

General Conditions of Sale  
Company Müggenburg Pflanzliche Rohstoffe GmbH & Co. KG  
for contracts with commercial and industrial enterprises  
effective from 1<sup>st</sup> of December 2006

## 1.0 General

### 1.1.

All, including future completed purchase- and supply- contracts of the company Müggenburg Pflanzliche Rohstoffe GmbH Co. KG (Müggenburg / us) are and will be based upon this General Conditions of Sale and its deliveries. All terms and conditions, clauses or amendments to these conditions by customers or brokers are rejected explicitly and only become substance of contract when agreed by us in writing. This also accounts to confirmations that we have not again explicitly objected to or unconditionally completed deliveries of. Additionally, the latest versions of §§ 651, 433 ff 631 ff BGB (German Civil Law Code) and INCOTERMS apply respectively.

### 1.2.

Disputes, resignations, terminations and deadlines of both parties will only be effective when put in writing, signed and forwarded as original or by facsimile transmission.

## 2.0 Contract, Quotations, Contracts and Prices

### 2.1

Verbal offers, promises, treaties and agreements of our employees, excluding directors and vice presidents, are non-binding. They are only effective when confirmed in writing. Respectively this can only be waived in writing. Only written statements and commitments are binding, forwarded as original or facsimile transmission.

### 2.2.

Our product descriptions and quality data and information on the suitability and usability of the final products are no warranty or assurance.

### 2.3.

The agreed charges are net prices plus VAT.

If any changes to VAT rates occur, the amount of VAT will be determined by day of delivery.

## 3.0 Delivery, performance, schedules and deadlines

### 3.1.

In the case of delay in delivery caused by us, the customer is not entitled to compensation if no evidence for grossly negligent behavior or willful intent is justified.

In any case, light negligence results in compensation that is restricted to the foreseeable damage that is caused due to the delay.

### 3.2.

If delivery is delayed due to unforeseen circumstances of any kind, e.g. raw material shortages, production constraints at the seller or his supplier, transport barriers, machine damage, illnesses, labor disputes, malfunction or act of God, it shall enter an appropriate extension of the period. This also accounts when these circumstances arise, after Müggenburg has got itself in default. Thus, incurred costs are not to be repaid by us.

### 3.3.

All deliveries are subject to our right and timely self-supply including the sold material and raw materials, additives or other substances from our suppliers. This includes the safe arrival of goods to be delivered. Furthermore, it is the obligation to deliver subject to a sufficient harvest. These reservations also apply, when the goods do not comply with Community- or German Law. Our supply- contract may also include the reservation for right and timely self-supply. For contracts that contain the supply of goods for which an import license and / or a CITES certificate is required, it is the obligation to deliver subject to the timely and complete issue of the import- license or certificate of Cites. In these cases, we are entitled to withdraw from the contract and are not made liable for compensation.

### 3.4.

We are obliged to make partial deliveries to customers that are regarded reasonable in the industry. The customer agrees to pay the appropriate subsets. Each partial shipment counts as an individual contract. Minor- and surplus quantities of 5% of the overall contracted quantity are accepted and have to be payed for.

### 3.5.

The collection by the customer, if agreed, and the call-offs of the commodities are essential and primary requirements.

### 3.6.

The weight and number of packages at point of departure are required elements when delivery terms are based on EXW (Incoterms) or CPT (Incoterms) in the contract.

### 3.7.

For contracts that are based on CPT terms, the customer bears the transport risk.

## 4.0 Prices and payment, default, transfer / retention

### 4.1

All prices are plus the latest obtained VAT at date of delivery. If more than four month between the contract and the actual delivery elapse or the contract stands for a permanent supply, the seller is entitled to reasonable price adjustments, if , for example taxes, duties, freight charges and comparable input costs have increased, from the date of contract.

### 4.2.

In the event of a default, we are entitled to claim interest at the rate of 10 % above the base rate of the European Central Bank. The evidence of higher or lower damage is permissible. In any case, legal interests have to be payed.

### 4.3.

The customer is not entitled to offset against the claims of Müggenburg or to make a lien claim, unless the counterclaim is undisputed or legally valid.

### 4.4.

If after the conclusion of the contract circumstances emerge that justify reason to belief, that the customer creditworthiness or the fulfillment of its obligations or despite the appointment of more than 14 days in arrears fails payment, we are entitled to postpone our obligations until full payment of all outstanding claims, including all other contracts made with the customer have been made.

### 4.5.

If the customer does not comply to No. 4.3 within 5 working days, we are entitled to exit all

made contracts and claim for compensation after a further five working days deadline has been given.

4.6.

The return of empty containers or packaging materials need special agreement.

## 5.0 Retention of title and assignment

5.1

The delivered goods remain or will be reserved goods owned by Müggenburg until the complete fulfillment of the payment claim and all claims, including future, not matured and mutual-business relationships, including any notes receivable, have been made. Conditional goods are even those goods that are produced from customer-supplied materials, when no new product has been made.

5.2.

The further processing or handling of goods by the customer is always on behalf of Müggenburg without the emergence and accumulation of liabilities to Müggenburg. We have the property rights of the newly developed articles. If conditional products are mixed with other goods from third parties, such as processed, blended, mixed or combined products, we reserve the right for co-ownership of the new goods in the proportion of the invoice value of the goods to the invoice value of the final product at the time of processing, handling, etc. The customer assigns to us, herewith, all of his joint property rights mentioned in the previous sentence up to the amount of the invoice value. The new product is to be stored appropriately by the customer for Müggenburg without charge.

5.3.

The customer is authorized, subject to clause 5.7, to trade under normal course of business the conditional goods under reservation. However, he is not obliged to use the goods as security or pledge. The customer hereby assigns to us the receivables he claims for resale of the goods, or by processing, editing, mixing, mixture or compound of the goods mentioned under No. 5.2. This applies even if the goods are sold together with other third party products for a lump price. If a third party, due to legal regulations of a result of processing, blending, mixing or combining holds ownership or joint ownership rights to the goods acquired, the customer assigns to us herewith and in future all his rights related to the goods acquired. Assignments under this paragraph shall always be only up to the invoice value of the goods. The customer is entitled to collect the assigned claims up until a revocation by us, which in case of a default of a single claim that is content of the business relation is accepted.

5.4.

The value of the retention- material of the preceding paragraphs, is always the Price / wage that we have debited the customer for the material (Invoice price).

5.5.

Upon request by our customer, we are obliged to our security in our choice and so far released, as their value exceeds the secured claims by more than 10%.

5.6.

If it needs the efficacy of the proprietary rights of participation of the customer, such as registrations, which are law by the client's country, the customer must carry out such acts. This is an essential principal of obligation.

#### 5.7.

If the customer is in default of payment, Müggenburg reserves the right to prohibit the sale and/or the release of the product or its use for processing, blending or mixing with other products as well as their evacuation. Müggenburg is entitled to claim the return of all processed and unprocessed conditional goods delivered. The customer is obligated to inform Müggenburg immediately, when third parties gain access to goods to which Müggenburg has reserved the above rights on. The same applies to accessing claims that are assigned under the preceding paragraphs. The customer has to bear all accumulating costs that result out of an intervention by Müggenburg and have to be reimbursed.

#### 5.8.

Contrarily behavior to contract, in particular late payment entitles us, after a reasonable period, to claim for return of the sold goods.

#### 5.9.

The claim of retention of title, especially the redemption of goods, is regarded as rescission of contract. Müggenburg is entitled to further demand compensation according to general provisions, independent to the resignation of contract.

### 6.0. Warranty / complaint / Liability

#### 6.1.

For all deliveries, the customer has to undergo immediate inspection after the arrival of the delivery at its appointed destination, as long as it is possible and reasonable. Claims have to be communicated to Müggenburg immediately. Otherwise, the goods shall be deemed as approved, provided that the deficiency in the inspection was detectable. The provision of § 377 HGB is further applied in contracts for work and materials.

For the determination of quantity, the involved parties provide the respective carriers rebuttable evidence.

#### 6.2.

Unless deficiencies are not found within commercial and sensory examination, the customer is bound to hold back representative samples to undertake analysis and/ or to consult an assessor to carry out an urgent investigation.

#### 6.3.1

Claims by the customer have to be handed in, if deficiencies or deviations are detected without assessor's consultation, in domestic German transactions within 3 working days, for international transactions no later than 10 working days of delivery / release of goods at the appointed destination.

In case of assessor's advice, samples will have to be handed to the assessor within 3 working days for a domestic transaction and 10 working days for an international transaction after arrival of goods at appointed destination. Claims have to be handed to Müggenburg within 3 working days after the receipt of results of examination but no later than 3 weeks after the arrival of the goods at the appointed destination, if no examination by an assessor has extended length of time.

#### 6.3.2

Complaints are only effective when handed in in writing (email/ fax/ post) and contain a concrete explanation of the alleged claim.

#### 6.4.

Warranty and / or claims for compensation against us are excluded, when ascertainable defects are identified by an examination of the material, at its appointed destination either by the customer or an assessor, but the examination has not been completed and parts thereof (except sampling for examination purposes) are removed from site, broached, processed

and/or handled or were otherwise modified.

6.5.

The customer is obliged to seek legal redress against the respective carrier through the timely registration of claims in the transport documents or back complaints in writing in any other way, if possible to be confirmed by the driver. If these duties are culpably breached or related documents of the complaint against the carrier are not made available within 2 weeks up on request by Müggenburg, the customer shall lapse the specific complaint.

6.6.

If “payment against documents” is agreed, the customer is not entitled to refuse receipt of documents or refuse or delay payment due to a complaint.

6.7.

In case of a defect, Müggenburg is entitled to choose either a replacement of the defect material or an elimination of the defect. This includes “payment against documents” transactions. In both cases Müggenburg, shall cover all necessary expenditures, especially transportation and repatriation, travel- , work- and material costs, provided these do not increase due to a relocation of the goods other than the appointed destination. If Müggenburg fails 2 or more attempts to replace the material or eliminate the defect, or delays the supplementary performance unreasonably, the customer is entitled to raise statutory rights without the need for a further period of grace. In the event of proper remedy for damages claimed, Müggenburg will not be liable for compensation, as long as these costs are not for repatriation of the claimed goods.

6.8.

If the contract contains information regarding the supply of material produced by Müggenburg and / or the customer provides goods/ materials or instructions/specifications for a production by Müggenburg, the customer is not entitled to claim a defect, if the defect is caused due to delivered materials from the customer or his instructions and/ or specifications. Müggenburg is not obliged to test the quality or suitability of provided materials or instructions and specifications.

#### 7.1. Clarification of Liability, Limits, Limitation of Claim

Claims for compensation in correlation with supply- or service contracts are addressed in respect to cause and extent by **German** legal provisions, if

- a) a negligent infringement of contract due to a senior executive or one of his chief executives; no deliberate intention of infringement of contract, results in a limit of liability that does not exceed the foreseeable, typically occurring damage;
- b) Müggenburg can be accused of violation of essential contractual obligations, the liability cannot exceed the foreseeable damage typically expected as a result.
- c) Müggenburg has assumed a special guarantee or dissemblingly assured a condition or dissemblingly concealed information or;
- d) claims under mandatory statutory provisions, particularly the product liability law or the principles of the entrepreneurs use (478 BGB) can be derived.

Otherwise, our liability and that of our agents, particularly for subcontractors and their employees, depends on culpable behavior, and slightly negligent and/ or innocent behavior is excluded from liability. Liability for damages in foreign countries and foreign product liability law is excluded, when its cause and size is beyond German product liability law and its standards.

7.2.

As far as Müggenburg is liable, its liability except in accordance with No. 7.1 b) in all cases is limited to the circumstances that were detected or should have been realized in accordance to gross and slight negligence, to no more than the extend the foreseeable, typically occurring damage as a consequence of the failure would have arisen.

7.3.

Warranties and / or claims against us arisen out of or in connection with the concluded contract, expire no later than one year after the final full /partial delivery. This does not apply to claims related to injury, to life, health and freedom and under the circumstances of paragraph No. 7.1 a), c) and d). If the goods are released or an information or instruction is available that enables the customer to collect the goods and the goods are not immediately collected after notification, the statute of limitation counts by the day of receipt of notification.

## 8.0. Performance, Governing law and Jurisdiction

8.1.

Place of fulfillment for mutual obligations is Hamburg, Germany.

8.2.

Only in the Republic of Germany applicable national law applies, respectively. The application of the law of the CISG Convention the United Nations from 11 April 1980 on contracts for the International Sale of Goods (CISG) and other laws that may supersede these laws are strictly excluded. Further, the suggested terms and conditions of the association of the drugs and chemicals trade companies ("Vereinigung der am Drogen- und Chemikalienhandel beteiligten Firmen e.V."), Hamburg (Drogen- und Chemikalienverein) are accepted.

8.3.

All disputes arising out of or in connection with the contract, even as they affect the validity or termination of the contract, are exclusively resolved by the ordinary courts in Hamburg or at Müggenburg's own choice, the Court of Arbitration of the Drugs and Chemicals Association eV, Gotenstraße 21, 20097 in Hamburg. Müggenburg is obliged to inform the customer upon his request in writing within three working days.