

# General sales terms and conditions

of TransMIT Gesellschaft für Technologietransfer mbH

for its Project Division for Plant Metabolites and Chemicals

led by Dr. Stefan Martens

(hereinafter referred as the „Seller“)

## 1. Scope of application and validity

- 1.1 The Seller develops, purchases and sells natural substances and fine chemicals that are being isolated or synthesized. He also offers the insulation as well as the synthesis of these products on request. The following General sales terms and conditions apply to all business relationships between the Seller and his costumers. These General sales terms and conditions shall be equally applicable to future contracts, deliveries and services, although not explicitly agreed upon once again.
- 1.2 Buyers, according to these terms and conditions, are exclusively entrepreneurs. Entrepreneurs shall mean natural or legal entities, as well as incorporated partnerships, with whom business relations are started, and who are undertaking a commercial, independent, or freelancing activity.
- 1.3 The substances subject to this contract are sold and transferred to the Buyer exclusively for research purposes. Every divergent use of the substances is prohibited.
- 1.4 Sales of the substances to third parties require previous written approval by the Seller.
- 1.5 By ticking the respective checkbox of the purchase order form, but nonetheless by no later than the receipt of our goods or other services, the Buyer declares its agreement with the validity of these General sales terms and conditions. Conflicting confirmations or orders from the Buyer referring to the Buyer's own General Terms and Conditions are herewith contradicted. Deviations provided by the Buyer from the subject General sales terms and conditions will be effective only with confirmation in writing by the Seller.

## 2. Conclusion of the contract

The contract is concluded through completion of the purchase order form by the Buyer, forwarded to the seller by fax or e-mail and the respective delivery by the Seller or the performance of the respective services. Any conditions differing from the purchase order form will be effective only with confirmation in writing by the Seller to the Buyer. The Buyer's exclusive contract partner will be TransMIT Gesellschaft für Technologietransfer mbH, Kerkrader Straße 3, 35394 Gießen, Germany.

### **3. Prices and shipping costs**

- 3.1 All prices are net prices without VAT, which the Buyer shall additionally pay in accordance with the prevailing statutory rate.
- 3.2 For the delivery of orders the actual shipping costs including possibly incurred duties, taxes and fees are charged to the Buyer.
- 3.3 The delivery is carried out within one week after receipt of the purchase order and for new customers one week after receipt of payment unless another arrangement was made.

### **4. Warranty, use of the products, complaints and liability**

- 4.1. A warranty for the Seller's products applies only for the original Buyer but not for any third parties. It only applies for a use of the products in the contractually prescribed manner which means a use in connection with natural substances and fine chemicals to the extent described in paragraph 4.2. This warranty does particularly not apply in case of modifications of the products made by Buyer or any third parties.
- 4.2. By the purchase of the product the Buyer acquires the non-transferable right to use the product for his own research and development purposes. The product may not be used as drug, food additive, cosmetic, household chemical, or for any other non-laboratory purpose.

The Buyer does not have the right to transfer

- a) the product
- b) its components and/or
- c) materials or components

to any third parties for commercial purpose or to use them for any other commercial purposes.

- 4.3. The Buyer has the right to transfer knowledge, information and materials or components that arise as a result of the usage of the products to his own research and/or scientific assistants provided that this is only for noncommercial purposes and the respective assistant has signed a declaration stating that the assistant
  - a) will not transfer materials and/or components to any third parties and/or
  - b) will use the transferred knowledge, information and materials or components that arise as a result of the usage of the products solely for research purposes and not for any commercial purposes.
- 4.4 Commercial purposes particularly means every activity which is connected with
  - a) a usage of the product and/or its components within the production process,
  - b) a usage of the product and/or its components within the process of Reverse Engineering of functionally comparable materials,
  - c) a supply of service, information or data by the product,
  - d) a usage of the product and/or its components for therapeutic, prophylactic or diagnostic purposes and/or

- e) in case of a resale of the product and/or its components irrespective of whether or not this resale is done for research and/or development purposes.
- 4.5 In the event that the Buyer contravenes the restrictions on use of this paragraph 4 in any way the Buyer shall immediately return the products to the Seller for refund of the purchase price by the Seller.
- 4.6 The Buyer shall inform the Seller about defects at the item immediately, but at the latest within one week from receiving the item.
- 4.7 The Buyer has first the choice whether the subsequent performance is to be effected by remedying the defect or delivering an item which is free of defects. The Seller shall be entitled to refuse the form of supplementary performance chosen by the Buyer if the Seller is only able to render such supplementary performance with disproportionately high costs and if the other type of subsequent performance does not cause a significant disadvantage to the Buyer. The reduction of the purchase price or the cancellation of the contract by the Buyer is excluded during the subsequent performance. If even the second try of subsequent performance chosen by the Buyer is unsuccessful, i.e. if the defect is not rectified or if a fault-free item is not delivered, the Buyer can fundamentally choose to either lower the compensation (reduction) or have the contract nullified (withdrawal).
- 4.8 Provided that on both sides the deal is a commercial transaction the statutory inspection and notification obligation according to §§ 377, 378 HGB is applicable subject to the following restriction: The complaint has to be sent by registered letter. The Buyer must notify the Seller of any obvious faults immediately and no later than 1 week after delivery. Apparent defects that cannot be detected within this period in spite of a careful examination are to be notified immediately and no later than 1 week after their detection.
- 4.9 The Seller is liable for the replaced goods and repaired parts to the same extent as to the original merchandise.
- 4.10 The Seller shall be available to the Purchaser for the issuance of information and advice about the use of his product to the best of his knowledge. He is, however, only liable for this according to paragraph 8 if special remuneration has been agreed in this respect.

## **5. Reservation of ownership; Withdrawal**

- 5.1 The Seller reserves itself the ownership of the goods up to entire settlement of all claims arising from a current business relationship. If the value of the goods subject to retention of title exceeds the value of the claims to be secured within the current business relationship by 150%, the Seller is obligated upon request to release the goods subject to retention of title.
- 5.2 The Buyer has to inform the Seller in writing immediately of all accesses of third parties to the goods subject to retention of title, in particular of any damages or the destruction of the goods. The Buyer has to inform the Seller of a change of ownership of the goods subject to retention of title as well as changes of the own address immediately. As far as the third party is not able to refund the Seller the court and out-of-court costs incurred in this context, the Buyer is liable for this.
- 5.3 The Seller is entitled to withdraw from the contract in the case of behavior of the Buyer contrary to the terms of the contract, especially due to payment delays and to reclaim the goods. The Seller is also entitled, in the case of a violation of a duty stipulated in paragraph 1.2 and/or to withdraw from the contract and to reclaim the goods, if further adherence to the contract is not supportable to the Seller.

## **6. Intellectual Property**

Other than explicitly stated, nothing in these General sales terms and conditions or in the delivery of the products and provision of the services to the Buyer shall be construed as granting any right or license to any patent or trade secret owned, used or licensed by the Seller or by third party regarding the technology and/ or processes included in the products and/ or that might be touched by the instrumental setup or by its use.

## **7. Security**

- 7.1 The handling of all substances is to be conducted exclusively by professionally competent, appropriately qualified persons who are familiar with laboratory procedures as well as with the potential risks.
- 7.2 The Buyer is obliged to provide for the safe use of the delivered products. The Buyer is responsible for his employees as well as all persons who possibly come into contact with the products, to inform about all risks which can arise in any way from the products for people and objects and to instruct them in the safe handling and use of these products. The Buyer is responsible furthermore for the safe disposal of all products according to regulations.

## **8. Compensation for damages and Liability**

- 8.1 The Seller shall be liable
- a) in case of culpable damage to life, body or health;
  - b) if he has provided a guarantee concerning the particular quality of the goods, the ability to procure them for the features or another guarantee, and if damage results from the non-fulfilment of such a guarantee.
  - c) for damages which are based on intentional or grossly negligent breach of duty of himself or a vicarious agent;
  - d) instead of the entire performance in case of culpably poor performance and culpable breach of material contractual obligations;
  - e) in the event of breach of material contractual duties due to ordinary negligence only in the amount of the typical loss in consideration of all decisive and recognizable circumstances;
  - f) pursuant to the provisions of the Product Liability Act and other possible mandatory statutory liability provisions;
  - g) instead of the performance in the event of breaches of contractual ancillary obligations, if the Buyer can no longer be reasonably expected to accept the product or service performed by the Seller.
- 8.2 If none of the cases set out in paragraph 8.1 is fulfilled the Seller shall not be liable to compensate for damages.
- 8.3 Paragraphs 8.1 and 8.2 shall apply for claims for compensation irrespective on whatever legal basis, particularly to liability in tort or any claim for damages based on fault during the contract settlement.
- 8.4 If the liability is excluded or limited, this settlement is also valid for claims for indemnity which are asserted directly to associates, employees, personnel, representatives and agents.

- 8.5 The Buyer is obliged to take reasonable measures to prevent the damage from occurring or to minimise its impact.

## **9. Payment and interest for late payment**

- 9.1 Payment of the purchase price is usually effected by cash on delivery. The purchase price is due immediately upon receipt of the goods and shall be transferred to the account specified in the invoice upon receipt of invoice without discount.
- 9.2 If another mode of payment is expressly agreed, Seller will inform the Buyer about the processing of payment.
- 9.3 The Seller is ready to accept payments from within and outside Europe (EU). The Seller shall, in no event, bear the costs for money transaction services.
- 9.4 In case of payment by cash on delivery, purchase price is due upon receipt of the goods. If payment has not been made within 14 days after maturity Buyer shall be in default of payment.
- 9.5 Default interest shall be charged at a rate of 5 percent p. a. over and above the prevailing base interest rate. The enforcement of a higher claim for damages caused by delay remains unaffected. Where a higher damage caused by the delay is asserted, the Buyer shall have the right to furnish evidence of the fact that the asserted damage caused by the delay were not incurred at all or at least to a significantly lesser extent.

## **10. Data protection**

- 10.1 In handling personal data, Seller will comply with the applicable rules and regulations for data protection.
- 10.2. Personal data shall be stored and used exclusively for transacting purchase agreements entered into between Seller and Buyer.

## **11. Miscellaneous**

- 11.1 All legal transactions or other legal relations with the Seller are subject to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) and any other international conventions, even after being incorporated in German law, shall not be applicable.
- 11.2 The place of jurisdiction for all disputes arising from this contractual relationship is exclusively Giessen, Germany. German law shall exclusively be applicable for all disputes arising out of this contractual relationship.
- 11.3 If individual provisions of the contract, including these General sales terms and conditions, should be or become invalid in full or in part, this shall not affect the validity of the remaining provisions. The fully or partially invalid provision shall be replaced by a provision whose economic effect as closely as possible approximates that of the invalid provision.