General Terms and Conditions of Sales - Dümmen GmbH

1. General remarks

1.1. The General Terms and Conditions specified below shall apply for all sales transactions performed within the framework of our business operations if nothing to the contrary has been specified in the quotation or in the order confirmation.

1.2. Our General Terms and Conditions shall apply exclusively. Any conflicting or deviating terms and conditions of the buyer, and any ancillary agreements, shall be binding only if we have explicitly confirmed their validity in writing. Our General Terms and Conditions shall apply even if we make delivery to the buyer without reservation, in full awareness of conflicting or deviating terms and conditions of the buyer.

1.3. The General Terms and Conditions specified below shall apply exclusively in relation to companies within the meaning of § 14 of the German Civil Code (in German and hereinafter abbreviated to BGB).

1.4. Unless otherwise agreed, interpretation of contract terms customary in the trade shall be governed by Incoterms®2010 (EXW Dammweg 18-20, D-47495 Rheinberg/Germany, Incoterms®2010), including the supplements valid at the time when the contract concerned is concluded.

2. Quotation – conclusion of contract

2.1. The descriptions and depictions of our goods in advertising material, etc. do not as such constitute quotations within the meaning of § 145 BGB. They are subject to change and non-binding. They are to be understood as an invitation to the customer to submit applications (purchase orders).

2.2. The customer shall be bindingly committed to the application submitted to us for a period of two weeks from receipt by us, unless the customer specifies something different in his/her application.

2.3. An order will materialise only if we accept the customer's application by confirming it in writing, or if we execute the delivery or provide the service in question without prior written confirmation of acceptance.

2.4. If we accept the customer's application – no matter whether this is done in writing or by execution – after the two-week commitment period (Section 2.2. above) has expired, the contract shall nonetheless be construed as having materialised unless the customer sends an immediate objection.

2.5. Our employees and commercial agents – with the exception of the managing directors and authorised signatories – have no prerogatives for making binding oral agreements on our behalf. Oral agreements made by this group of persons require our written approval for them to attain validity.

2.6. We shall be entitled to make changes in our order confirmations in terms of varieties, quantities and delivery dates in line with actual availability. Such changes shall be construed as agreed if the customer does not object to them within 8 calendar days from receipt of the order confirmation. This shall apply only if such change(s) appear(s) acceptable for the customer taking all due account of our own interests.

3. **Ordering by electronic means**

If by using our website a contract is to be concluded by way of e-commerce, our General Terms and Conditions shall insofar apply exclusively; these can – in compliance with § 312g Para. 1 No. 4 BGB – be called up on our website. If our General Terms and Conditions as posted on our website deviate from these General Terms and Conditions, then for e-commerce the General Terms and Conditions posted on our website shall exclusively apply.

4. Delivery

4.1. Any delivery dates agreed shall refer to making the seedlings available for handing over or for dispatch in our production facility in D-47495 Rheinberg/Germany, Dammweg 18-20 EXW in accordance with Incoterms®2010.

4.2. For as long and in so far as correct and punctual delivery by our subsuppliers has not been made, we will be released from our obligation to deliver, however, only for a period of 3 months. Thereafter, both parties can terminate the contract. This only applies if we are not responsible for this fact, which means in particular that an effective covering transaction with the supplier exists. We will notify the customer of an event which leads to a release from our obligation to deliver within 14 days after knowledge.

4.3. Any shortage of raw materials or energy, strikes, lockouts, disrupted transportation, official decrees or other restrictions imposed by government agencies, industrial disruption, all cases of *force majeure,* plus any other circumstances, for which neither we nor our vicarious agents can be held responsible and which were impossible for us to foresee, shall release us from our obligation to make delivery for as long as such circumstances last, insofar as they affect our ability to deliver.

4.4. In the cases listed under Sections 4.2. and 4.3. above, we shall be entitled – without obligation to pay damages – (subject to the provisions of Section 12. below) to withdraw from the contract, if it has become impossible (or unacceptable) for us to make delivery, or if the impediment to performance is of unforeseeable duration. This shall apply only if we or our vicarious agent are/is not responsible for such impediment to performance and if we have notified the customer immediately of the above-mentioned impediments to performance. In case of withdrawal from the contract, we are obligated to immediately refund to the customer any consideration already paid.

4.5. Unless otherwise agreed, we shall be entitled to make partial deliveries on customers' orders. The customer shall be entitled to refuse acceptance of partial deliveries only if such partial delivery is of no objective interest to him/her. The customer must declare his/her refusal of acceptance in writing, at the same time stating the reasons why said partial delivery is of no objective interest to him/her.

5. Obligation to inspect and give notice of defects

5.1. The customer must inspect and examine the goods immediately upon receipt, insofar as this is feasible within the context of normal business operations. Depending on the size of the consignment concerned, such inspection/examination may if appropriate be made by taking random samples in sufficient numbers. If the customer wants the goods to be delivered to third parties, he/she must him/herself make sure that such immediate inspection/examination is carried out there.

5.2. The customer's obligation to inspect the goods and give notice of defects also includes phytosanitary characteristics, i.e. in particular viruses, pest infestation and diseases. If the customer suspects such phytosanitary characteristics to be present, he/she must proceed as described under Section 11.7. below. Above and beyond this, the customer must specifically make sure – especially with a view to his/her duty to avert, minimise or mitigate loss – that the possibly infested or defective plants are separated from other plants, both those delivered by us and those already present on the customer's premises, so as to prevent the infestation concerned from spreading.

5.3. In the event of defects (in case of non-obvious defects after detection), incorrect deliveries, or insufficient numbers delivered, the customer must notify us thereof without undue delay. Such notification must be made in writing. Staff from the forwarding agent/transportation company are not authorised to receive any notice of defects. If the customer fails to make such notification, the goods shall be regarded as approved, and the customer may not derive any rights from these defects, unless the defect concerned is one that was not discernible at the time of inspection.

5.4. Otherwise, the provisions laid down in §§ 377 ff. of the German Commercial Code (in German abbreviated to HGB) shall apply.

5.5. Our taking receipt of a notice of defects shall not constitute a recognition on our part of the defects being notified.

6. Prices and methods of delivery

6.1. Unless otherwise agreed, all prices are to be understood EXW our production facility in D-47495 Rheinberg/Germany, Dammweg 18-20 (Incoterms 2010). The prices refer to the price list valid at the time the binding order is placed and are exclusive of the statutory turnover tax applicable at the time of binding delivery. All costs of the goods, such as levies, insurance premiums, taxes, warehousing costs, etc. are passed on to the customer when the goods are made available at our production facility in D-47495 Rheinberg/Germany, Dammweg 18-20. Dispatch is arranged for only if the customer so requests; in that case, the additional freight/transport costs shall also be borne by the customer and shall be invoiced by us to him/her.

6.2. The risk of accidental loss of the goods shall pass to the customer when the goods are handed over to the transportation company.

6.3. Sales packages are taken back by us within the framework of the obligations laid down by statute law. When this is done, the customer must take appropriate measures to ensure that the packaging material's phytosanitary condition is safe. The customer must deliver the packaging material at his/her own expense in sorted condition to our production facility in D-47495 Rheinberg/Germany, Dammweg 18-20.

6.4. Unless otherwise agreed, any other transport packaging shall be invoiced. If it is returned by the customer in undamaged condition, a credit note will be issued.

6.5. Loading of the goods at our production facility in D-47495 Rheinberg/Germany, Dammweg 18-20 shall be carried out by the customer. This shall also apply in cases where the customer has the goods collected. Insofar as we assist the customer, or the person(s) commissioned by him/her, in loading the goods, this is done as a favour. Responsibility for proper loading, and in particular for complying with the regulations applying for securing the load, is vested solely in the customer and/or in the person(s) commissioned by him/her.

6.6. Our prices refer to the price list valid at the time the binding order is placed, unless otherwise agreed. They are to be understood ex our production facility in D-47495 Rheinberg/Germany, Dammweg 18-20 and are exclusive of packing and the statutory turnover tax applicable at the time of delivery. We reserve the right to invoice to the customer any time-limited hardship allowances (such as increase in oil price) at the time the contract is concluded. Note that we undertake to notify the customer of this before conclusion of the contract.

6.7. Cash discounts, and any other discounts, shall require our explicit prior agreement in writing. They have to be agreed afresh for every contract.

7. Terms of payment

7.1. Our invoices are due for payment within 30 days as of the invoice date, unless otherwise agreed to in writing.

7.2. Insofar as partial deliveries are made in accordance with Section 4.5. above or in consultation with the customer, we shall be entitled to invoice each partial delivery separately. Invoicing shall be based on the net itemised prices agreed.

7.3. Payments shall be made solely to one of our accounts stated on the invoice.

7.4. We reserve the right to demand payment in advance, or deliver the goods COD (cash on delivery).

7.5. Payments received from the customer shall – unless otherwise agreed in an individual case – always be credited against the earliest open liability. In line with the statutory regulation laid down in § 367 BGB, payments received shall be credited first against costs, then against any interest accrued, and lastly against the main debt. Any statement as to how the payment shall be booked on the part of the debtor to the contrary shall be ignored.

7.6. Cheques shall be accepted only as a conditional payment. Payment shall not be regarded as made until and insofar as the amount in question has been irrevocably credited to our account. Any fees charged by the bank, in particular if the cheque is dishonoured, shall be borne by the customer.

7.7. Bills of exchange, too, shall be accepted only as a conditional payment. All charges and costs, including the costs of presentation and raising a protest (if any), shall be borne by the customer. We are not obligated to make timely presentation or to raise a protest.

8. Default

8.1. Incidence and consequences of default shall be governed by the statutory regulations laid down in §§ 286, 287 and 288 BGB.

8.2. If the customer is in arrears with his/her payments, we may at our discretion make further deliveries and services – also those covered by other contracts – contingent upon advance payments or surety; we shall also be entitled to disclose all assignments (Section 9.1.) to all account debtors of the customer concerned, and to demand direct payment to us.

8.3. The customer shall only be entitled to offset any counterclaims if these have either been recognised by us or have been confirmed as legally enforceable.

9. Retention of title

9.1. We retain the title to the goods delivered by us until full payment of all accounts receivable due to us from the underlying contract – including any costs, interest and damage caused by delay – has been made.

9.2. Our title of ownership shall also extend to the plants and articles that the customer produces by cultivating, processing, blending and mixing the goods supplied by us and covered by retention of title.

9.3. The goods supplied by us must, until they have been paid for in full, always be labelled in such a way that they can be identified as goods supplied by us at any time.

10 Assignment

10.1. The customer shall be entitled – within the framework of his/her ordinary business activities – to resell the goods supplied by us. In this case, the customer here and now assigns to us the account receivable arising from such resale against his/her account debtor. The assignment shall be limited in size to the sum due to us from delivery of the resold goods, including any costs, interest and damage caused by delay, insofar as these have already been invoiced to and registered with the customer. If so requested by us, the customer must disclose to us all resales of not-yet-paid-for goods, must name all the recipients involved and give us all the particulars required for direct enforcement of the accounts receivable assigned to us.

10.2. The customer shall, within the framework of what is legally permissible, be obligated to make sure – by way of suitable agreements with his/her buyers – that the accounts receivable assigned to us are not lost by offsetting but are fulfilled only by payment; if necessary, the customer must for this purpose draw attention to the assignment concerned.

10.3. The customer shall be entitled to collect from his account debtors accounts receivable assigned to us. He/She undertakes to pass on to us insofar any payments received from his/her buyers, up to the amount of the accounts receivable we are entitled to, without delay. If the customer collects from his/her buyers receivables that have been assigned to us and does not pass them on correspondingly to us, we shall be entitled to disclose all the assignments concerned – also in relation to other account debtors – and to demand direct payment to us. The authorisation to collect receivables can be revoked at our discretion.

10.4. If third parties – especially within the framework of compulsory-execution or bankruptcy-law measures – attempt to seize the goods to which we hold title, the customer must draw their attention to the fact that the goods are our property and present the underlying documents. At the same time, he/she must notify us of any such attempt immediately. If we incur any costs for defending against any alleged claims asserted by foreign parties to the goods to which we hold title, the customer must refund these costs to us, insofar as they are not in fact reimbursed by third parties; we shall assign any claims against third parties to the customer step by step.

11. Warranty

11.1. Insofar as goods supplied by us exhibit a defect, the cause of which was already present at the time of passage of risk, we shall always be obligated to perform under warranty, insofar as we are notified of the defect concerned within the period of limitation (Section 11.4.).

11.2. If the customer resells the goods supplied by us and his/her buyer, or the last buyer in the supply chain, is a consumer within the meaning of § 13 BGB, the customer may seek recourse against us in accordance with the regulations laid down by statute law in §§ 478, 479 BGB by way of what is referred to as supplier recourse. If what is involved is a justified case of supplier recourse, then the restrictions on warranty specified in these General Terms and Conditions shall be void.

11.3. Any case of supplier recourse is conditional on the goods supplied by us being sold to the consumer in unchanged condition throughout the entire supply chain. Insofar as the goods in question have in the meantime been cultivated, or changed in some other way, or not handled with due and proper care, this will render supplier recourse null and void. A vital precondition for supplier recourse is that the defect present in the goods when handed over to the consumer also constitutes a defect in the relationship obtaining between us and the customer.

11.4. Any warranty claims come under the statute of limitation after 12 months. Notwithstanding the foregoing provision, the periods of limitation laid down by statute law shall apply if the customer justifiably seeks recourse against us within the framework of supplier recourse (Sections 11.2. and 11.3. above).

11.5. If the customer violates his/her obligation to inspect the goods and give notice of defects as laid down in Section 5. above, he/she may – in accordance with the provisions laid down in Section 5. above – lose his/her rights of warranty.

11.6. If the customer notifies us of any defects – irrespective of whether this is done in accordance with Section 5., he/she must give us an opportunity to investigate said defects ourselves and/or have them investigated by third parties commissioned by us. If the customer him/herself commissions third parties – especially expert appraisers – to examine the goods and/or to ascertain any defects, we shall be obligated to bear the costs incurred thereby only if in fact an immediate expert appraisal is objectively necessary and we cannot be reached in time for such immediate expert appraisal.

11.7. If the client asserts warranty claims, we shall initially be obligated only to make subsequent fulfilment (remedying the defect, or supplying a flawless article). If we refuse subsequent fulfilment, or if this fails, the customer may reduce the purchase price or withdraw from the contract. Subject to the provision specified in Section 12. below, any claims for damages on the part of the customer are excluded.

11.8. If the customer is entitled to subsequent performance in the shape of delivery of a flawless article, then we are entitled to match varieties to what is actually available if the deviation concerned is acceptable for the customer.

11.9. We shall make compensation of equal value for the varietal identity only up to the invoice amount, insofar as notice was given as to the missing varietal identity, in accordance with Sections 5. and 11.6. above.

12. Claims for damages

12.1. Insofar as the customer is entitled to claims for damages or compensation for expenses because of defects, which are not excluded by the agreements mentioned above or by Section 12.2., these shall be statute-barred after 12 months.

12.2. We are not liable for all claims for damages or compensation for expenses of the customer irrespective of the legal grounds involved, especially due to violation of duties arising from contractual obligations or unlawful acts which are based on a slightly negligent breach of a duty on our part or a slightly negligent breach of a duty on the part of our legal representatives or our vicarious agents.

12.3. Section 12.2 is not applicable for damages

a) from injury to life or limb or health, which is based on a negligent breach of duty on our part, on a negligent or intentional breach of duty on the part of our legal representatives or our vicarious agents.

12.4. Section 12.2 furthermore is not applicable for a violation of an essential contractual duty. In this case, our liability is limited to damages foreseeable at the conclusion of the contract.

13. Consultancy / Plant protection / Cultivation

13.1. Planting instructions, consultancy on plant protection, and any other consultancy services are not the subject-matter of purchase and delivery contracts. Unless they are explicitly declared a constituent part of the contract, they constitute non-binding information only. They do not release the customer from his/her obligations in respect of professional and expert processing of the goods supplied by us, nor from the necessary care, in particular with regard to the use of pesticides and fertilisers, as well as products to promote or inhibit growth.

13.2. Any planting instructions provided by us, and any other documents that relate to the processing and cultivation of goods supplied by us, must not be made available to third parties, unless they have been published by us, in catalogues or similar (printed) matter, for example.

13.3. Insofar as we provide plant-protection consultancy, the customer shall be obligated to start by conducting a test using the measures recommended on some of the plants. Only after a positive test result may he/she use the measures on a general scale. The plants under test must be kept under conditions that are identical to those of the rest of the plants, which – once the test has yielded a positive result – are to be subjected to the plant-protection measures tested. We shall be liable for a plant-protection consultancy we have provided, subject to the restrictions specified in these contractual conditions, only if a proper test has been conducted beforehand and can be evidenced by the customer concerned.

13.4. With regard to plant protection, the customer must comply with the relevant statutory regulations, in particular with the German Plant Protection Act. Even if we provide consultancy on plant protection, this shall not release the customer from complying with the relevant statutory regulations on his/her own responsibility.

13.5. The customer shall him/herself be responsible for cultivation, in particular with regard to the selection and use of products to promote or inhibit growth, fertilisers and pesticides. The customer must take care to ensure that the substances and agents used are mutually compatible. We explicitly draw your attention to the fact that damage may be caused if, for example, products to promote or inhibit growth and pesticides are used that are mutually incompatible. We do not accept any liability for any damage whatsoever attributable to mistakes made during cultivation.

14. Guarantees

14.1. Unless explicitly and otherwise agreed, all descriptions given by us or our vicarious agents, and all other particulars, also those given in catalogues, brochures, advertising material and on the internet, are always descriptions only. With such descriptions, we do not assume any guarantee for the nature and quality of the goods concerned, nor to the effect that the goods will retain a certain quality for a certain period.

14.2. If – in contravention of Section 14.1. above – we have in fact assumed a guarantee, then the customer shall in the event of any defects found that are covered by that guarantee be entitled to the statutory warranty rights without restriction.

14.3. Any guarantee can be accepted only by a member of our managing board or the sales manager. A guarantee in the legal sense of the word is conditional on our warranting one or several particular properties explicitly and in writing, and designating the document in question explicitly and in writing as a "guarantee".

15. Industrial property rights / Licences / Propagation

15.1. The plants subject to plant variety protection may be reproduced and propagated only on the basis of a licensing agreement. A licensing agreement must be concluded separately; the licence fees shall be agreed therein.

15.2. Plant variety protection is based on the relevant statutory regulations, in particular the German Plant Varieties Protection Act and the Council Regulation (EC) No. 2100/94. We supply protected varieties exclusively for purposes of cultivation and subsequent sale; the customer shall not be authorised to produce any material suitable for propagation, or to export propagatable material to a country that does not guarantee variety protection, unless a separate agreement to that effect has been concluded.

15.3. Seed stock that is subject to variety protection, plus varieties whose designation has been registered as a brand, may be sold only under the protected designation.

15.4. If mutations occur at the customer's premises, the customer must notify us thereof immediately, allow us access so we can verify the matter, and make available to us samples of the mutations concerned without so being requested.

15.5. Should the customer be entitled to alleged rights from finding the mutation concerned, rights which he/she wants to sell or have protected, then the customer shall be obligated to notify us of this in advance. We in any case reserve the right to assert our own rights in such mutations.

15.6. In the event that rights to mutations that the customer is entitled to are sold, the customer shall grant us an irrevocable right of first refusal; in the event that the customer plans to have such rights protected, the customer shall here and now undertake to offer us his/her rights for assignment at a reasonable price. If an agreement on the price cannot be reached, then an expert appraiser appointed by the chamber of agriculture responsible for us shall make a binding decision.

15.7. The customer shall permit us, and third parties commissioned by us respectively, to inspect the cultivation areas after prior announcement and fixing a date, so as to check on due compliance with the relevant variety protection legislation.

16. Force Majeure

16.1. In case of Force Majeure which makes it impossible for us, our suppliers or our vicarious agents to perform the obligations according to the contract with regard to subject matter and timing, we shall give notice to the customer at the latest within 14 (fourteen) days after we became aware of it. We shall not be liable for any delay caused thereby or impossibility to perform. During the term of the event we shall be released from our obligation to perform, but not later than 3 months after occurrence of the event. In case the Force Majeure extends to a period of more than 3 months after occurrence of the event, both parties can terminate the contract.

16.2. Force Majeure in the sense of these General Terms and Conditions means all unforeseeable events or such events which are beyond our control and whose effects on the performance of the contract could not be prevented by reasonable efforts. Force Majeure can include, but is not limited to, war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, terrorism, rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, riot, commotion, disorder, strike or lockout and natural catastrophes such as earthquake, hurricane typhoon, landslide or lightning.

17. Place of performance / Place of jurisdiction / Severability clause

17.1. The place of performance for all work arising from contracts between us and the customer is Rheinberg/Germany.

17.2. Solely German law shall apply. The UN Convention on the International Sale of Goods is explicitly waived.

17.3. For all disputes arising from contractual relationships between us and the customer – unless a different sole place of jurisdiction is mandatory under statute law – Rheinberg/Germany is agreed as the place of jurisdiction.

17.4. If one of the clauses contained in these General Terms and Conditions or some other clause of a contract concluded between us and the customer should be or become inoperative in whole or in part, the rest of the contract shall remain operative. The contracting parties undertake to make an agreement in place of the inoperative clause that approaches it as closely as possible in commercial terms.

Rheinberg, June 2014