

# THE STANDARD TERMS OF SALE AND DELIVERY OF SELECTA KLEMM GMBH & CO. KG

## I. The area of application of the Standard Terms of Sale and Delivery

- (1) Only these Standard Terms of Sale and Delivery of Selecta Klemm GmbH & Co. KG, to the exclusion of all others, shall apply to all sales and deliveries of plants (referred to below as "the goods") by Selecta Klemm GmbH & Co. KG (referred to below as "the Seller").
- (2) It is expressly stated that no contradictory or different business terms of the Buyer shall be valid. This exclusion of the Buyer's business terms shall even apply if the Seller effects deliveries to the Buyer without reservation in the knowledge of these contradictory business terms.

## II. Prices and terms of payment

- (1) The prices in the Seller's offers are net prices before value added tax.
- (2) In as far as nothing to the contrary is agreed the prices in the offer are quoted ex works including loading. In the case of goods which are delivered directly to the Buyer by one of the Seller's suppliers on the instructions of the Seller, the prices are quoted ex the agreed destination airport including loading, but in both cases exclusive of packaging, freight, transport (possibly from the agreed destination airport), insurance and customs duty.
- (3) The Buyer shall only be entitled to deduct a cash discount in as far as such a discount is included in the Seller's offer.
- (4) If the agreed delivery date falls more than 4 months after the formation of the contract, and there have been increases in the costs of materials, raw materials, wages and salaries, production, transport or energy, the Seller shall be entitled to demand a higher price to take account of and compensate for these higher costs.
- (5) The purchase price shall be due for payment when the Seller issues an invoice or after delivery. If no different payment dates are agreed in the contract or stated in the invoice, the Buyer shall be in default 30 days after the receipt of the invoice without any reminder being required. This shall have no bearing on the Seller's option of putting the Buyer in default by sending a reminder.
- (6) As from the date that the Buyer is in default the Buyer must pay interest on the Seller's outstanding claim at a rate of 8 % above the base rate in accordance with s. 288 of the German Civil Code (BGB).
- (7) If, after the formation of the contract, the Seller should become aware of facts which give grounds for justified doubts regarding the Buyer's solvency, the Seller shall be entitled to demand part payment or a security before making any deliveries. The Seller shall be entitled to set the Buyer a deadline for remitting payment or providing a security. The Seller may rescind the contract after the expiry of this deadline. This shall not affect any further rights which the Seller may have.
- (8) Payments to the Seller's staff may only be made if they have been expressly authorised to accept such payments.
- (9) The Seller will only accept cheques and bills of exchange on account of payment. The charges for redeeming cheques or bills of exchange (particularly cheque and bill charges) shall be borne by the Buyer.
- (10) The Buyer shall only have the right to set off claims against the claims of the Seller if these claims are non-appealable, undisputed or recognised by the Seller.
- (11) The Buyer shall only be entitled to exercise a right of retention if its counter-claim is based on the same contract.

## III. Delivery date

- (1) The delivery dates stated in the Seller's offers are estimated dates based on the fact that the natural material isn't to a hundred percent controllable. The Seller shall be entitled to deliver the goods up to two weeks before the delivery date stated in the offer or up to four weeks after this delivery date. The Seller shall not be in default before the expiry of four weeks after the delivery date stated in the offer. The aforesaid rules shall not apply in as far as the Seller has promised or guaranteed a firm delivery date.
- (2) The Seller shall notify the Buyer of the probable delivery week by no later than the last working day of the week which precedes the delivery week.
- (3) Deliveries shall be made subject to the reservation that the Seller is itself supplied with the right goods in good time. If the Seller has ordered the goods from a supplier in good time and the reasons for the late or incorrect delivery to the Seller are no fault of the Seller's and the Seller is not able to offer the Buyer any comparable goods or the Buyer has justifiably refused the delivery of comparable goods (see IV.2), the Seller shall be released from its obligation to effect delivery.

## IV. Delivery

- (1) The Seller shall have the right to make part delivery to a reasonable extent.
- (2) If the agreed goods are not available (particularly the agreed species) the Seller shall have the right to deliver comparable goods to the Buyer. If the Buyer is not interested in the comparable goods for objectively justified reasons, the Buyer may rescind the contract.
- (3) When the goods are shipped, the risk of their deterioration or loss shall pass to the Buyer when they are handed over to the carrier or forwarding agent. This shall also apply if delivery has been agreed at no charge to the customer.
- (4) In as far as the Buyer deals as a business as defined in the German Commercial Code (HGB), the Buyer must immediately examine the consignment for obvious defects and immediately make a complaint to the Seller. The Buyer must immediately make a complaint concerning defects which become discernible at a later date.

## V. Reservation of title

- (1) The sold goods shall remain the property of the Seller (goods under reservation of title) until the full payment of all liabilities under the business relationship between the Seller and the Buyer.
- (2) The Buyer must treat the goods under reservation of title and which are the property of the Seller with good care.
- (3) If the goods under reservation of title are seized by third parties the Buyer must notify the Seller immediately.
- (4) The Buyer shall have the right to process and sell the goods under reservation of title within the framework of proper business dealings.
- (5) The goods under reservation of title shall be processed on the Seller's behalf. In as far as the Seller becomes the ownership of a new item produced as a result of the processing, it is agreed that the Buyer shall also have an inchoate title to the new item.
- (6) If the goods are inseparably joined to or blended with other items, the Seller shall become co-owner of the new item in ratio between the price which the Seller has invoiced for the goods under reservation of title and the value of the other items processed or blended at the time of processing or blending. The Buyer's inchoate title to the goods under reservation of title shall continue in relation to the joint property acquired by the Seller.
- (7) If the goods under reservation of title or an item to which the Seller has acquired a joint right of ownership through processing, inseparable joining or blending, the Buyer assigns to the Seller its claims against its customers or third parties from the resale of such an item to the sum of the amount (including value added tax) which the Seller invoiced to the Buyer for the goods supplied under reservation of title. The Buyer shall remain authorised to collect the sum of the claim in its own name and on the Seller's behalf.
- (8) The Seller must release the claims assigned as a security if the realised value of the claims exceeds the sum of the Seller's secured claims by more than 10 %.
- (9) The Seller may revoke the authorisation to collect outstanding claims and collect the sums of the claims in its own name, if the Buyer defaults on its regular payments. In the event of such a revocation, the Buyer must provide the Seller with information concerning the names of its debtors and must disclose the assignment to the debtors.

## VI. Guarantee

- (1) The Buyer's rights under guarantee due to a defect in the goods supplied shall be based on the statutory provisions in as far as nothing to the contrary results from the following provisions in this clause and in clause VII. Liability.
- (2) In as far as a claim for damages accrues to the Buyer due to a defect in the goods, the provisions regarding liability in clause VII. Liability shall apply.

- (3) There shall be no guarantee for defects if the Buyer deals as a business in the meaning of the German Commercial Code (HGB) if the goods are deemed approved despite the defect pursuant to s. 377 of the German Commercial Code (HGB) because the Buyer has failed to examine the goods or has failed to make an immediate complaint concerning a defect which is recognisable or becomes recognisable at a later date.

## VII. The Seller's liability

- (1) In cases of personal injury the Seller shall be liable according to the statutory provisions.
- (2) If the Buyer asserts claims for damages or claims to compensation for expenses due to slight negligence on the part of the Seller, the Seller shall only be liable for the typical foreseeable damage. The same shall apply in commercial transactions in the case of gross negligence on the part of a vicarious agent who is not a member of the Seller's executive staff. The Seller draws the Buyer's attention to the fact that it must take out insurance in the individual case, e.g. if there is any possibility of substantial damage occurring.
- (3) If the Buyer asserts claims for damages or claims for compensation due to an intentional or grossly negligent breach of duty on the part of the Seller, the Seller, in departure from III.3, shall have unlimited liability for its vicarious agents without prejudice to the foregoing provision.
- (4) The Seller, in departure from VII. 2. sentence 1, shall only be liable for damage due to default caused by slight negligence on the part of the Seller, to the sum of 5 % of the agreed purchase price (including value added tax).
- (5) In all other cases the Seller's liability shall be excluded. [Section 478 of the German Civil Code (BGB) shall remain unaffected.] This shall also apply in as far as the Seller is not obliged to effect delivery in accordance with III. 3. The exclusion and limitation of liability shall also apply to non-contractual liability.
- (6) In case of Force Majeure the Seller's liability shall also be excluded. Such cases are, for example, fire, thunderstorms, earthquakes, strikes, traffic accidents, hostage-taking, wars, disturbances or other acts of nature.
- (7) The foregoing provisions limiting and excluding liability shall not apply to damage sustained due to the failure to comply with a delivery date or a defect in the goods in as far as the Seller has given an assurance or a guarantee regarding the delivery date or the quality of the goods.

## VIII. Intellectual property rights

- (1) The Seller shall charge a fee for using its intellectual property rights including industrial property rights (Plant Breeders' Rights and Protection of Trademarks), Copyrights and Image Rights. This fee shall be displayed separately on the invoice as royalty.
  - (2) Provisions regarding Plant Breeders' Rights
    - (a) The goods (plants) that are protected by Plant Breeders' Rights may only be cultivated and processed as potted plants or cut flowers and/or sold as such.. The Buyer may particularly not give the goods to third parties, use or process them for propagation purposes, circulate them for the said purposes nor import or export them. Infringements will result in an immediate penalty of EUR 0,50 per illegally propagated plant or plant given to third parties. This penalty doesn't affect the legal rights of the supplier to claim real damages from the infringer.
    - (b) The Buyer must indicate the correct variety denomination on all invoices and other business papers.
    - (c) The Buyer acknowledges that mutations/sports found in the goods are subject to the plant breeders' rights of the owner of the protected varieties being essentially derived varieties in the meaning of the PBR Law and that for this reason they may not be exploited for commercial purposes without the consent of the owner of the rights of the protected varieties. The Buyer shall give notice to the Seller immediately after having detected such mutation/sport and to entitle the Seller to inspect the mutation/sport during normal business hours.
    - (d) The Buyer of goods protected by plant breeders' rights shall be obliged to allow persons authorised by the Buyer to make controls of the protected varieties at any time and without prior announcement during the normal business hours and to particularly allow these persons to enter the Buyer's premises and to inspect the production and development facilities and to give them the information necessary to assert the right to control the goods. At the Buyer's request the persons engaged by the Seller shall prove their authorisation to the Buyer by showing a written authorisation from the Seller. The Seller undertakes to ensure that the controllers maintain confidentiality regarding other company secrets which they may notice within the framework of their inspections.
  - (3) Provisions regarding Trademark Rights
    - (a) The Seller has assigned to each of its varieties a certain trademark. By paying the goods and the Intellectual Property Access Fee brought to account the Buyer shall become entitled to use, in addition to the variety denomination, the trademark corresponding to the variety when selling the respective variety.
    - (b) Using the trademark the Buyer has to ensure the proper identification of the trademark as such and that it is clearly distinguishable from the variety denomination. This can be done by adding ® or at least TM to the trademark and by avoiding that the trademark isn't used in direct connection with the variety denomination. The Buyer shall only use labels delivered by the Seller to ensure an uniform image of variety and the trademark. The use of a trademark on other than the delivered labels is subject to prior written approval of the owner of trademark owner.
- ## IX. Applicable law, place of jurisdiction, amendments and severability
- (1) The contract shall be governed by the law of the Federal Republic of Germany with the exception of the UN Agreement concerning the international sale of goods (CISG) and the provisions of international private law.
  - (2) The place of performance for all obligations under this contract and the place of jurisdiction for all disputes under this contract shall be Stuttgart-Bad Cannstatt, if the Buyer is a business as defined in the German Commercial Code (HGB), a legal entity under public law or a public fund.
  - (3) Even if the contract and these Terms of Sale and Delivery are translated into another language the German version of the contract and the German version of these Standard Terms of Sale and Delivery shall be binding.
  - (4) Amendments to the contract may only be made in writing (also by fax).
  - (5) If any provision of the contract or of these Standard Terms of Sale and Delivery should be or become void, the remainder of the contract shall nevertheless remain valid. In this case the Seller and the Buyer undertake to replace the void provision by a valid provision which gives best effect to the intended commercial purpose in as far as there are no statutory provisions which can be implied into the contract to fill any possible gap.

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