

General Terms and Conditions of Sale and Delivery

1. Scope of application

The provisions of these General Terms and Conditions apply as the standard contract conditions which are used in a contract with a merchant in the normal course of business. In accepting an offer or order confirmation or by sending a purchase order, the customer (hereafter called the Purchaser) confirms his acceptance of these General Terms and Conditions of Sale and Delivery. Contradictory terms and conditions laid down by the Purchaser will not be binding upon Phaesun GmbH and its subsidiary Phaesun France SAS (hereafter collectively called the Seller), even if no specific objections are raised by the Seller. The services, deliveries and offers of the Seller are carried out exclusively on the basis of these Terms and Conditions of the Seller. These thus also apply to all future business relations, even if they are not explicitly agreed upon again. These Terms and Conditions are taken as accepted at the latest when the product or service is received.

Any other document than the present General Terms and Conditions of Sale and Delivery, such as catalogues, prospects, advertisements and other notes shall only be informative and indicative, and shall not constitute a contractual obligation. Product related text and image and other product specific information have been carefully -prepared, however no responsibility is taken for the correctness of this information in all documents and digital media of the Seller. Any offers, order acknowledgement, order acceptance of sale of any product of the Seller is conditional upon the terms contained in this document. Any conditional or different terms proposed by the Purchaser are objected to and will not be binding upon the Seller unless accepted expressly in writing by the Seller. These conditions shall govern any individual contract of sale between the Seller and the Purchaser. Any typographical, clerical or other error omission in any sales literature, quotation, price list, order confirmation, invoice or other document of information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2. Orders and Specifications

(1) The act of sale is effective after acceptance by the Seller of the order submitted by the Purchaser.

Offers and quotations do not constitute a contract and are of no contractual value.

No order submitted by the Purchaser shall be deemed to be accepted by the Seller unless and when confirmed in writing by the Seller or the Seller's representative.

Verbal agreements or arrangements with the Seller's employees shall only be binding unless and when they are confirmed in writing by the Seller.

In order to be legally effective, declarations of acceptance and all orders require written confirmation from the Seller (order confirmation) or written confirmation by email and/or fax are sufficient. All order acceptances are given exclusively on the basis of these General Terms and Conditions of Sale and Delivery. Supplements,

amendments and verbal agreements shall require a written confirmation by the Seller to be legally binding.

Revocation of an order already sent by the Purchaser and confirmed by the Seller shall be inadmissible. Changes in the terms of the order (quantity, reference or technical specifications) shall only be admissible within 24 hours after the order confirmation has been sent by the Seller.

(2) The quantity, quality and description of any specifications for the Goods shall be those set out in the Seller's quotation (if accepted in writing by the Purchaser through an order) or the Purchaser's order (if accepted in writing by the Seller through the order confirmation).

Any such specification, sales literature, quotation etc. shall be strictly confidential and must not be made available to third parties. The Purchaser shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Purchaser, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with the specification submitted by the Purchaser, the Purchaser shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual rights of any other person which results from the Seller's use of the Purchaser's specification. The Seller reserves the right to make any changes in the specification of the Goods which may be required to conform to applicable statutory requirements, without being held responsible for such changes.

(3) In addition, where the Goods are to be supplied to the Seller's specification, the Seller reserves the right to make any changes which do not materially affect the quality or performance of the Goods.

(4) The information contained in any selling documents prepared by the Seller is only indicative and shall not be legally binding.

(5) Any analysis or study undertaken or delivered on request of the Purchaser has to be verified by him before use. The Seller accepts no responsibility and shall have no liability in contract, tort or otherwise to the Purchaser or other third parties in relation to the content of such documents.

(6) The minimum order value is 50,- EUROS. Beneath that amount, every order generates administrative charges of 12,- EUROS.

(7) Revocation of an order already sent by the Purchaser and confirmed by the Seller will generate punitive damages of 10% of the amount of the order.

3. Price of the Goods

(1) Unless stated otherwise, all prices are given by the Seller on an ex-works (Incoterms 2010) basis, and where the Seller agrees on demand of the Purchaser to deliver the Goods elsewhere as at the Seller's premises, the Purchaser shall be liable to pay the Seller's charges for transport, packaging and insurance.

(2) Unless stated otherwise, the Seller is bound by the prices named in its offers for a period of 30 days from the date of the offer.

(3) The prices named in the Seller's order confirmation plus the statutory Value Added Tax at the time of the delivery or service are binding. Further deliveries and services are calculated and to be paid for separately. The prices given in the order confirmation do not, unless it has been agreed otherwise, include postage and packaging.

(4) If at least three (3) months have, for any reason, passed between the conclusion of the contract and the delivery of the product, the Seller may raise the purchase price by an amount which corresponds to: the rise in the cost-of-living index and a modification of a tariff agreement and higher production costs and a currency regulation and an alteration of duties and a significant increase in the costs of materials and other costs of manufacture or any change in delivery dates.

(5) The price is exclusive of any applicable Value Added Tax, which the Purchaser shall be additionally liable to pay to the Seller.

4. Terms of Payment

(1) The Purchaser shall pay the price of the Goods within the time specified by the Seller from the date of the Seller's invoice. Trade discounts need the prior written approval of the Seller.

(2) Payment shall be effected by interbank payment transaction only; no cheque or bill of exchange will be considered as fulfillment of the payment obligation. It may be agreed between the parties that the Purchaser has to deliver a Letter of Credit issued by a bank acceptable to the Seller. In this individual case it is assumed that any Letter of Credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600. If the Purchaser fails to make payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall at his discretion be entitled to:

– cancel the contract or suspend any further deliveries to the Purchaser;

– or charge the Purchaser interest on the amount unpaid from the due date, at the rate of 7 per cent per annum above European Central Bank reference rate, until payment in full is made. The Purchaser shall be entitled to prove that the delay of payment caused no or little damage only.

(3) All orders shall be accepted under the provision that the Purchaser is in the position to pay the complete amount of the purchase price. If this prerequisite is no longer fulfilled, which shall be assumed if unfavourable information about the Purchaser's economic situation exists or payments are not made within the agreed payment period, then the Seller can demand immediate cash payment before delivery of the commodities, regardless of the agreed payment date. In the event of a considerable deterioration of the financial situation of the Purchaser becoming known

after conclusion of the contract or in the event of arrears in payment, the Seller shall have the right to withdraw from the contract and to demand immediate settlement of all claims, both due for payment and not yet due for payment. If the Seller makes use of the right to withdraw from the contract, the Purchaser shall reimburse the Seller for the loss of profits or expenditure incurred with a view to the order placed, in particular with a view to the working hours taken up. Payments must be made exclusively to the Seller.

(4) Rights of offset shall not be allowed.

5. Delivery

(1) The deadlines and time periods indicated by the Seller are not binding, unless agreed otherwise in writing. The Seller is not responsible for delays of delivery due to Force Majeure or due to events which make the delivery considerably more difficult or impossible for the Seller, even if binding time periods and delivery deadlines have been agreed. Those events permit the Seller to delay the delivery or service for the duration of the hindrance, or to withdraw from the contract in full or in part in relation to that part that has not been fulfilled. The Seller is always permitted to carry out partial services or deliveries.

(2) The start of the delivery period stated by the Seller is subject to the clarification of all technical questions. Compliance with the delivery obligation of the Seller shall further presuppose punctual and proper performance of the Purchaser's obligations. The right to the plea of non-performance of contract shall remain reserved.

(3) Delivery of the Goods shall be made by the Purchaser collecting the Goods at the Seller's premises at any time after the Seller has notified the Purchaser that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place. If the Purchaser falls into arrears of acceptance of the Goods or culpably breaches other cooperation duties, the Seller shall be entitled to demand reimbursement of the costs incurred by the Seller to this extent, including all and any additional expenditure and other damages. The right of the Seller to further-reaching claims shall remain reserved.

(4) Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 3 % more or 3 % less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be in the quantity ordered.

(5) If a fixed and binding time for delivery is provided for in the contract, and the Seller fails to deliver (in accordance with Point (3) of this Article) within such time or any extension thereof granted, the Purchaser shall be entitled, on condition that the arrears in delivery are based on a breach of contract by malice aforethought or gross negligence of the Seller and on giving to the Seller within a reasonable time notice in writing, to claim a reduction of 0,1 % of the delivery value for each completed week of arrears, albeit no more than 3 % of the delivery value, unless it can be reasonably concluded from the circumstances of the particular case that the Purchaser has suffered no loss.

(6) Liability for any loss of profits or any other consequential losses, including liability for loss of income which can otherwise customarily be achieved with the sold product(s), shall be ruled out.

(7) To the extent possible, the quantity ordered by the Purchaser shall be provided. Any difference in quantity resulting from the delivery note or the invoice shall be notified to the Seller in writing, albeit not later than five (5) working days after receipt of the commodities.

(8) If the Purchaser fails to accept delivery on due date, he shall nevertheless make payment as if the delivery of the Goods had been accepted. The Seller shall arrange for the storage of the Goods at the risk and cost of the Purchaser. If required by the Purchaser the Seller shall insure the Goods at the cost of the Purchaser.

6. Transfer of Risks

(1) In the case of Goods to be delivered at the Seller's premises (ex works, Incoterms 2010) the risk shall pass to the Purchaser at that time when the Seller notifies the Purchaser that the Goods are available for collection.

(2) In the event of dispatch being impossible without culpability on the part of the Seller, the risk shall pass to the Purchaser upon notification of availability for dispatch.

(3) The risk of damage to or loss of the Goods shall pass to the Purchaser as soon as the Goods have been handed over to the person carrying out the transportation, or as soon as the Goods have left the Seller's warehouse. This shall also apply when the Seller is assuming the transport costs.

(4) The Purchaser shall check the incoming Goods immediately after receipt. Complaints of any kind shall be ruled out if they are not made within 14 days after the receipt of the Goods.

(5) Complaints or claims in relation to hidden defects which are difficult to discover in the course of the customary examination shall be addressed directly to the manufacturer.

(6) Defects of part of the delivery shall not entitle the Purchaser to make claims in relation to the entire commodities within a delivery.

7. Retention of Title

(1) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Purchaser until the Seller has received full payment of the price of the Goods and all other Goods agreed to be sold by the Seller to the Purchaser for which payment is then due.

(2) If the Purchaser acts in breach of the contract, in particular in the case of payment default, the Seller shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the Goods in which title remains vested in the Seller;

(3) Until such time as the property in the Goods passes to the Purchaser (passage of ownership), the Purchaser shall hold the Goods as the Seller's fiduciary agent, and shall keep the Goods properly stored, protected and insured at his own costs.

(4) Until passage of ownership the Purchaser shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the Purchaser and third parties.

(5) If the Goods are processed or reshaped by the Purchaser and if processing is done with Goods that the Seller has no property in, the Seller shall become co-owner of the new object in the ratio of the value of the object of purchase (final invoice amount excluding VAT). If the blending is done in such a way that Purchaser's object is to be regarded as the main object, it shall be deemed agreed that the Purchaser assigns co-title to the Seller pro rata.

(6) If third parties take up steps to pledge to otherwise dispose of the Goods, the Purchaser shall immediately notify the Seller in order to enable the Seller to seek a court injunction in accordance with § 771 of the German Code of Civil Procedure. If the Purchaser fails to do so in due time he will be held liable for any damages caused.

(7) The Seller shall on demand of the Purchaser release any part of the collateral if the value of the collateral held in favour of the Seller exceeds the value of the claims being secured. It is to the Seller's decision to release those parts of the collateral suitable for him.

8. Liability

(1) General provisions: With the exceptions of gross negligence of the Seller and with the exception of personal injury, the Seller's liability is limited, for all claims of the Purchaser in aggregate, to the value of goods & services received by the Purchaser to the extent such have been paid by the Purchaser at the date of the Purchaser's claim. The Purchaser warrants the waiver of liability from his insurers or from third party which have entered into separate contractual agreements with him, against the Seller or the Seller's insurers beyond the limits and exclusions mentioned above.

(2) Liability for errors in Purchaser's documents: The Seller is not liable for any damages due to the Purchaser's or third party errors relating to the contract execution, nor damages resulting from the use of technical documents, data or other information provided by the Purchaser containing errors undetected by the Seller.

(3) Liability for consequential damages and/or intangible damages: Under no circumstances, the Seller shall be liable for damages consequential and/or indirect such as: operating loss of profit, commercial loss or any other consequential losses (including consequential and/or indirect damages for installation costs, transportation costs, handling fees, travel costs, etc.)

9. Warranties and Exclusion Clauses

(1) The Purchaser shall examine the Goods as required by German Law (§§ 377, 378 of the German Commercial Code) and in doing so check every delivery in any respect.

(2) The seller warrants that all items delivered under this agreement are under manufacturer's warranty limited to 12 months from the date of first invoicing.

(3) The Seller shall not be liable for the Goods being fit for a particular purpose unless otherwise agreed upon, to which the Purchaser intends to put them.

(4) The above warranty is given by the Seller subject to the following conditions: the Seller shall not be liable for any defect in the Goods arising from any design or specifications supplied

by the Purchaser; the Seller shall not be liable under the above warranty if the total price for the Goods has not been paid by the Purchaser at the due date for payment; the above warranty does not extend to parts, material or equipment manufactured by or on behalf of the Purchaser unless such warranty is given by the manufacturer to the Seller.

(5) This warranty does not cover defects in or damage to the products which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application.

(6) Any claim by the Purchaser which is based on any defect in the quality or condition of the Goods shall be notified to the Seller within two weeks from the date of delivery.

(7) The Purchaser is entitled to demand the delivery of any substitute Goods, or repair or a reduction of the purchase price as set forth with the terms of each individual contract of sale. Liability for any loss of profits or any other consequential loss, including liability for income which can customarily be achieved with the product(s) sold, shall be ruled out.

(8) Where any valid claim in respect of any Goods which is based on any defect in the quality or condition of the Goods is notified to the Seller in accordance with these Conditions, the Seller shall be entitled at the Seller's sole discretion to either replace the Goods free of charge or repair the Goods.

(9) The Seller is not the manufacturer of the products sold by him. The Seller therefore assumes no kinds of duties from such guarantees or warranties granted by the manufacturer. Written guarantee assurances granted by the Seller shall remain unaffected.

(10) The Seller does not guarantee the performance of any system. The Seller does not give any guarantee of performance. The Seller assumes no kind of guarantee of output or efficiency of any system or component delivered to the Purchaser.

10. Miscellaneous Clauses

(1) The Seller reserves the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not affect the form and function of the product.

(2) This agreement supersedes and invalidates all other commitment and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior the date hereof, and which shall become null and void from the date of the agreement is signed.

(3) This agreement shall not be assigned or transferred by either party except with the written consent of the other.

(4) Each party shall be responsible for all its legal, accountancy or other costs and expenses incurred in the performance of its obligation hereunder.

(5) In the event of a conflict between the German, French and English version of the Terms & Conditions the English version shall prevail.

11. Choice of Law; Place of Jurisdiction

(1) This agreement shall be governed by and construed in accordance with German law where a contract has been entered into between the Purchaser and Phaesun GmbH. This

agreement shall be governed by and construed in accordance with French law where a contract has been entered into between the Purchaser and Phaesun GmbH's subsidiary Phaesun France SAS. Where there is uncertainty on which law shall apply the German Law shall take precedence.

(2) Each party agrees to submit to the jurisdiction of the courts selected by the Seller.

(3) The Seller shall have the right to bring a claim before a court at the Purchaser's principal place of business or at his discretion before any other court being competent according to any national or international law.

In case of any discrepancy between the different translations of the Terms and Conditions the English version shall prevail.