).

However, in the event of simple negligence Seller's liability is limited to foreseeable loss typical for this type of contract.

(7) The provisions of the previous paragraph shall apply accordingly to buyer's direct claims against Seller's legal representatives or vicarious agents.

(8) If buyer faces contractual penalties (penalties for non-performance, liquidated damages etc.) claimed by a third party buyer may – irrespective of

the other prerequisites – only assert claims for compensation against Seller if this has been previously and expressly agreed upon between buyer and Seller or if Seller was informed in writing and before the contract was concluded about the possibly imminent contractual penalty agreed upon between buyer and a third party.

(9) Statutory provisions covering shipments to consumers remain unaffected in any case (Supplier's recourse pursuant to §§ 478, 479 German Civil Code (Bürgerliches Gesetzbuch)).

§ 9 Limitation

(1) Any claims of buyer – for whatever legal reasons – shall become time-barred twelve (12) months after delivery of the goods. In case an acceptance (Abnahme) requirement has expressly been agreed upon, the period begins upon acceptance.

(2) The limitation period in the event of buyer's exercising a supplier's recourse pursuant to §§ 478, 479 German Civil Code shall remain unaffected.

§ 10 Copyright / Confidentiality

Seller reserves all ownership rights and copyright in offers, estimates, illustrations, drawings, construction plans, calculations, brochures and other documents which it makes available to buyer. Buyer may not disclose these documents or the content thereof to third parties or make them known or copy them without Seller's express consent. They shall only be used in connection with the delivery.

§ 11 Trademarks

(1) Seller is liable in accordance with this Section 11 that delivered goods are free from any industrial property rights or copyrights of third parties as far as the design of the delivered goods originated from the Seller.

(2) In case the delivered goods infringe any intellectual, trademark, or other property rights or copyrights of third parties Seller will substitute the delivered goods at his choice and at his own costs so that the goods do not infringe any such rights anymore but are still usable for the intended purpose contractually agreed upon. Alternatively, Seller may enter into a license agreement in order to ensure that buyer has the right to use the goods. Should Seller not succeed in doing so within a reasonable timeframe, buyer shall be entitled to cancel the contract or to reduce the purchase price accordingly (Minderung). Any claims of buyer are subject to the limitations pursuant to §8(6).

§ 12 Data Protection

Seller shall treat any data obtained about buyer in connection with the business relationship in accordance with Federal Data Protection Act (Bundesdatenschutzgesetz) irrespective of whether this information has been provided by buyer or a third party.

§ 13 Place of Performance / Jurisdiction / Language / Applicable Law / Miscellaneous

(1) Unless otherwise expressly agreed, the place of performance shall be Seller's registered place of business.

(2) Exclusive – also international – place of jurisdiction for all disputes arising from the supply relationship shall be Bad Homburg v.d.H., Federal Republic of Germany. Seller may also sue buyer at his place of jurisdiction.

(3) The laws of the Federal Republic of Germany shall apply. The CISG shall not apply.

(4) The invalidity of any provision of these General Terms, irrespective whether partly or in full, shall not affect the validity of the other provisions. If the General Terms contain omissions such omissions shall be deemed to be filled by whatever valid provisions the parties would have agreed upon had they been aware of the omission, such valid provisions reflecting the commercial aims of the contract and the purpose of these General Terms.

(5) These General Terms are drafted in German and in English. The English version serves for information purposes only and does not form part of the General Terms. Therefore, in the event of any discrepancies between the German and English version, only the German version shall apply.