

International Sales Conditions (ISC) of ..... Inc.  
For use in international business operations.

### **I. General**

Only the individually-negotiated contractual agreements and these International Sales Conditions are valid for our deliveries. Opposing or different terms and conditions of the seller do not obligate us. We do not acknowledge them, along with any contradictions expressed by us that are not in writing, or reserved delivery, or acceptance of the performance of the buyer. These International Sales Conditions are valid for current deliveries and all subsequent deliveries of goods to the buyer. Additional obligations undertaken by us in sales- and cooperation-contracts concluded with the buyer do not affect the enforcement of these International Sales Conditions. At the latest, through the acceptance of our goods the buyer indicates his consent to these terms and conditions

### **II. Consultation**

We give each form of consultation – spoken and written – from our best knowledge on the basis of our experiences. The particulars and details concerning application and use of our goods are not binding and do not free the buyer from his own testing and research. The buyer is responsible for legal and official regulations while using our goods.

### **III. Contract execution**

1. The buyer is obligated to provide us with written notice before contract execution if the ordered goods are not to be used exclusively for the customary application or under unusual or increased stress necessitating terms and condition be added.
2. Our offers are subject to confirmation, insofar as nothing else results from order confirmation.
3. All are also effective without written order confirmation, in particular orders recorded by our personnel. Particular requests by a buyer, namely assurances or guarantees regarding the goods or the execution of contracts, are valid only upon written confirmation by us.
4. The buyer informs us without delay if he desires a written order confirmation which we then provide up to the expiry of calendar days after the buyer's order is received by us.
5. Orders, delivery retrieval and changes and additions thereto can be effected by data telecommunication or mail.

### **IV. Payment conditions**

1. Our prices are valid after acceptance and as noted on the invoice either "ex factory" or "freight paid," including freight costs plus the customs costs borne by the buyer. The prices are valid categorically for the single order noted in the order confirmation. Repeat offers are new orders.
2. We reserve the right to raise our prices appropriately in agreement with the buyer if, after the execution of the contract and after the acceptance of the prices, unexpected and extraordinary cost increases occur, in particular on the basis of price increases for materials.
3. Notwithstanding further obligations for payment assurance or payment scheduling, the buyer is obligated to remit the agreed purchase price to the banking institution designated by us in the currency shown on the order confirmation without deduction and without expense. Insofar as a price is not separately agreed, our customary sales price on the agreed delivery date applies. Our personnel and sales representative or other company intermediaries are not authorized to receive payments.
4. The purchase price to be paid is in every case due for payment on the date designated in the written order confirmation. Insofar as the order confirmation does not designate a payment date, the sales price is due for payment before or upon delivery based upon agreement. Payment is due without any further conditions and in particular independent of whether the buyer has already taken the goods or the documents or had the opportunity to examine them.

5. Granted terms of payment are cancelled and pending claims become due immediately if an insolvency proceeding is initiated against the assets of the buyer, if the buyer, without providing justified grounds, does not perform a material obligation that is due to us or to a third party, or if the buyer has made inaccurate statements as to its creditworthiness. In this respect we are entitled to verify the statements of the buyer as to its integrity.

### **V. Value-added tax**

The buyer ensures that all preconditions for a delivery free of value-added tax to the seller are fulfilled. Insofar as we do not receive the verification for tax-free export delivery or we have paid value-added tax on behalf of the buyer because of delivery modalities or because of circumstances, the buyer unreservedly indemnifies us regardless of our ongoing claims. The indemnification is approved by the buyer under release of further assumptions or other objections, in particular under release of the objection of the limitation, and also includes the reimbursement of our original expenditure.

### **VI. Set-off and liens**

We can calculate with free discretion incoming payments on claims that exist against the buyer at the time of the payment by virtue of our own or assigned right regardless of the currency and regardless of judicial jurisdiction.

Rights of the buyer for set-off against our claims are barred unless the counterclaim is in the same currency, based on the buyer's own right and is either legally established, or is due and undisputed, or is acknowledged by us in writing.

Rights of the buyer for reserving payment and raising objections are barred unless, despite written warning, we materially breach due obligations that arise from the same contractual relationship and have offered no appropriate protection.

Upon the buyer's default we are entitled to hold back further deliveries until all due accounts are settled.

### **VII. Delivery area, measurement methods, trademark rights**

We are obligated - in view of industry-standard tolerances with respect to kind, amount, quality and packaging - to deliver the goods in the kind and quality agreed between us and the buyer and ensured by us. If since the time of contract execution technical improvements are made, we are entitled to deliver the improved goods.

2. When the buyer receives knowledge of changes to the goods, he is to advise us without delay if these are considered objectionable.
3. Contracts are performed at the buyer's risk according to the buyer's written statements given to us above.

### **VIII. Delivery and terms of delivery**

1. Subject to a liability release according to XV16 we have to deliver the goods described in the order. We are not obligated to perform that which is not listed in the order, is not confirmed separately by us in writing, and is not listed in these International Sales Conditions.
2. Third parties –particularly customers of the buyer - do not participate in the contract execution are not entitled to claim delivery for themselves or to make valid other claims of a contractual nature against us. The buyer's responsibility to receive also remains valid if he assigns claims to a third party.
3. If the goods to be delivered need further explanation, we carry out the specification considering the separate and identifiable and justified interests of the buyer. We are, however, not obligated to disclose the implemented buyer's specification or to allow to him the chance for a different specification.
4. Adherence to our delivery obligations necessitates the timely and proper fulfillment of the cooperative obligations by the buyer. The beginning of the delivery term specified by us assumes the complete clarification of all technical questions. Adherence to agreed delivery terms and delivery deadlines has as a precondition that the buyer

eventually furnishes for procured authorization or licenses in a timely manner, opens credit as agreed, renders deposits and prepayments, and fulfills all other obligations incumbent upon him. Apart from that the delivery term is extended appropriately. We are entitled to deliver before the agreed time.

5. We make the goods available for local pickup by the buyer at the agreed delivery time at the address designated in the contract or for delivery at the agreed delivery time to the delivery address named by the buyer.

6. The buyer is obligated to accept the goods on the delivery date without recourse to additional dates and at the delivery address described in the order. The buyer is entitled to refuse to accept only if he bears the right to cancel the contract according to the provisions in number XIV.1.

7. Without waiver of other legal rights we are entitled to fulfill contractual obligation after the designated deadline if the buyer is informed of the deadline violation and a period for later compliance is communicated. The buyer can object to the later compliance within a reasonable time if the later compliance is not acceptable. The objection is effective only if it is received by us before the start of later compliance. We refund the buyer's unavoidable extra expenses that occur as a consequence of the deadline violation to the extent that we have responsibility according to the provisions in number XV.

#### **IX. Documents, Transport, Packaging**

We are not obligated to provide for the required export, transit or export licenses, authorization, certificates or other documents. However, we facilitate the procurement of the designated written documents for buyer at his request, risk and cost.

Also, namely upon agreement to INCOTERMS of Group F, we are particularly not obligated to organize the transport of the goods, to insure the goods, to furnish credentials or documents not expressly agreed, to deal with customs clearances, to bear incidental taxes (except in the country of our main place of business), to follow valid measurement and weight systems, packing, labeling or marking specifications (except in the country of our main place of business), to inform the buyer of the delivery, or to take back from the buyer packaging material (transport-, sales- and other packaging). Regardless of statutory provisions, the buyer has the additional duty to undertake, as his own expense, recycling or other prescribed disposal. The aforesaid provisions are valid regardless of whether of not the packaging of the buyer is separately listed on the invoice.

#### **X. Packaging**

Type and scope of the packaging is determined by agreement between us and the buyer and confirmed in the written order confirmation. The packaging of the goods takes place with due care according to our best discretion. Disposable packages are the property of the buyer.

#### **XI. Suspension of delivery obligations**

Without waiver of other legal rights, we are entitled to suspend delivery obligations so long as, in our view, the apprehension exists that the buyer will not perform its obligations in whole or in part. The right to suspend applies especially when the buyer only incompletely fulfills his existing obligations to us or third parties for payment scheduling, or pays slowly, or exceeds a limit set by a credit surety or is exceeded with the anticipated delivery. Instead of suspension, we can make future and already-confirmed deliveries dependent upon the opening of an active letter of credit through a major bank in the country of the buyer's domicile or by prepayment, at the buyer's option. We are not obligated to continue performance if a warranty by the buyer upon the avoidance of suspension does not offer adequate security or can be defeasible by another applicable right. Subject to the provisions in number VII we are thus only obligated to inform the buyer of delay of failure to perform if these provisions apply conclusively.

#### **XII. Force Majeure**

We are not liable for disturbances which occur as a result of natural or political events; mandatory actions; labor disputes; sabotage; accidents; terrorism; biological, physical or chemical activities; or other conditions; and cannot be controlled by reasonable means.

#### **XIII. Nonconforming and defective goods**

1. Without waiver of legal exclusions or limitations the buyer's responsibility, the goods are nonconforming if the buyer verifies at the date of the passage of risk that the good, in view of the provisions in numbers VII, VIII, IX and X, clearly deviates in packaging, quantity, quality or other type from that agreed in the contract or in additional requirements agreed to by us in writing; or, contrary to agreed requirements, is not suitable for the customary intended use in the country of our main place of business.

2. Material modifications that correspond to new technical findings do not establish breach of contract.

3. Regardless of the regulations valid in the country of our main place of business, delivery is not in breach of contract insofar as the legal specifications for the customary use if the good applicable in the buyer's location is not opposed.

4. Insofar as the written order confirmation does not expressly contain contrary statements, we are especially not responsible that the goods are applicable for a particular intended application desired by the buyer, possess the characteristics of a prototype or a sample, or comply with the legal specifications outside of the country in which our main place of business is located, perhaps in the country of the buyer.

5. We are not liable for breaches of contract which occur after the date of the passage of risk.

6. Insofar as the buyer undertakes attempts to cure breach of contract without our consent or through a third party, we are released from warranty obligation.

7. The buyer has to examine the goods according to lawful regulations and to screen every single delivery in every respect for identifiable and typical nonconformities.

8. Without waiver of legal exclusions or limitations of the buyer's responsibility, the goods are legally defective if the buyer verifies that the goods, at the time of the passage of risk, are not free from enforceable rights or claims of a third party.

9. Without waiver of other statutory requirements, a third party establishes a defect of title based on rights or claims on commercial or other intellectual property only insofar as the rights are registered and a matter of public record in the country of our main place of business.

10. Regardless of the statutory regulations valid in the country of our main place of business, delivery is not in breach insofar as the legal specifications for the customary use if the good applicable in the buyer's location is not opposed.

11. The buyer is to notify us immediately and in writing of breaches of contract such as defects according to the legal specifications. Our personnel and sales representative or other company intermediaries are not authorized to accept notifications or to provide clarifications about warranty.

12. After to proper notification, namely number XIII.11, the buyer can assert the legal remedy designated in these International Sales Conditions. He is not entitled to other claims. The buyer's legal remedies for legal defects are prescribed according to the same provisions as the legal remedies for property defects. In the case of proper notification, the buyer can only claim legal remedies insofar as we have fraudulently concealed the breach of contract or the legal defect. Our defenses to breach of contract and legal defects serve merely as functional clarification and do not, however, particularly imply a waiver of the demand for proper notice.

13. The buyer is entitled to require a replacement delivery or repair from us or to reduce the purchase price according to the provisions of the UN Sales Law. The buyer is not entitled to other claims for

performance. According to the provision in number VIII.8, we are always entitled to repair nonconforming goods or deliver replacements or to avoid the buyer's legal remedies through the issuance of a credit of a suitable amount, regardless of the buyer's legal remedies.

#### **XIV. Contract cancellation**

1. Without waiver of compliance with legal regulations, the buyer is entitled to contract cancellation only after he has threatened us in writing of the contract cancellation, and a reasonable grace period that is set in writing has passed in vain. If the buyer makes claim for replacement delivery, repair or other performance, after a reasonable time he is bound by the legal remedy to forego contract cancellation. The buyer, generally speaking, is to explain the contract cancellation to us in writing and without delay within a reasonable time.

2. Without waiver of other legal rights we can cancel the contract in part or in whole without replacement if the buyer objects to the standing of these International Sales Conditions; if an insolvency proceeding is initiated against the assets of the buyer; if the buyer, without providing justified grounds, does not perform a material obligation that is due to us or to a third party; if the buyer does not make accurate statements about his creditworthiness; if we, through no fault of our own, are not supplied correctly or in a timely manner; or if fulfillment of our performance obligations is no longer possible on other grounds which are reasonable in view of the buyer's own interests and his interests justified by and identifiable from the contract cancellation and, in particular, the agreed consideration.

#### **XV. Damages**

1. Within and outside of the scope of this contract, we are only obligated according to the following provisions for damages:

a) The buyer is obligated, in the first instance, to perceive other legal remedies and can demand indemnity only on account of remaining deficits, but in no case in place of other legal remedies.

b) We are not liable for the conduct of suppliers or subcontractors or for accidental damages of the buyer. Incidentally we are liable only insofar as our management or personnel intentionally or with gross negligence harms the buyer with respect to incumbent contractual obligations.

c) In case of liability we compensate - within the limits of letter d) - the buyer's proven losses to the extent they were unavoidable for the buyer and, with respect to the occurrence and amount of damages, were foreseeable to us at the time of contract execution as a consequence of breach of obligation. The buyer must advise us in writing before contract execution about particular risks, atypical possibilities for damage, and unusual amounts of damages. In addition, the buyer is obligated to mitigate his damages as soon as a breach of contract is or should be known.

d) We are not liable for lost profits or damage to reputation. Moreover, the amount of damages for late delivery is limited to a maximum of 5% for each full week of delay. Our liability for other breaches of obligation is limited to damage to real property and personal property within the scope of our commercial- and products-liability insurance of an amount in each case of a maximum of ... Million Euros and within the scope of our insurance for product recall costs of an amount of Million Euros. This liability limitation is not valid in case of intentional or gross negligence of our executive management or our directing officers.

e) The foregoing provisions b) through d) do not apply insofar as statutory provisions which give rise to more extensive liability apply.

f) The limitation period for contractual claims likewise applies for the buyer's extra-contractual claims against us which are concurrent with contractual claims. Insofar as the claim is not time-barred earlier, a six-month preclusion period for bringing an action for damages applies, starting with the refusal of the damages.

g) The foregoing provisions as to our liability also apply to the personal

liability of our officers, employees, staff members, agents and its servants

2. Regardless of our continuing legal or contractual claims the buyer is obligated to us for the following damage indemnities:

a) In the case of delay in payment the customer pays the incidental, usual legal and extra-legal costs, domestic and foreign, for legal prosecution, in addition to interest at the rate applicable for short-term unsecured credit in the agreed currency in the country of our main place of business

b) In the case of very late or absent acceptance of delivery by the buyer, we are entitled, without evidence, to demand lump-sum damages of ... % of the actual value of the delivery.

#### **XVI. Microorganisms**

1. Our growing media, in particular the organic growing media and their constituents are free of human or phytopathogenic microorganisms. However, they are not sterile, but microbially active. Microorganisms can be autochthonous or can colonise growing media during storage or crop cultivation which may depend on the season and cultivation conditions. By far the largest percentage of all growing media contains high percentages of organic materials which are automatically exposed to microbial decomposition by means of fungi, bacteria, actinomycetes and other organisms. Saprophytic nematodes can be present in growing media in small numbers. The addition of nutrients and lime can promote the growth of saprophytic organisms.

2. We shall not accept any liability for damage to property and financial losses which are caused by ubiquitous colonisation of microorganisms as well as by a ubiquitous occurrence of saprophytic organisms, such by the growth of fungus on or in the growing medium.

This exclusion from liability shall not apply in the case in which the growing media are at the time of the passing of risk contaminated anthropogenically with an unnaturally and/or atypically high number of saprophytic organisms or microorganisms, and we and/or our representatives or our vicarious agents have caused this anthropogenic contamination by intent or gross negligence.

Unless we have caused the damage/loss intentionally our liability and that of our representatives and our vicarious agents shall be restricted to the replacement of the foreseeable damage/loss typically occurring.

In the case of the slightly negligent violation of a subsidiary obligation our liability and that of our representatives as well as that of our vicarious agents shall be excluded.

3. The exclusion of liability according to Item 2 shall not apply in the case of intent, physical injury, the violation of major subsidiary obligations or liability in accordance with the German Product Liability Act."

#### **XVII. Retention of title**

We reserve title to the delivered goods until after settlement of all claims outstanding against the buyer.

The buyer is authorized to sell the goods in the ordinary course of business. Purchase price claims resulting from this are considered assigned to the seller from the time of accrual. The buyer supports the seller for any legal acceptable measures that are necessary to protect the title of the seller in the respective country. Thus, accrued extra costs are borne equally by us and the buyer.

#### **XVIII. Indemnity**

Without waiver of other claims, the buyer indemnifies us, without limitation, against all claims by third parties brought against us on the basis of products liability or similar provisions; insofar as liability is supported by the circumstances which – such as, for example, the presentation of the product – were caused by the buyer or other third parties without our express written consent. In particular, the indemnification also includes compensation for expenses incurred by us and is granted by the buyer waiving further conditions or other objections, in particular waiving compliance with control and recall

obligations, and waiving any defense limitation.

#### **XIX. Place of performance, payment and fulfillment**

The place of performance, payment and fulfillment for all obligations arising from the legal relationship between us and the buyer is the place of our main place of business. This provision also applies if we assume the costs of payment, effect performance for the buyer in another place, or payment is rendered in exchange for the delivery of goods or documents, or restitution is provided for work already performed. The agreement to INCOTERMS of Group F, or of Group C, or from agreements as to how costs are borne, contain no change to the foregoing rule as to place of fulfillment.

#### **XX. Applicable law, legal venue, other \*\*\***

1. The April 11, 1980 treaty of the United Nations concerning contracts for the international sale of goods (UN-Sales Law/CISG) – in the English-language version - is valid for the legal relationship with the buyer and the authoritative application to our place of business. The UN Sales Law applies to its scope of application and notwithstanding governmental contractual restrictions for all contracts which are subject to the provisions in number I of these International Sales Conditions. By using the commercial terms, the INCOTERMS 2000 of the International Chamber of Commerce apply in view of the provisions in these International Sales Conditions.

2. The UN Sales Law in combination with these International Sales Conditions is exclusively valid for the realization of the contracts including the agreements as to the legal jurisdiction and the inclusion of these International Sales Conditions and for the contractual rights and obligations of the parties under inclusion as well as pre-contractual and other related obligations and for interpretation. Outside the force of the UN Sales Law, the legal relationship of the parties is determined according to the law not harmonized and in force at the main place of business of the seller.

3. All disputes – contractual and extra-contractual – arising from or in relation to contracts for which the enforcement of these International Sales Conditions is designated, are conclusively resolved to the exclusion of regular legal processes according to the rules of conciliation and arbitration of the International Chamber of Commerce Paris by one or more arbitrators appointed according to these rules. The place of arbitration is the main place of business of the seller. The arbitration language can be English or the particular official language in the main place of business of the seller.

4. We are also entitled to appeal in every case to the competent governmental courts at the headquarters of the seller. In this respect the jurisdiction stipulated in number XIX.3 is suspended.

5. Should provisions of these International Sales Conditions be or become inoperative in whole or in part, the provisions stay operative in all other respects. The parties are obliged to change the inoperative provision to a legally valid provision which preserves as much as possible the commercial spirit of the inoperative provision.

6. All communications, messages, notifications, etc. are to be composed in either the English language or in our national language. Messages sent by fax or email are considered to be in written form.

#### **XXI. Supplied goods**

For claims by the buyer for damages or destruction of goods supplied or goods of the buyer left for us to repair, we are liable only for intentional and gross negligence; liability for simple negligence is barred. Normal wear and tear is excluded from liability. For delivered products such as raw materials, etc., the buyer takes on responsibility for the inspection and warranty of quality (i.e., material, dimensional accuracy, etc.), we merely perform an incoming goods inspection with respect to amount, count, identity, and a visual inspection for obvious shipping damages.

We are not obligated to perform further examinations.