

# General Terms and Conditions of Sale – Lodder Unterlagen GmbH

## 1. Application

- 1.1 These General Terms and Conditions of Sale (hereinafter: "Sales Conditions") shall apply to all business transactions between Lodder Unterlagen GmbH (hereinafter: "LODDER") and the customer. They shall apply irrespective of whether the customer ordering the goods orders them as a consumer or entrepreneur. If the customer ordering the goods orders them as an entrepreneur, they shall also apply to all subsequent contracts, even if they are not specifically referred to again in such subsequent contracts.
- 1.2 According to Sec. 13 German Civil Code (*Bürgerliches Gesetzbuch* – hereinafter "BGB"), a consumer means every natural person who enters into a legal transaction for purposes that predominantly are outside his/her trade, business or profession. According to Sec. 14 (1) BGB, an entrepreneur means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his/her or its trade, business or profession.
- 1.3 Terms and conditions of the customer that conflict with, supplement or deviate from these Sales Conditions shall not become part of the contract unless their application is expressly approved by LODDER in writing. These Sales Conditions shall apply even if LODDER makes a delivery to the customer without reservations whilst being aware of the customer's conflicting or deviating terms and conditions.
- 1.4 Agreements which supplement or deviate from these Sales Conditions and which are made between LODDER and the customer for the performance of a contract must be set out in writing in the contract. This shall also apply to the cancellation of this requirement of the written form.
- 1.5 Any rights beyond these Sales Conditions to which LODDER is entitled by law shall remain unaffected.

## 2. Formation of contract

- 2.1 All offers shall be subject to change and non-binding, unless they are expressly designated as binding offers.
- 2.2 Pictures, drawings, information regarding weight and measurements and other descriptions of the goods that may be contained in the documentation which forms part of the offer shall be approximations only, unless they are expressly stated to be binding. Such items shall not constitute an agreement on, or guarantee of, an according quality of the goods. In particular, the customer is aware that any measurements that are made are only approximated and deviations on a scale of up to 10% are usual.
- 2.3 Orders shall not become binding until they have been confirmed by LODDER by means of a written order confirmation. Order confirmations that are generated using automatic devices and, therefore, do not contain a name and signature shall be deemed written order confirmations. If LODDER does not respond to offers, orders, requests or other declarations from the customer, this shall only be deemed approval if an express written agreement to this effect has been made between LODDER and the customer. To the extent that an order confirmation contains obvious errors, misspellings or calculation mistakes, it shall not be binding upon LODDER.

## 3. Right of withdrawal

If the customer ordering the goods is a consumer, the customer shall have the right to withdraw from the purchase agreement within fourteen days without stating any reasons for the withdrawal. The right to withdraw shall not apply to contracts for the supply of goods,

- that are not pre-fabricated and the production of which is governed by an individual choice of or decision by the consumer, or that are clearly tailored to the personal needs of the consumer;
- which, according to their nature, are inseparably mixed, after delivery, with other items.

The customer can find more information regarding his/her right to withdraw in a separate statement at [www.lodder.de](http://www.lodder.de).

## 4. Delivery; delivery periods; default

- 4.1 Unless expressly otherwise agreed, delivery shall be "ex works" (EXW, as defined by Incoterms® 2010), 48249 Hiddingsel, Germany. At the request and expense of the customer, the goods will be shipped to a different destination (hereinafter: "sale involving shipment"); in this case, LODDER shall have the right to determine the manner of shipment.
- 4.2 The scope of the delivery shall be as set out in the written order confirmation from LODDER. Any changes to the scope of the delivery must be approved by LODDER in writing to be valid.
- 4.3 If the customer ordering the goods is an entrepreneur, LODDER shall have the right to make partial deliveries, unless this is unreasonable for the customer.
- 4.4 Delivery periods must be agreed in writing.
- 4.5 Agreed delivery periods shall be deemed met if, by the time the delivery period expires, the goods have left the business premises or LODDER has given notice that the goods are ready for dispatch, but due to an announcement by the customer that it will refuse acceptance, the goods have not left the business premises.
- 4.6 If the customer ordering the goods is an entrepreneur, the delivery shall be conditional upon LODDER being timely and properly supplied by its own suppliers.
- 4.7 If the failure to comply with delivery periods is due to force majeure or other obstacles for which LODDER is not responsible, such as war,

terrorist attacks or import and export restrictions, including restrictions affecting LODDER's suppliers, the agreed delivery periods shall be extended for the duration of the existence of such obstacles. This shall also apply if LODDER and/or its suppliers are affected by industrial action.

## 5. Transfer of risk

- 5.1 If the customer ordering the goods is a consumer, the risk of accidental loss or destruction of, or of an accidental deterioration in, the sold items shall pass to the customer when they are handed over. If the buyer is in default of acceptance of delivery, this shall be equivalent to the handing over of the goods.
- 5.2 If the customer ordering the goods is an entrepreneur, the following provisions shall apply with regard to the transfer of risk:
  - a) The risk of accidental loss or destruction of, or of an accidental deterioration in, the goods shall pass to the customer as soon as LODDER has made the goods available at the place of delivery mentioned in the first sentence of Clause 4.1 above or – in the event of a sale involving shipment, as defined in the second sentence of Clause 4.1 above – as soon as the goods have been handed over to the person in charge of carrying out the transport. This shall also apply if partial deliveries are made or LODDER has assumed further obligations, such as the transport costs or the assembly of the goods for the customer. At the request and expense of the customer, LODDER shall insure the goods against the risks specified by the customer by taking out a transport insurance policy.
  - b) If the customer defaults on its obligation to take delivery of the goods, LODDER may claim damages for the losses suffered due to default. The liquidated damages shall be in an amount equal to 0.5% of the net price of the delivery per day of default, however, they shall be limited to a maximum of 5% of the net price of the delivery. The contracting parties may assert that further losses were suffered or that the loss actually suffered was smaller. The risk of accidental loss or destruction of, or of an accidental deterioration in, the goods shall pass to the customer at the time the customer starts to default on its obligation to take delivery of the goods.

## 6. Prices

- 6.1 The agreed price shall be the price in euros that is stated in the order confirmation, plus value-added tax. The statutory value-added tax is not included in the price and shall be stated separately on the invoice at the statutory rate which applies on the date of issue of the invoice.
- 6.2 Unless specifically otherwise agreed, all prices are "ex works" (EXW, as defined by Incoterms® 2010), plus packaging. In the event of a sale involving shipment, as defined in the second sentence of Clause 4.1 above, the customer shall bear the transport costs as well as the costs of any transport insurance if specified by the customer.

## 7. Terms of payment

- 7.1 The deadlines for payment are set out in the order confirmation. If the order confirmation does not contain any deadlines for payment, payment of the gross price plus any potential costs for freight and insurance shall be made within 10 days of the date of the invoice to receive a discount of 3% or within 30 days of the date of the invoice without any discount.
- 7.2 A payment shall be deemed made when LODDER is able to dispose of the amount at its place of business.
- 7.3 If the deadline for payment is exceeded, LODDER may charge entrepreneurs default interest at the rate of 9 percentage points above the base rate, and consumers default interest at the rate of 5 percentage points above the base rate (Sec. 247 BGB). This shall not affect LODDER's right to assert further claims for damages.
- 7.4 Counterclaims shall not entitle the customer to make a set-off or exercise a right to retain, unless the customer's claims are undisputed or have been established in a judgment that cannot be appealed against. Furthermore, the customer may only exercise a right to retain if the customer's claims and the claims of LODDER are based on the same contract.
- 7.5 LODDER shall have the right to make the performance of outstanding deliveries or services contingent upon the customer paying in advance or providing security, if circumstances become known after the conclusion of the contract which could significantly reduce the customer's creditworthiness and jeopardise the payment of LODDER's outstanding claims under the relevant contract by the customer. This shall apply accordingly if the customer refuses to pay, or fails to pay, any outstanding claims of LODDER and undisputed objections against LODDER's claims or objections that have been established in a judgment which cannot be appealed against do not exist.

## 8. Claims for defects and liability

- 8.1 The customer's rights arising from defects shall be governed by the statutory provisions, except to the extent otherwise provided below.
- 8.2 The parties agree that the goods are plants and thus living materials which means that their properties cannot be definitively examined and the results held as binding.
- 8.3 If the customer ordering the goods is an entrepreneur, the limitation period for the customer's claims for defects shall be 12 months. If the customer ordering the goods is a consumer, the limitation period for the customer's claims for defects shall be 24 months.

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- 8.4 The limitation period shall also apply to tort claims which are based on a defect of the goods. LODDER's unlimited liability for damage resulting from breach of guarantee or from death, bodily injury or damage to health, for wilful misconduct and gross negligence and for product defects shall remain unaffected.
- 8.5 If the customer ordering the goods is an entrepreneur, the following provisions shall in addition apply with regard to defects of the goods:
- a) The customer's rights arising from defects shall be contingent upon the customer performing its statutory obligations to inspect and give notice of defects, in particular, on the customer inspecting all goods supplied upon receipt and giving LODDER written notice of any obvious defects and of defects that could be identified during such inspection without undue delay after the goods were received. The customer must provide LODDER with written notice of any hidden defects without undue delay after such defects have been discovered. In order for such notice to be deemed given without undue delay, it must be given within 8 working days after the delivery if the defects are obvious or could be identified during a proper inspection, and within 8 working days after the discovery if the defects were hidden; this deadline is met if LODDER receives the notice or complaint before the expiry of the aforesaid period. If the customer fails to carry out a proper inspection and/or give notice of defects, LODDER shall not be liable for the defect. When giving LODDER notice of defects, the customer must provide a written description of the defects.
- b) If a complaint about defects is unjustified, LODDER may demand to be reimbursed by the customer for the expenses incurred by LODDER unless the customer proves that it is not guilty of intent or negligence in respect of the unjustified complaint about defects.
- c) Claims for a repair or replacement delivery shall be excluded in the event of minor deviations in quality, colour, width, weight, equipment or design which cannot be avoided technically.
- d) If the goods contain defects, LODDER may, at its option, remedy the defects or deliver goods which are free from defects.
- e) If the item supplied is not at the place of delivery, the customer shall bear all additional costs and expenses which LODDER incurs as a result of this fact when remedying defects unless such relocation is in line with the agreed use.
- f) Except where agreed out of goodwill, the limitation period shall not start anew as a result of a repair or replacement delivery.
- g) LODDER's contractual liability for damages within the scope of the warranty presupposes culpable conduct in any case, even if the law (in particular according to CISG in the context of international business transactions) provides for a strict liability for damages. The mandatory legal liability for product defects (especially under the German Product Liability Act) remains unaffected by this.
- h) LODDER shall be liable without limitation for damage resulting from breach of guarantee or from death, bodily injury or damage to health. The same shall apply to wilful misconduct and gross negligence, mandatory statutory liability for product defects (especially under the German Product Liability Act), and liability if defects were concealed with fraudulent intent. In cases of slight negligence, LODDER shall only be liable if material obligations are violated which result from the nature of the contract and are of particular importance for achieving the purpose of the contract. If such obligations are violated, and also in the event of default or if performance is impossible, LODDER's liability shall be limited to the damage that can typically be expected with this contract.
- i) In the event that quarantine measures are initiated by the authorities in the form of instructions to clear the customer's site or exterminate the plants, the customer shall inform LODDER about such measures without undue delay. Otherwise, irrespective of Clause 8.5 a) and Clause 9, any claims for compensation are excluded.
- 9. Goods free from pathogens; limitation of liability**
- 9.1 LODDER shall endeavour to make all efforts to ensure that the goods are free from pathogens, for example, viruses or phytoplasmas. Also, all the necessary control and surveillance measures will be carried out, including those which go over and beyond the plant inspection measures required by law. As the goods are living materials, which according to the certification under the plant quarantine directive does not include certifying each individual plant and, therefore, it is not possible to completely ensure that each individual plant is free from pathogens, LODDER's liability in the event of a pathogen infestation shall nevertheless be limited to the net price of the delivery.
- 9.2 However, the customer shall have the opportunity before, during or after receipt of the goods to test such to ensure they are free from pathogens using the respective analysis methods, and in the event of a pathogen infestation rescind the purchase agreement. In this case, LODDER shall assume the costs of the examination and the return shipment to LODDER. If it transpires that no pathogen infestation exists, the customer shall bear the costs of the examination together with any other additional costs incurred.
- 9.3 The unlimited liability of LODDER according to Clause 8.5 h) shall remain unaffected.
- 10. Guarantee of growth; authenticity of species**
- 10.1 No guarantee shall be given for the growth of the plants. A guarantee which is nevertheless given in a particular case by way of separate contract, shall, unless otherwise expressly agreed, cover a period of one year from the transfer of risk and is conditional upon the customer bestowing upon the plants the correct treatment required for that particular species of plant. This shall in particular include the correct planting depth, fertilisation and irrigation. Events of force majeure, in particular, drought, frost, pest and virus infestation, etc. shall not be covered by said guarantee.
- 10.2 In addition, no guarantee shall be given for authenticity of the species. A guarantee which is nevertheless given in a particular case by way of separate contract shall include,
- for fruit trees, the authenticity of the species and the required rootstocks up until the expiration of the fifth year from the day of the transfer of risk;
  - for soft fruits, roses and other woody plants, the authenticity of the species and the required rootstocks up until the expiration of the second year from the day of the transfer of risk;
  - for refinement-tree bases and seedlings, the authenticity of the species and the required rootstocks up until the expiration of the first year from the day of the transfer of risk;
  - no guarantee shall be given for the authenticity of species for offspring seeds.
- 10.3 Clause 8.2 remains unaffected.
- 11. Retention of title**
- 11.1 LODDER shall retain title to the goods supplied until payment of the purchase price has been made in full (including VAT and shipping costs) for the respective goods.
- 11.2 If the customer ordering the goods is an entrepreneur, the following provisions shall in addition apply with regard to the retention of title:
- a) The goods supplied shall remain the property of LODDER until all claims of LODDER against the customer which arise from the business relationship have been paid in full.
- b) The customer shall be obliged to handle the goods which are subject to this retention-of-title clause (hereinafter: "Conditional Goods") with due care for as long as title is retained. In particular, the customer shall be obliged to sufficiently insure the goods at the customer's own expense at their replacement value against damage by fire, water and theft. The customer hereby assigns to LODDER all claims for compensation arising from such insurance. LODDER hereby accepts this assignment. Upon request, the customer shall provide LODDER with evidence of the conclusion of the insurance contract.
- c) The customer shall be authorized, subject to revocation, to process, combine and mix the Conditional Goods in the ordinary course of business. The processing, combining and mixing (combining and mixing hereinafter also referred to as "transformation") of the Conditional Goods by the customer shall always be carried out for LODDER. The customer's right to acquire the Conditional Goods shall continue to exist with regards to the processed or transformed object, to the extent and so far as a new object is created. If the Conditional Goods are processed or transformed with objects that do not belong to LODDER, LODDER shall acquire co-ownership of the new object in relation to the value of the Conditional Goods (in an amount equal to the invoiced amount including the VAT) and to the other processed or transformed objects at the time of the processing or transformation. The same provisions shall apply to the object created through the processing or transformation that apply to the other goods which are subject to retention-of-title.
- d) The customer shall be authorized, subject to revocation, to sell the Conditional Goods in the ordinary course of business. The customer shall not be authorized to pledge the goods which are subject to this retention-of-title clause, to transfer them by way of security or to make any other dispositions which jeopardize the ownership of LODDER. In the event of attachments or other encroachments by third parties, the customer must notify LODDER without undue delay in writing and provide all the information needed, advise the third party of LODDER's property rights and assist with any measures taken by LODDER to protect the goods which are subject to this retention-of-title clause.
- e) The customer hereby assigns to LODDER its claims arising from the resale of the goods that are subject to this retention-of-title clause, along with all ancillary rights, in an amount equal to the amount invoiced, including value-added tax and irrespective of whether the Conditional Goods are sold without being processed or transformed or after they have been processed or transformed. LODDER hereby accepts this assignment. If the goods which are subject to this retention-of-title clause are sold with other goods not supplied by LODDER, the claim arising from resale shall be assigned proportionately, according to the ratio of the value of the goods which are subject to this retention-of-title clause (final amount invoiced, including value-added tax) and the other goods sold. In the event of a sale of the goods where LODDER has a co-ownership share as set out in Clause 11.2 c) above, the customer shall assign to LODDER a share equivalent to LODDER's ownership interest. If assigning such claims is not allowed, the customer hereby irrevocably instructs the third party debtor to make payments, if any, only to LODDER.
- f) The customer shall be authorized, subject to revocation, to collect any claims which have been assigned to LODDER in the customer's own name and hold them in trust for LODDER. All amounts collected must immediately be remitted to LODDER.
- g) LODDER may revoke the customer's right to resell and transformation of the goods and the authority to collect the claims if the customer fails to properly perform its payment obligations to

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LODDER, defaults on one or more payments or stops payment or if a petition is filed to institute insolvency proceedings against the assets of the customer.

- h) At the request of the customer, LODDER shall be obliged to release the security interests to which LODDER is entitled to the extent that the realizable value of such security interests exceeds LODDER's claims arising from the business relationship with the customer by more than 10%, upon deduction of the mark-downs customary in the banking business. LODDER may choose which security interests it wishes to release.
- i) In the event that goods are supplied to destinations with other legal systems where the retention-of-title provisions do not provide the same degree of protection as they offer in the Federal Republic of Germany, the customer hereby grants LODDER an equivalent security interest. If the creation of such a security interest requires further measures, the customer shall do whatever is necessary to grant LODDER such security interest without undue delay. The customer shall assist with all measures that are required for, and conducive to, the validity and enforceability of such security interests.

### 12. Governing law

- 12.1. The legal relations between the customer and LODDER shall be governed by the laws of the Federal Republic of Germany.
- 12.2. Insofar as the United Nations Convention on Contracts for the International Sale of Goods (CISG) applies to customers outside of the Federal Republic of Germany, any questions concerning matters which are not regulated in this Convention or which cannot be decided according to its basic features shall be decided according to the laws of the Federal Republic of Germany. This shall not apply to the provisions concerning supplier recourse in accordance with Secs. 445a, 445b, 478 BGB, which do not apply to international business transactions.
- 12.3. If the customer ordering the goods is a consumer and if at the time the order is made, his/her ordinary place of residence is in another country other than Germany, the choice of law set out in Clauses 12.1 and 12.2 shall not affect the application of the mandatory legislation of said country.

### 13. Place of jurisdiction

- If the customer ordering the goods is an entrepreneur, the following provisions shall apply with regard to the place of jurisdiction:
- 13.1. The exclusive place of jurisdiction for all claims shall be MÜNSTER, Germany. However, LODDER shall additionally have the right to sue the customer at the customer's place of business or at any other permissible place of jurisdiction.
  - 13.2. In international business transactions, whenever a legal dispute arises out of or in connection with this agreement and its implementation, the contracting parties may choose whether to turn to the ordinary courts of law or whether to bring the matter before an arbitral tribunal.
  - 13.3. If the parties turn to the ordinary courts of law Clause 13.1 shall apply.
  - 13.4. If the parties turn to an arbitral tribunal, all disputes arising out of or in connection with the present agreement shall be finally decided in accordance with the Arbitration Rules of the German Institution of Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit e.V.* (DIS)). The arbitral tribunal shall be comprised of three arbitrators. Unless otherwise agreed between the parties, at least one of the individual arbitrators must have studied law and completed such studies successfully. The arbitrators must be in command of the language of the arbitral proceedings. Notwithstanding the language used in this contract, the language of the arbitral proceedings shall be German, unless the parties agree on another language for the arbitral proceedings. The place of arbitration shall be MÜNSTER, Germany.

### 14. Online platform for dispute resolution, participation in dispute resolution proceedings

- 14.1. Pursuant to the applicable law, LODDER is obliged to inform consumers about the existence of the European online dispute resolution platform which can be used to resolve disputes without having to instruct a court. The European Commission is responsible for the platform. The European online dispute resolution platform can be found at: <http://ec.europa.eu/odr>.
- 14.2. LODDER is not obliged to participate in dispute resolution proceedings with a consumer arbitration body and has therefore decided against voluntary participation.

### 15. Miscellaneous

- 15.1. Any transfer or assignment of rights and obligations of the customer to third parties shall require the written consent of LODDER.
- 15.2. The language of the contract shall be German.
- 15.3. The place of performance for all obligations that are to be performed by the customer and by LODDER shall be LODDER's place of business.