

# General Terms and Conditions of Sale and Payment of Lipoid GmbH, PHOSPHOLIPID GmbH, R&R Extrakte GmbH

## 1. Scope of application and validity

**1.1** These General Terms and Conditions of Sale (Terms and Conditions) apply to all our business relationships with our customers (hereinafter: "Buyer"). They also apply to all future sales, deliveries and quotations made to the Buyer, even if we do not in each individual case specifically make reference to them.

**1.2** Our Terms and Conditions apply exclusively. Deviating, contrary or supplementary General Terms and Conditions of the Buyer shall only be applicable if and to the extent that we have expressly agreed to them. They shall also not apply in the event that we do not expressly and specifically contest their validity. This shall also apply for the case that we perform delivery to the Buyer without reservation in awareness of the Buyer's General Terms and Conditions.

## 2. Quotations and contracts

**2.1** All our quotations are non-binding and subject to change. The ordering of the goods by the Buyer is considered a binding contract offer on the part of the Buyer. We are entitled to accept this contract offer within two calendar weeks of its receipt by us. Acceptance may be declared in writing or by delivering the goods within this time period to the Buyer.

**2.2** Declarations and notifications of legal relevance that must be submitted to us by the Buyer subsequent to conclusion of contract shall only be valid in writing.

**2.3** We reserve ownership rights and copyrights to illustrations, drawings, calculations and other documents. This applies in particular to written documents that are designated "confidential". Prior to their transfer to third parties the Buyer shall require our express written consent.

## 3. Prices and payment

**3.1** Unless otherwise agreed, our prices are indicated in euros plus the statutory value added tax.

**3.2** Invoices are due and payable within 30 days from the date of invoicing or delivery of the goods – whichever takes place later – without deduction, unless otherwise stated in the order confirmation. For legal purposes, the date of payment shall be deemed the date upon which we receive the payment.

**3.3** Upon expiry of the above payment period, the Buyer shall be in default. Interest shall be charged on the purchase price at the applicable interest rate for the duration of default. We reserve the right to claim further damages for default. Our right to the commercial maturity interest (Section 353 HGB – German Commercial Code) shall remain unaffected.

**3.4** We are entitled to perform deliveries that are still outstanding only against payment in advance or provision of a security in the event that subsequent to conclusion of contract we become aware of circumstances that could substantially reduce the creditworthiness of the Buyer and due to which payment by the Buyer of our outstanding receivables under the respective contractual relationship (including other individual orders for which the same framework contract applies) is jeopardized.

**3.5** The Buyer shall only have set-off or retention rights to the extent that its claim is legally established, undisputed or has been recognized by us. In the event of delivery deficiencies, the counter rights of the Buyer shall remain unaffected, in particular in accordance with Item 6 of these Terms and Conditions.

## 4. Delivery, delivery time, partial deliveries, blanket orders

**4.1** Deliveries are performed "ex works" (EXW, Incoterms 2010).

**4.2** Our proposed deadlines and dates for deliveries are always only approximate deadlines and dates unless a fixed deadline or fixed date has been expressly pledged or agreed. If shipment has been agreed, delivery times and dates refer to the point in time that the consignment is handed over to the freight forwarder, haulage company or other third party retained to carry out transport unless otherwise expressly agreed.

**4.3** We do not accept liability for impossibility of delivery or for delivery delays that are due to force majeure or other events that could not be foreseen at the time of conclusion of contract (such as operational disruptions of all kinds,

difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, lack of manpower, energy or raw materials, difficulties in obtaining the requisite regulatory approvals, official measures and delivery defaults, incorrect or late delivery by suppliers) for which we are not responsible. Should such events make delivery particularly difficult or impossible and the hindrance is not merely of a temporary nature, we shall be entitled to rescind the contract. In the case of such events for which we cannot be held responsible and which lead only to hindrances of a temporary nature, the delivery deadlines shall be extended or the delivery dates postponed by the duration of the time period during which the hindrance lasts plus a reasonable lead time. This shall also apply to delivery delays due only to slight negligence on our part, provided that adherence to the delivery date or delivery deadline does not constitute a major contractual obligation (see Item 7.2. Letter b). If the Buyer cannot reasonably be expected to accept the delivery as a result of the delays, it can withdraw from the contract by notifying us immediately in writing.

**4.4** We are entitled without specific agreement to make only partial deliveries if the partial delivery can be used by the Buyer within the framework of the intended purpose set down in the contract, the delivery of the remaining ordered goods is ensured and the Buyer does not incur any significant additional costs as a result (unless we declare our willingness to assume these costs). In regard to risk transfer, performance disruptions and payment obligations, a justified partial delivery is deemed an independent performance of service.

## 5. Place of performance, dispatch, packaging, transfer of risk, default of acceptance

**5.1** Unless otherwise agreed, the place of performance for all obligations arising from the contractual relationship is Ludwigshafen/Rhine for Lipoid GmbH; for Phospholipid GmbH and R&R Extrakte GmbH it is Cologne.

**5.2** Unless otherwise agreed, we decide on the type of shipment (in particular transport companies, shipping route, packaging). We are not obliged to take back packaging materials.

**5.3** The risk is passed to the freight forwarder, haulage company or other third party retained to carry out transport at the latest upon handover of the goods. This also applies if partial deliveries are made. In the event that shipment or handover is delayed due to circumstances for which the Buyer is responsible, the risk shall be transferred to the Buyer as of the date on which the Buyer defaults on acceptance.

**5.4** In the event that the Buyer defaults on acceptance, we shall also be entitled to compensation for the damage incurred as a result, including additional expenses (for example storage costs).

## 6. Warranty claims by the Buyer

**6.1** The delivered goods must be inspected carefully immediately upon delivery to the Buyer or to a third party designated by the Buyer. In the case of obvious or other defects that could be detected by an immediate, thorough examination, the goods shall be deemed as approved unless a written complaint is submitted within ten working days of delivery of the goods. The punctual dispatch of the complaint shall suffice to ensure compliance with the deadline. With respect to other defects, the goods shall be deemed approved if a written complaint is not submitted within ten working days of the discovery of the defect. The punctual dispatch of the complaint shall suffice to ensure compliance with the deadline. If in respect to defects the goods are deemed approved, our liability for these defects shall be excluded unless we have fraudulently concealed the defect.

**6.2** In the event that the goods are defective and the Buyer has notified us of this properly in accordance with Item 6.1, the Buyer shall be entitled to the statutory rights subject to the following provisions:

- a) We shall have the right at our own discretion to either remediate the defect or supply the Buyer with goods that are free of defects (subsequent performance);
- b) The Buyer may demand damages under the conditions set down in Item 7.

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**6.3** The information we provide about the goods does not constitute a legal warranty of properties but is rather a description or labeling of the goods. The properties of specimens and samples are binding only insofar as they have been expressly agreed as properties of the goods.

## **7. Other liabilities**

**7.1** Unless otherwise stated in these Terms and Conditions including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations according to the relevant statutory provisions.

**7.2** We shall be liable for damages – for whatever legal reason – due to gross negligence and intent. In case of simple negligence, we shall only be liable

a) For damages resulting from injury to life, limb or health.

b) For damages arising from the breach of a significant contractual obligation (obligation of which fulfillment first makes the correct and proper execution of the contract possible and upon whose fulfillment the contractual partner regularly relies and may rely); in this case, our liability shall however be limited to compensation for foreseeable damage that typically occurs. We shall not be liable for claims for damages due to negligent breach of a collateral duty or due to tort claims for compensation for damage caused by negligence in accordance with Section 823 BGB [German Civil Code].

**7.3** The foregoing liability exclusions and limitations apply in equal scope for the benefit of our corporate organs, legal representatives, employees and other agents.

**7.4** The liability exclusions and limitations ensuing from Items 7.2 and 7.3 do not apply in the case that we have fraudulently concealed a defect or provided a warranty for the quality of the goods. This also applies to claims of the Buyer pursuant to the Product Liability Act.

**7.5** We cannot assume any responsibility for risks, formulations or liabilities arising from the use of our products, as the working conditions in the facilities of our Buyers are beyond our control.

## **8. Period of limitation**

**8.1** The general limitation period for claims ensuing from material and legal defects is one year from the date of delivery of the goods. This does not affect the special statutory provisions relating to actions in rem for the recovery of property of third parties (Section 438 Par. 1 Item 1 BGB), in the case of fraudulent intent of the seller (Section 438 Par. 3 BGB) and for claims ensuing from supplier recourse in connection with final delivery to a consumer (Section 479 BGB).

**8.2** The foregoing limitation periods of the purchase right shall also apply to contractual and non-contractual claims for damages by the Buyer that are based on defective goods unless the application of the regular period of limitation (Sections 195, 199 BGB) would result in a shorter period of limitation in specific cases.

**8.3** Instead of the one-year period referred to above, the statutory limitation periods shall apply in the case of liability for intent or gross negligence, fraudulent concealment of a defect, damages resulting from injury to life, limb or health, the provision of a warranty of properties and in the case of statutory liability under the Product Liability Act.

## **9. Reservation of title**

**9.1** All goods supplied by us to the Buyer remain our property until the full payment of all our present and future accounts receivable ensuing from the business relationship with the Buyer (secured debts). The reservation applies to the recognized account balance.

**9.2** The Buyer is under obligation to treat and store the goods appropriately. The Buyer shall be held liable irrespective of negligence or fault for any damage to or loss of delivered goods that are subject to reservation of title. In the event that the Buyer cannot itself provide compensation from its own assets in the event of damage to or loss of the goods, it shall be obliged to insure the goods at its own expense against fire, water and theft at replacement value. The Buyer hereby cedes possible claims against the insurance company to us; we hereby accept this cession of claims. The existence of insurance coverage must be proven to us on request.

**9.3** The goods subject to reservation of title may not be pledged as collateral to third parties nor reassigned as security prior to full payment of the secured debts. The Buyer shall inform us immediately in writing in the event that third parties make claim to the reserved goods.

**9.4** The Buyer is authorized to resell and/or process the goods under reservation of title in the ordinary course of business. In this case, the following provisions apply additionally:

a) The reservation of title extends to the products resulting from the processing, mixture or combination of our goods to their full value, whereby we are considered the manufacturer. In the event that subsequent to their processing, mixture or combination with the goods of third parties the property rights of the third parties remain valid, we shall acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. In all other matters the same shall apply for the resulting product as for the goods delivered under reservation of title.

b) The Buyer hereby cedes to us as security all claims against third parties ensuing from the resale of the goods or products in their entirety or to the amount of our co-ownership share in accordance with the preceding paragraph. We hereby accept cession of these claims. Obligations of the Buyer set down in Item 9.2 also apply with respect to the ceded claims.

c) We grant the Buyer the revocable authorization to collect the claims ceded to us on its own behalf. We may only revoke this authorization of collection in the case of a liquidation event.

d) If the realizable value of the securities exceeds our claims by more than 10%, we will release securities at our discretion at the request of the Buyer.

e) If in the event of a breach of contract by the Buyer – in particular default of payment – we withdraw from the contract (liquidation event), we shall be entitled to reclaim the reserved goods.

## **10. Place of jurisdiction and other provisions**

The exclusive – and international – place of jurisdiction for any disputes arising from the business relationship between us and the Buyer is Ludwigshafen/Rhine for Lipoid GmbH; for Phospholipid GmbH and R&R Extrakte GmbH it is Cologne.

The law of the Federal Republic of Germany applies without exception. Application of the United Nations Convention on Contracts for the International Sale of Goods and the conflict rules of international private law are excluded. Mandatory statutory provisions on exclusive jurisdiction remain unaffected by this provision.

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