

General Conditions of Sale of the Pluggit GmbH (November 2009)

§ 1 General, Scope of Application

(1) These General Conditions of Sale (Conditions) apply to all our business relations with our customers (referred to hereinafter as "Customer"). The Conditions apply only if the Customer is an entrepreneur (Section 14 of the German Civil Code), a legal entity under public law or a public law special fund.

(2) The Conditions apply in particular to contracts for the sale and/or delivery of personal property (also referred to hereinafter as goods), irrespective of whether we manufacture the goods ourselves or buy them from suppliers (Sections 433 and 651 of the German Civil Code). The Conditions in the version current at the time also apply as a basic agreement to future contracts for the sale and/or delivery of personal property with the same Customer without our having to refer to them again in every single case.

(3) Our Conditions apply exclusively. Customer's diverging, opposing or supplementary General Terms of Business shall become part of the contract only if and insofar as we have expressly agreed that they shall apply. This consent requirement shall apply in every case, including for example if we execute delivery to the Customer without reservation in the knowledge of the latter's Terms of Business.

(4) Individual agreements made with the Customer in a particular case (including collateral agreements, additions and amendments) shall in every case take priority over these Conditions. With regard to the content of such agreements a written contract and/or our written acknowledgment shall apply.

(5) Legally relevant declarations and notifications to be made to us by the Customer after conclusion of contract (such as fixing time limits, notifying defects, declaring withdrawal or diminution of the purchase price due to defects) shall be valid only if made in writing.

(6) References to the applicability of legal provisions are provided for clarification only. Even without such clarification the legal provisions shall therefore apply unless directly amended or expressly excluded in these Conditions.

§ 2 Conclusion of Contract

(1) Our quotations are subject to change and without obligation. This shall apply even if we have supplied the Customer with catalogues, technical documentation (such as drawings, plans, calculations, costings and references to DIN standards), other product descriptions or documents – including in electronic form – in which we reserve ownership and copyright.

(2) Ordering of goods by the Customer shall be deemed a binding contractual offer. Unless otherwise indicated in the order we shall be entitled to accept the contractual offer within seven days of receipt by us.

(3) Acceptance can take place either in writing (e.g. by an acknowledgment) or by delivery of the goods to the Customer.

§ 3 Delivery Period and Default in Delivery

(1) The delivery period is individually stipulated or indicated by us when accepting the order. If this is not the case the delivery period is six weeks from conclusion of contract. In any case, the terms of delivery shall be dependent on the advance payments agreed by the buying department.

(2) If we are unable to meet firm delivery periods for reasons beyond our control (non-availability of performance) we will inform the Customer without delay, at the same time giving the expected new delivery period. If the performance is still not available within the new delivery period we shall be

entitled to withdraw wholly or partly from the contract; any consideration already paid by the Customer will be reimbursed without delay. A particular instance of non-availability of performance in this respect is late delivery to us by our suppliers if we have concluded a congruent covering transaction. Our statutory rights of withdrawal and cancellation and the legal provisions concerning completion of the contract if the obligation to perform is excluded (e.g. impossibility or unreasonableness of performance and/or subsequent performance) shall be unaffected. The Customer's rights of withdrawal and cancellation in accordance with Section 8 of these Conditions shall likewise be unaffected.

(3) The occurrence of default in delivery shall be determined by the provisions of law. A reminder by the Customer shall be required in all cases, however. If we are in default of delivery the Customer may demand lump-sum compensation for the loss he has thus suffered. The lump-sum compensation shall be 0.5% of the net price (delivery value) per complete calendar week's default, subject to a maximum of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the Customer has suffered no loss at all or only a substantially smaller loss than the above lump sum.

§ 4 Delivery, Passing of Risk, Acceptance, Default in Acceptance

(1) Delivery is ex warehouse and this is also the place of performance. The goods will be sent to a different destination at the Customer's request and expense (sale to destination according to Customer's instructions). Unless otherwise agreed we are entitled to decide on the manner of shipping (in particular the carrier, routing and packaging).

(2) The risk of accidental loss and accidental deterioration of the goods passes to the Customer at delivery at the latest. However, in the case of sale to destination according to Customer's instructions the risk of accidental loss and accidental deterioration of the goods and the risk of delay passes to the Customer at handover of the goods to the forwarder, carrier or other person or organisation carrying out the shipping. If acceptance has been agreed then acceptance determines the passing of risk. The statutory provisions of the law on contracts for services shall apply analogously in other respects to an agreed acceptance. Default of acceptance by the Customer shall be equivalent to delivery or acceptance.

(3) The Customer must ensure that the delivery destination has an entrance road or pick-up centre which can be used by heavy-duty trucks. The unloading must be made promptly and properly by the Customer and any required equipment for this (forklifts, cranes) must be provided by the Customer.

(4) We shall be entitled to render partial services and partial deliveries at any time unless the partial delivery or partial service is of no interest for the Customer.

§ 5 Prices and Terms of Payment

(1) Unless otherwise agreed in a particular case our prices current at the time of conclusion of contract shall be valid on the basis ex warehouse, exclusive of VAT at the rate in force.

(2) In the case of sale to destination according to Customer's instructions (Section 4 (1)) the Customer shall bear the cost of transport ex warehouse and the cost of any transport insurance requested by the Customer. Any customs duties, fees, taxes and other public charges are to the Customer's account. Transport packaging and all other packaging in accordance with the Packaging Ordinance is non-returnable and becomes the Customer's property, except for pallets.

(3) The purchase price is due and payable within 14 days from invoicing and delivery or acceptance of the goods. We are entitled to demand a down payment of 60% of the purchase price. The down payment is due and payable within 14 days of invoicing.

(4) Upon expiry of the above time for payment the Customer is in default. During the default period interest at the statutory default interest rate at the time shall be due on the purchase price. We reserve the right to claim further damage caused by default. Our claim against merchants for commercial interest after due date (Section 353 of the German Commercial Code) shall not be affected.

(5) If multiple deliveries are made, each partial delivery shall be individually charged. If the Customer enters into payment default for a partial delivery, we shall, notwithstanding our other rights, be expressly freed from our obligation to make more partial deliveries until the Customer has completely fulfilled its payment obligations.

Partial deliveries will be invoiced individually. In the event the Customer is late in payment on a partial delivery, Croma-Pharma may terminate the contract without setting a final delivery date.

(6) The Customer shall have rights of set-off or retention only if the claim is *res judicata* or undisputed. Section § 7 (7) shall not be affected by defects in the delivery.

(7) If after conclusion of the contract it becomes apparent that our claim for payment of the purchase price is jeopardized by the Customer's inability to pay (e.g. an application for commencement of insolvency proceedings) we shall be entitled in accordance with the provisions of law to refuse to perform and – if necessary after fixing a time limit – to withdraw from the contract (Section 321 of the German Civil Code). In the case of contracts for the manufacture of specific items (making to specification) we can withdraw immediately; this shall not affect the legal provisions concerning the dispensability of fixing a time limit.

§ 6 Retention of Title

(1) We retain title to the goods sold until full payment of all our present and future claims arising from the contract of sale and current business relations (secured claims).

(2) Until the secured claims have been satisfied in full the goods subject to retention of title shall not be pledged to a third party or assigned as security. The Customer shall notify us immediately in writing if and insofar as a third party executes attachment of our goods.

(3) In the event of contract-breaching behaviour by the Customer, in particular failure to pay the purchase price due, we shall be entitled according to the provisions of law to withdraw from the contract and/or to reclaim the goods on the basis of the retention of title. Reclaiming does not at the same time constitute declaration of withdrawal; instead we shall be entitled simply to reclaim the goods and to reserve the right of withdrawal. If the Customer does not pay the purchase price due, we may assert these rights only if we have first set the Customer an appropriate time limit for payment without result or if setting a time limit may be dispensed with according to the provisions of law.

(4) In case of access of third parties to the retained goods, especially in case of attachment, the customer shall advise said third parties of our ownership and notify us immediately so that we can enforce our right of ownership.

(5) The Customer is authorised to resell and/or to process the goods subject to retention of title in the ordinary course of business. In this case the following provisions shall additionally apply.

(a) Retention of title extends to the full value of the products created by processing, mixing or combining our goods, in which context we shall be deemed the manufacturer. If in the case of processing, mixing or combining with third party goods the latter's retention of title still applies, we shall acquire joint ownership in proportion to the invoice values of the processed, mixed or combined goods. In other respects the same rules shall apply to the product created as to the goods delivered subject to retention of title.

(b) The Customer here and now assigns to us as security the claims against third parties arising from resale of the goods or product, in total or, if applicable, in the amount of our joint ownership share according to the previous clause. We accept assignment. The Customer's duties according to Section 2 shall also apply with regard to the claims assigned. (c) The Customer remains authorised to collect the claim with us. We undertake not to collect the claim as long as the Customer fulfils its payment obligations towards us, is not in default of payment, no application for commencement of insolvency proceedings is made and its ability to pay is not otherwise impaired. However, if this is the case we can demand that the Customer gives us details of the claims assigned and the debtors, supplies all the information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

(d) If the realisable value of the securities exceeds our claims by more than 10%, upon request from the Customer we shall release securities at our option.

§ 7 Customer's Warranty Claims

(1) Save as otherwise provided below, the Customer's rights in the event of defects of quality and legal imperfections in title (including wrong and short shipments and incorrect installation or defective installation instructions) shall be governed by the provisions of law. The special legal provisions in the case of ultimate delivery of the goods to a consumer (suppliers' recourse according to Sections 478, 479 of the German Civil Code) shall be unaffected in all cases.

(2) The primary basis of our liability for defects shall be the agreement made concerning the quality of the goods. All product descriptions that are the subject of the individual contract shall be deemed the agreement concerning the quality of the goods, irrespective of whether the product description originates from the Customer, from the manufacturer or from us.

(3) In the case that our operating or maintenance instructions are not followed, changes are made to the products, parts exchanged or consumables used which do not correspond to the original specification, then any guarantee shall become null and void if the customer does not first provide substantiated proof that one of these circumstances did not cause the fault. The legal burden of proof shall apply.

(4) In the absence of any quality agreement, the existence or non-existence of a defect shall be assessed according to the statutory provision (Section 434 (1) paragraphs 2 and 3 of the German Civil Code). We shall not be held liable, however, for any public statements by the manufacturer or other third parties (e.g. advertising messages).

(5) The Customer's warranty claims presuppose him to have fulfilled his statutory duties of examination and notification (Sections 377 and 381 of the German Commercial Code). Any defect discovered during examination or later shall be notified to us without delay. Notification shall be deemed 'without delay' if given within two weeks; the time shall be deemed observed if the notification is sent in time. Notification must be given in writing. Irrespective of the abovementioned duties of examination and notification the Customer shall notify obvious defects (including wrong and short delivery) within two weeks from delivery; the time shall be deemed observed if the notification is sent in time. Notification must be given in writing. If the Customer fails to notify defects as stipulated above, our liability for defects not notified shall be excluded.

(6) In the case that the delivered item is faulty, then the customer may demand either repair of the fault (rectification) or delivery of a flawless item (replacement), as he chooses. Should the customer fail to state which of these two rights he requires, then we reserve the right to set him a fair time limit. Should the customer not have chosen within this time limit, then the right to choose is passed to us upon expiration of said time limit.

(7) We are entitled to make due subsequent performance conditional upon the Customer's paying the purchase price due. The Customer shall, however, be entitled to withhold an appropriate part of the purchase price in proportion to the defect.

(8) The Customer shall allow us the necessary time and opportunity for due subsequent performance and shall in particular hand over the goods concerned for inspection. In the case of replacement the Customer shall return the defective item to us in accordance with the statutory provisions.

(9) Should a fault actually exist, then we shall bear the expenses incurred for the purposes of inspection and repair, specifically the costs of transportation, labour and materials. However, should a customer demand for repair be proven unjustified, then we can demand the incurred costs be reimbursed by the customer.

(10) In urgent cases, e.g. if operating safety is jeopardised or to avert disproportionate damage, the Customer shall be entitled to remedy the defect himself and demand reimbursement by us of the objectively necessary expenses incurred. We shall be advised without delay, if possible beforehand, of self-remedying of defects. The right of self remedy shall not apply if we would have been entitled to refuse corresponding subsequent performance in accordance with the statutory provisions.

(11) If subsequent performance is unsuccessful or a deadline to be set by the Customer for subsequent performance has elapsed without result or may be dispensed with according to the statutory provisions, the Customer may withdraw from the contract of sale or diminish the purchase price. No right of withdrawal applies in the case of a minor defect.

(12) The Customer shall be entitled to claim compensation or reimbursement of expenses incurred in vain only as provided in Section 8; otherwise such claims shall be excluded.

§ 8 Other Liability

(1) Save as otherwise provided in these Conditions including the provisions below, in case of breach of contractual and noncontractual duties we shall be liable in accordance with the relevant statutory provisions.

(2) We shall be liable to compensate, irrespective of legal ground, in the event of intent and gross negligence. In the case of ordinary negligence we shall be liable only

a) for damage due to injury to life, limb or health;

b) for damage due to breach of an essential contractual duty (an obligation that has to be fulfilled to enable the contract to be duly performed and on the satisfaction of which the other party regularly relies and may rely); in this case our liability shall be limited to compensation for the foreseeable damage typically occurring.

(3) The limitations of liability according to Clause 2 shall not apply if we conceal a defect with intent to deceive or if we have warranted the quality of the goods. The same shall apply to the Customer's claims under the Product Liability Act.

(4) The Customer may withdraw or cancel on the grounds of a breach of duty that is not a defect only if we are responsible for the breach of duty. The Customer's free right of cancellation (in particular in accordance with Sections 651 and 649 of the German Civil Code) is excluded. Otherwise the statutory requirements and legal consequences shall apply.

§ 9 Period of Limitation

(1) Section 438 (1) paragraph 3 of the German Civil Code notwithstanding, the general period of limitation for claims based on defects of quality and legal imperfections in title shall be one year from delivery. If acceptance has been agreed the limitation period commences at acceptance.

(2) However, if the commodity is a building or an object used for a building as a result of its customary mode of use and has caused its defectiveness (building material), and these components or parts cannot be replaced by normal assembly steps (e.g. loosening and replacement of screw fasteners or screws) the period for barring by limitation, according to the statutory regulation shall be five years from delivery (§ 438 sub-section 1 no. 2 German Civil Code). Statutory special regulations for in rem claims to return of third parties (§ 438 sub-section 1 no. 1 German Civil Code), willful deceit of the vendor (§ 438 sub-section 3 German Civil Code) and for claims of recourse against the supplier in final supply to a consumer (§ 479 German Civil Code) shall also be unaffected.

(3) The aforementioned periods of barring of purchase law shall also apply to contractual and extracontractual claims to damages of the Customer based on a defect in the commodities unless application of regular statutory barring by limitation (§§ 195, 199, German Civil Code) would lead to a shorter barring in the individual case. The periods of barring of the Product Liability Act shall remain unaffected in any case, Apart from this the statutory periods of barring shall exclusively apply to claims to damages of the Customer pursuant to Section 8 of the present Terms and Conditions of Sale.

§ 10 Patents

(1) We shall indemnify the Customer and its end customer from any claims owing to the violations of copyrights, trademarks or patents unless the design for delivery goods originates from the Customer. Our obligation to indemnify is restricted to the amount of foreseeable damages.

An additional requirement for indemnification is that we are assigned the right to conduct the legal defense and that the asserted violation is attributable exclusively to the building design of our delivery goods without being combined or used together with other products.

(2) Alternatively, we have the right to be released from the obligations assumed in Paragraph 1 in the event that we either

- a) Acquire the required licenses for the patents that have allegedly been violated
or
- b) Provide the Customer with modified delivery goods or parts which, in the event that the violating delivery goods or portions thereof are exchanged, eliminate the purported contractual violation affecting the delivery goods.

§ 11 Confidentiality

Unless otherwise expressly agreed in writing, information provided to us in connection with the order shall not be treated as confidential. The provisions of the German Data Protection Act (Bundesdatenschutzgesetz) remain unaffected.

§ 12 Choice of Law and Venue

(1) These Conditions and all legal relations between us and the Customer shall be governed by the law of the Federal Republic of Germany excluding all international and supranational (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods. Preconditions and effects of retention of title according to Section 6 shall, however, be subject to the law of the place where the item is located if the choice of law made in favour of German law is thus impermissible or ineffective.

(2) If the Customer is a merchant as defined by the Commercial Code, a legal entity under public law or a public law special fund, the exclusive venue, including in international matters, for all disputes arising indirectly or directly from the contractual relationship shall be our registered office at Munich. We shall, however, also be entitled to sue at the Customer's place of general jurisdiction.