

General Terms and Conditions of Sale and Delivery

agriKomp GmbH (last updated: 01 March 2010)

These terms and conditions are a translation only of the original German terms and conditions of sale and delivery of agriKomp GmbH. In case of any divergence the original German version shall prevail.

§ 1 General provisions

Supplies, services and offers provided by the Supplier (agriKomp GmbH) will be exclusively based on the present Terms and Conditions of Sale and Delivery. They shall also apply to all future business relations, even if they are not expressly agreed upon again. The Terms shall be deemed to have been accepted upon receipt of the goods or services at the latest. A confirmation by the Customer shall not be required. Deviating terms used by the Customer shall be non-binding for the Supplier, unless he has expressly acknowledged such terms, even if the Supplier does not expressly object to such terms. The following Terms shall even apply if the Supplier, being aware of conflicting or deviating terms used by the Customer, fulfils the Customer's orders without reservations.

§ 2 Offer and conclusion of the contract

1. All agreements made between the Customer and the Supplier regarding the handling of the purchase contracts, have been set out in said contracts and in the present Terms.
2. The Supplier's offers are subject to confirmation and are non-binding. Acceptance declarations and orders require a written confirmation by the Supplier in order to be legally effective. The same shall apply to amendments, modifications and ancillary agreements.
3. The authority of representation shall not go beyond the text of the order form; in particular, it shall not encompass an authorisation for the acceptance of loans.
4. Unless specified otherwise, the Supplier shall be bound to the prices contained in his offers for a period of 30 days from the date of the offer. The decisive prices shall be those specified in the Supplier's order confirmation, plus applicable value added tax. Additional supplies and services shall be invoiced separately.
5. Any claims for damages by the Customer on account of impossibility of performance (Unmöglichkeit der Leistung), violation of ancillary contractual obligations (positive Vertragsverletzung), culpa in contrahendo (Verschulden bei Vertragsschluss) and tort (unerlaubte Handlung) are excluded, whether such claims be against the Supplier or his assistants in the performance of his contractual obligations, with the exception of intentional and grossly negligent acts.

§ 3 Scope of supply obligations

1. Drawings, illustrations, measurements, weights and other performance data shall only be binding if this has expressly been agreed in writing. Design modifications which do not cause a deterioration in the object and modifications to the external appearance are admissible without prior notification.
2. The Supplier shall have the right to effect partial supplies or delivery at all times, provided this is reasonable for the Customer.

§ 4 Prices

1. Unless agreed otherwise, prices shall be ex warehouse or ex works of the respective manufacturer. To be added to this are any packaging costs which may be incurred as well as value added tax at the rate applicable at the time of invoicing.
2. Prices quoted freight paid shall be subject to the condition of unhindered traffic.

3. The prices of the initial transaction shall only apply to repeat orders if this is expressly agreed.

§ 5 Payment terms

1. Unless agreed otherwise, the Suppliers' invoices shall be due for immediate payment without deductions upon receipt of the invoice. The Supplier shall have the right to initially set off effected payments against older debts. Should costs and interest have already been incurred, the Supplier shall have the right to first set such payments off against costs, then against interest and finally against the principal claim itself.
2. Bills of exchange and cheques will only be accepted on account of performance (Erfüllungshalber), the discounting and collection costs shall be borne by the Customer.
3. If payment terms are extended or if payment is effected after the due date, interest will be charged from the due date onwards, at a rate of 5 percentage points above the applicable base rate of the Deutsche Bundesbank, without the requirement of a notice of default.
4. Set-offs against counter-claims which the Customer may hold are excluded. This shall not apply to such claims held by the Customer which are undisputed or have been determined in a legally binding manner.
5. Retention of payments on account of potential counter-claims held by the Customer is excluded. This shall not apply if such counter-claims are based on the same contractual relationship.
6. Payments shall only be deemed to have been effected once the Supplier can dispose of the sum. In case of payments through cheques or bills of exchange, payments shall only be deemed to have been effected once the cheque or bill of exchange has been cashed.
7. Should the Customer fail to fulfil his payment obligations, in particular if checks or bills of exchange cannot be cashed, or should the Supplier have tangible indications suggesting that the Customer is not creditworthy or insolvent, the Supplier shall have the right to request immediate payment of the total outstanding sum.
8. The Supplier shall not assume any liability with regard to the receipt of payments which the Customer does not directly pay to agriKomp GmbH or an expressly authorised person.

§ 6 Delivery periods - default

1. The dates and periods specified by the Supplier shall be non-binding, unless an expressed deviating agreement has been concluded in writing.
2. Delivery periods shall commence once all details of performance have been clarified and both parties agree on all terms and conditions of the transaction; they relate to the completion at the factory. Compliance with delivery periods requires fulfilment of the contractual obligations by the Customer, in particular compliance with the agreed terms of payment. Unforeseeable events which are outside the Supplier's sphere of influence, such as disruptions of operation, strikes, lock-outs, exclusions - in the Supplier's own facility or with a sub-supplier - as well as force majeure shall lead to an adequate extension of the delivery period, even if they occur during an event of default. The same shall apply if official licences or other permissions or documents which are to be provided by third parties and are required for the performance are not obtained in time; the same shall apply to subsequent modifications of the order in mutual agreement.
3. Should a case of default for which the Supplier is responsible be based on an inten-

tional or negligent violation of material contractual obligations, the Supplier shall be liable in accordance with the statutory provisions, subject to Nos. 4 and 5 below.

4. In such cases, the Customer shall have the right to claim a lump-sum compensation amounting to a maximum of 0.5 per cent of the value of the supply for each complete week of default, however not more than a total of 5 per cent of the value of the outstanding supply.
5. Any liability for cases of default for which the Supplier is responsible going beyond the aforesaid shall be excluded.
6. Should the Customer be in default of acceptance, the Supplier shall have the right to request compensation for the damage incurred and for any additional expenses which may become necessary. The same shall apply if the Customer intentionally or negligently violates his cooperation obligations. Upon commencement of the event of default of acceptance or performance, the risk of accidental deterioration or accidental destruction shall transfer to the Customer.

§ 7 Transfer of risk - shipment

The risk shall be transferred to the Customer once the consignment has been handed over to the person effecting the transport. Insurance against transport damages shall only be taken out upon the Customer's instructions and at the Customer's costs.

§ 8 Guarantee - warranty/ liability

A. Contracts with companies

1. The Customer shall only be entitled to claims based on defects if he has properly fulfilled his duties of examination and notification under section 377 HGB (German Commercial Code).
2. Should the goods contain a defect for which the Supplier is responsible, the Supplier shall be obligated, under exclusion of the Customer's right of withdrawal from the contract or of reduction of the purchase price (Minderung), to provide subsequent performance or rectification, unless the Supplier is entitled to refuse subsequent performance or rectification due to the statutory provisions. The Customer shall grant the Supplier an adequate period of time for the subsequent performance or rectification. At the Suppliers' choice, this may either be effected by an elimination of the defect (rectification) or by supply of new products (subsequent performance). In case of a rectification of the defect, the Supplier shall bear the necessary expenses, unless these are increased by the fact that the contractual object is located at a place other than the place of fulfilment.
3. The Customer shall only have the right to assert the claims based on defects, subject to the terms specified below, if subsequent performance or rectification has failed. Rectification shall be deemed to have failed after the second unsuccessful attempt, unless further rectification attempts are adequate due to the nature of the contractual object, and can reasonably be expected to be tolerated by the Customer. The Customer's right to assert further damages under the provisions hereinafter shall remain unaffected.
4. The Supplier must promptly be notified of any defects in writing, and the affected parts must be returned to him upon request.
5. The Customer's warranty claims shall become time barred after one year from delivery of the goods by the Supplier, unless the defect was fraudulently concealed; in this case, the statutory provisions shall apply. The Supplier's further obligations under these warranty provisions shall not be affected by this. The warranty period under

section 438 subsection 1 No. 2 BGB (German Civil Code) for buildings and goods which were used for buildings, in accordance with their regular type of utilisation, and have caused the defectiveness of these buildings, shall remain unaffected. Agreements in contracts concluded individually shall take priority.

6. The Supplier shall have unrestricted liability under the statutory provisions for damage due to injury or death caused by a negligent or intentional violation of duties on the part of the Supplier, his legal representatives or assistants in the performance of his obligations, as well as for damage covered by the liability under the Produkthaftungsgesetz (German Product Liability Act). For any damage not covered by sentence 1, caused by intentional or grossly negligent violations of contractual obligations or by fraudulent acts on the part of the Supplier, his legal representatives or his assistants in the performance of his obligations, the Supplier shall be liable in accordance with the statutory provisions. In such cases, liability for damages shall, however, be limited to the foreseeable damage which typically occurs in such cases, provided that the Supplier, his legal representatives or assistants in the performance of his obligations have not acted intentionally. To the extent to which guarantees regarding characteristics and/or durability have been given with regard to goods or parts thereof, the Supplier shall also be liable within the framework of this guarantee. However, the Supplier shall only be liable for damage which is caused by the lack of the guaranteed characteristic or durability but has not occurred in the products themselves, if it is obvious that the risk of such damage was intended to be covered by the guarantee regarding the characteristics and durability.
7. The Supplier shall also be liable for damage caused by him through slight negligence, provided that the negligence relates to the violation of a contractual duty the compliance with which is of particular importance for attaining the purpose of the contract (cardinal duties). However, the Supplier shall only be liable for damage which is foreseeable and typically associated with the contract.
8. Any liability going beyond this shall be excluded, irrespective of the legal nature of the asserted claim; this shall in particular apply to claims based on tort and claims for restitution of futile expenses in lieu of performance; this shall not affect any other liability of the Supplier provided for in the present General Terms and Conditions of Sale and Delivery. If the Suppliers' liability is excluded or limited, this shall also apply with regard to the personal liability of the Supplier's legal representatives and assistants in the performance of his obligations. The Customer's claims for damages based on defects shall expire 1 year after delivery of the goods. This shall not apply for injury or death caused by the Supplier, his legal representatives or assistants in the performance of his obligations, nor if the Supplier or the legal representative acted intentionally or in a grossly negligent way, nor if the Supplier's assistants in the performance of his obligations acted intentionally.

B. Contracts with consumers

1. Should the goods contain a defect for which the Supplier is responsible, the Supplier shall be obligated to carry out subsequent performance or rectification, under exclusion of the Customer's rights to withdraw from the contract or to reduce the purchase price, unless the Supplier has a right to refuse subsequent performance or rectification on the basis of the statutory provisions. The Customer shall grant the Supplier an adequate period of grace during which to provide subsequent performance or rectification.
2. While subsequent performance or rectification is being provided, the Customer may not reduce the purchase price or withdraw from the contract. Subsequent performance or rectification shall be deemed to have failed after the second unsuccessful attempt. Should

subsequent performance or rectification have failed, the Customer may, at his option, either request a reduction of the purchase price (Minderung), or declare withdrawal from the contract (Rücktritt).

3. The Customer shall only be able to assert the claims for damages for a defect under the following terms if subsequent performance or rectification has failed. The Customer's right to assert damage claims going beyond this, in accordance with the terms hereinafter, shall remain unaffected.
4. The Supplier shall have unrestricted liability under the statutory provisions for damage due to injury or death caused by a negligent or intentional violation of obligation on his part, the part of his legal representatives or assistants in the performance of his obligations, for damage covered by the Produkthaftungsgesetz, and for all damage caused due to intentional or grossly negligent breaches of the contract or due to fraudulent activities on the part of the Supplier, his legal representatives or assistants in the performance of his obligations. To the extent to which guarantees regarding characteristics and/or durability have been given with regard to goods or parts thereof, the Supplier shall also be liable within the framework of this guarantee. However, the Supplier shall only be liable for damage which is caused by the lack of the guaranteed characteristic or durability but has not occurred in the products themselves, if it is obvious that the risk of such damage was intended to be covered by the guarantee regarding the characteristics and durability.
5. The Supplier shall also be liable for damage caused by him through slight negligence, provided that the negligence relates to the violation of a material contractual obligation or to a cardinal duty. The same shall apply if the Customer can assert claims for damages in lieu of performance. However, the Supplier shall only be liable for damage which is foreseeable and typically associated with the contract.
6. Any liability by the Supplier going beyond this shall be excluded, irrespective of the legal nature of the asserted claim; this shall in particular apply to claims based on tort and claims for restitution of futile expenses in lieu of performance; this shall not affect any other liability of the Supplier provided for in the present General Terms and Conditions of Sale and Delivery. If the Suppliers' liability is excluded or limited, this shall also apply with regard to the personal liability of the Supplier's legal representatives and assistants in the performance of his obligations.

§ 9 Consequences of the Customer's failure to perform

Should the Customer fail to fulfil his obligation under the contract to accept delivery of the purchased object, and should he be in default of acceptance, the Supplier shall have the right to withdraw from the contract and request payment of a sum amounting to 25 % of the purchase sum as lump-sum damages.

§ 10 Customer's right of withdrawal

The Customer shall have a right of withdrawal if an adequate period of grace set by the Customer for the Supplier in order for the Supplier to eliminate a defect for which he is responsible has expired unsuccessfully, or if the rectification or the provision of a suitable replacement for subsequent performance is impossible, or if elimination of a defect for which proof has been provided to the Supplier has been refused by the Supplier; any other claims, in particular any claims for damages, shall be excluded for the Customer.

§ 11 Supplier's right of withdrawal

1. In case of unforeseeable events, provided they substantially change the economic significance or the contents of the service, or have substantial effects on the Supplier's business, as well as for cases where performance subsequently is found to be impossible,

the Supplier shall have the right to completely or partially withdraw from the contract.

2. The Customer shall have no damage claims on account of such withdrawal. Should the Supplier wish to exert his withdrawal rights, he shall inform the Customer thereof, promptly after obtaining knowledge of the scope of such event, even if initially an extension of the delivery time had been agreed with the Customer.

§ 12 Reservation of title

1. Up until complete fulfilment of all claims, including any outstanding balance claims on current account which the Supplier holds against the Customer, whether at present or in the future, the delivered products (reserved-title goods) shall remain the Supplier's property. Should the Customer act in violation of the contract, for instance default in payment, the Supplier shall have the right, after expiry of an adequate deadline, to take back the reserved-title goods.
2. The Customer shall handle the reserved-title goods with care and shall sufficiently insure them at their replacement value and at the Customer's costs against damage caused by fire, water or theft. Any necessary maintenance or service work shall be carried out by the Customer in a timely manner and at his costs.
3. Should third parties encroach upon the reserved-title goods, in particular in case of attachments, the Customer shall advise the third party of the Supplier's ownership, and shall promptly inform the Supplier in order to enable the Supplier to enforce his title rights. In as far as the third party is unable to reimburse the Supplier for court fees or other legal fees incurred in this context, the Customer shall be liable for such costs.

§ 13 Severability clause

Should one of the provisions in the present Terms be or become invalid, this shall not affect the validity of the remainder of the contract. The invalid provisions shall be replaced by the corresponding statutory regulation.

§ 14 Place of performance and place of jurisdiction for contracts with businesses

1. The place of performance for supplies and services as well as the place for jurisdiction for any claims and disputes resulting from the contractual relations shall be the Supplier's headquarters.

2. The relations between the contracting parties shall exclusively be governed by the law of the Federal Republic of Germany. The application of the uniform law on the international sale of goods and of the law on contracts for the international sale of goods is excluded. The contractual language is German.