

# General Terms and Conditions of Sale

## 1. Formation of Contract

- 1.1 Any order sent to AnaTox GmbH & Co. KG (the "Seller") by the Purchaser shall be accepted entirely at the discretion of the Seller, and, if so accepted, will only be accepted upon these General Terms and Conditions of Sale ("General Conditions").
- 1.2 Each order that is so accepted shall constitute an individual legally binding contract between the Seller and the Purchaser and such contract is hereafter referred to in these General Conditions as a "Contract".
- 1.3 These General Conditions shall override any contrary different or additional terms or conditions (if any) contained, or referred to, in any order form or other document or correspondence from or by the Purchaser, and no addition alteration or substitution of these terms will bind the Seller or form part of any Contract unless it is expressly accepted in writing by a person authorized to sign on the Seller's behalf.

## 2. Specification

- 2.1. All goods supplied by the Seller shall be in accordance with the specifications or descriptions (if any) expressly listed or set out in the Contract. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Contract.
- 2.2 It is the responsibility of the Purchaser to ensure that the intended application is suitable and appropriate, before acceptance and use. This also applies to the choice of suitable materials. The Purchaser must ensure that the use of the product is appropriate.

## 3. Prices

- 3.1 Unless otherwise agreed, all prices shall be net EXW Fuerstenwalde, Germany (Incoterms 2000).
- 3.2 Prices specified in product price sheets and posted on the web-site, or otherwise presented, are subject to change without notice.

## 4. Delivery / Delay

- 4.1 Delivery shall be made in accordance with the International Commercial Terms (Incoterms) in force at the time of the formation of the Contract. In the absence of any agreement to the contrary, delivery shall be made EXW Fuerstenwalde, Germany (Incoterms 2000).
- 4.2 The delivery term shall begin when and if:
  - 4.2.1 the Contract has been concluded and any letters of credit, advance payments or sureties required in the terms of the order confirmation have been put in place by the Purchaser; and

4.2.2 the Seller is in possession of all the details required for the execution of the order; and

4.2.3 the Purchaser has fulfilled any other contractual obligations incumbent on it.

4.3 Time is not of the essence in the sale contemplated by the Contract and the Seller shall be entitled to a reasonable period of grace in the event of any delay in delivery beyond the scheduled shipping date.

4.4 A contingency beyond Seller's control shall not constitute cause for cancellation of the order but shall extend Seller's time of delivery for a period equal to the duration of such contingency.

4.5 The Seller shall in no way be liable (i) for any loss of profit, business, contracts, revenues, or anticipated savings, arising from any delay in delivery, or (ii) for any special indirect or consequential damages of any nature whatsoever, arising from any delay in delivery.

## **5. Passing of Risk**

5.1 Benefit and risk shall pass to the Purchaser when Seller communicates to the Purchaser that the goods are at the disposal of the Purchaser. The foregoing shall also apply in the event that the delivery is carried out free of charge or if transport is organized by the Seller. In any case, benefit and risk shall pass to the Purchaser no later than when the goods are handed over to the first carrier.

## **6. Payment**

6.1 Unless otherwise agreed upon, the Purchaser shall pay to the Seller the full invoice price of the goods not later than thirty (30) days after the date of each invoice.

6.2 Payments made after thirty (30) days may, at the Seller's option, be subject to interest at the rate of 1% per month on the invoiced amount. In addition, the Seller shall have the right, without notice, to set off or apply any amounts owed to Purchaser by Seller against monies that may be owed to Seller by the Purchaser.

6.3 Whatever means of payment shall be used, payment shall not be deemed to have been effected before the Seller's account has been fully and irrevocably credited.

6.4 In case of late payment the Seller may, after having notified the Purchaser in writing, suspend his performance of the contract until he receives payment.

6.5 If the Purchaser has not paid any amount due within three (3) months of the respective due date, the Seller shall be entitled (i) to terminate the Contract by giving notice in writing to the Purchaser, and (ii) to claim compensation for any losses incurred. Such compensation shall not exceed the purchase price.

## **7. Title of Goods**

7.1 Title to the goods delivered shall not pass to the Purchaser until the Purchaser has effected payment to the Seller; provided that the Seller shall be entitled to claim payment for such goods once payment has become due even though title has not passed.

- 7.2 The Purchaser shall at the request of the Seller assist in taking any measures necessary to protect the Seller's title to the goods and cover the cost that might arise from this protection
- 7.3 The retention of title shall not affect the passing of risk under Clause 5.

## **8. Warranty**

- 8.1 The Seller shall only be liable for defects of the goods arising under the conditions of operation provided for in the Contract and proper use of the goods. The Purchaser acknowledges that the Seller has no control or knowledge under which conditions the goods are operated or stored by the Purchaser and the Seller explicitly disclaims all warranties, express or implied, for any period during which the goods are operated or stored not in accordance with the technical specifications. In particular, the Seller's liability does not cover defects that are caused by faulty maintenance, incorrect installation or faulty repair by the Purchaser, or by alterations carried out without the Seller's consent in writing. Seller's liability does not cover normal wear and tear or deterioration.
- 8.2 The Seller warrants solely to the original purchaser of the goods for a period of 12 months (one year) from the date of delivery that the goods shall be of the quality, material and workmanship defined in the Seller's published specifications of the goods. Within such period, if proven to be defective, the Seller shall repair and/or replace the goods, in the Seller's discretion, free of charge to the Purchaser, provided that:
  - 8.2.1 notice in writing describing the defects shall be given to the Seller within fourteen (14) days after their appearance; and
  - 8.2.2 such defects shall be found, to the Seller's reasonable satisfaction, to have arisen from the Seller's faulty design, material, or workmanship; and
  - 8.2.3 the defective goods shall be returned to the Seller's factory at the Purchaser's expense.
- 8.3 The Purchaser shall at his own expense arrange for any dismantling and reassembly of equipment other than the goods, to the extent that this is necessary to remedy the defect.
- 8.4 This warranty does not apply to any equipment that has not been installed or used within the specifications recommended by the Seller for the intended and proper use of the equipment. Any repaired or replaced goods shall be redelivered by the Seller free of charge to the original point of delivery but otherwise in accordance with and subject to these General Conditions save that the warranty period shall be limited to the unexpired portion of the original period pursuant to Clause 8.2.
- 8.5 In lieu of the remedies in Clause 8.2, the Seller shall be entitled, in its absolute discretion, to refund the price of the defective goods in the event that such price shall already have been paid by the Purchaser to the Seller, or, if such price has not been so paid, to relieve the Purchaser of all obligations to pay the same by issuing a credit note in favor of the Purchaser in the amount of such unpaid price.

- 8.6 Save as stipulated in Clauses 8.1 to 8.5, the Seller shall be free of any liability to the Purchaser whether contractual, tortious or otherwise for defects in the goods or for any loss or damage to or caused by the goods, in particular, but without limitation of the foregoing, loss of production, loss of profit and other indirect, incidental, or consequential damages. All operating parameters, including without limitation recommended parameters, must be validated for each of Purchaser's applications by Purchaser's technical experts. Recommended parameters can and do vary in different applications.
- 8.7 EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH HEREIN, THE SELLER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS. ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DECLINED.

## **9. Allocation of Liability for Damage Caused by the Goods**

- 9.1 The Seller shall not be liable for any damage to property caused by the goods after having been delivered and while they are in the possession of the Purchaser. Nor shall the Seller be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part.
- 9.2 If the Seller incurs liability towards any third party for damages to property as described in the preceding paragraph, or for personal injury, the Purchaser shall indemnify, defend and hold harmless the Seller and its officers, employees, subsidiaries, affiliates and distributors against all claims, costs, damages, expenses, and reasonable attorney fees.
- 9.3 If a claim for damages pursuant to this Clause 9 is asserted by a third party against one of the parties, such party shall forthwith inform the other party thereof in writing.

## **10. Force Majeure**

- 10.1 The Seller shall not be liable for any failure to perform any of its obligations under the Contract due to Force Majeure. Following notification by the Seller to the Purchaser of such cause, the Seller shall be allowed a reasonable extension of time for the performance of its obligations.
- 10.2 For the purpose of these General Conditions, Force Majeure means fire, explosion, flood, lightning, Act of God, act of terrorism, war, rebellion, riot, sabotage, or official strike or similar labour dispute, or other events or circumstances outside the reasonable control of the party affected thereby.

## **11. Economic Loss**

- 11.1 Notwithstanding anything contained in these General Conditions or the Contract, the Seller shall under no circumstances be liable for any reason, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, and whatever the cause thereof (i) for any loss of profit, business, contracts, revenues, or anticipated savings, or (ii) for any special, indirect, incidental or consequential damage of any nature whatsoever.

- 11.2 In jurisdictions that limit the scope of or preclude limitations or exclusions of remedies or damages or of liability such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.
- 11.3 With respect to any costs, damages, interest or claims adjudicated by a court or arbitration tribunal located in the United States of America and its possessions (the "US") or applying the laws of the US or any of its states or territories for which the Seller is liable to the Purchaser, the Seller shall in any case only be liable to the Purchaser to the extent it would have been liable pursuant to the internal laws of Germany.

## **12. Confidentiality**

- 12.1 Each of the Seller and the Purchaser shall each keep confidential, and shall not without the prior consent in writing of the other disclose to any third party, any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications relating to the goods and the Contract; except as may be required by law or legal process.

## **13. Applicable Law**

- 13.1 Any dispute arising out of or in connection with the Contract shall be governed by and construed in accordance with the internal laws of Germany (Schuldrecht), to the exclusion of the UN Convention on the International Sale of Goods and without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than Germany.

## **14. Jurisdiction**

- 14.1 Any dispute arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the courts of the Frankfurt/Oder, Germany. The Seller reserves the right to initiate court proceedings against the Purchaser in any other court of competent jurisdiction.

## **15. Miscellaneous**

- 15.1 If any provision contained herein or in any Contract is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these General Conditions and the Contract, and the remainder of these General Conditions and the Contract shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these General Conditions and the Contract, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these General Conditions and the Contract by one party to the other, the remaining provisions of these General Conditions and the Contract shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

- 15.2 In the event of a violation or threatened violation of the Seller's proprietary rights, the Seller shall have the right, in addition to such other remedies as may be available pursuant to law or these General Conditions and the Contract, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that the Seller would suffer irreparable harm.
- 15.3 The failure of any party hereto to enforce at any time, or for any period of time, any provision of these General Conditions or the Contract shall not be construed as a waiver of either such provision or of the right of such party thereafter to enforce each and every provision of these General Conditions and the Contract.
- 15.4 The parties hereto are independent contractors and nothing in these General Conditions will be construed as creating a joint venture, employment or agency relationship between the parties.
- 15.5 Paragraph headings are inserted for convenience of reference only and do not form part of these General Conditions.