

# Terms and Conditions of Purchase

with effect from 1st of August 2019

## 1 Acceptance and Effectiveness of Phytron Terms

Any orders placed by Phytron shall be governed solely and exclusively by the Terms and Conditions of Purchase and Supply set forth hereinbelow, as well as our guidelines for quality. By accepting our order, the supplier declares that it is in agreement with these Terms and Conditions, even if it attaches deviating sales conditions to its acceptance of the order.

Conditions contained in the supplier's confirmation that deviate from our order and our Terms and Conditions shall be recognised by us as binding only if we confirm them in written form. Silence on our part shall not be deemed to constitute consent.

Our Terms and Conditions of Purchase shall also apply to all future business relations, even if this is not expressly agreed upon again in the future. These Terms and Conditions shall be deemed accepted at the latest upon initial delivery of goods or services.

## 2 Order Confirmation

Each order must be confirmed to us immediately, giving details of prices and delivery dates. If Phytron does not receive the order confirmation within 14 days after receipt of the order letter, Phytron shall no longer be bound by the order.

Any declaration of acceptance received thereafter shall be deemed to constitute a new offer by the supplier based on our Terms and Conditions of Purchase.

## 3 Delivery Dates

It is imperative that delivery dates agreed upon should be met by our suppliers. In the event that delivery for an agreed delivery date is late, we shall be released and discharged, after a reasonable subsequent grace period, from our obligation to accept it. The supplier shall be liable for the consequences of delayed delivery.

If delays are anticipated, the supplier must immediately inform us thereof in writing and agree upon a new, non-binding delivery date with us.

## 4 Prices, Dispatch, Packaging, Transport Risk, Invoicing

Unless otherwise agreed, the prices quoted are fixed prices. The costs of packaging, freight, transport and transport-insurance are included therein. Price increases incurred by the supplier after confirmation of our order do not entitle the supplier to demand additional payment.

We reserve the right to make supplementary changes to the scope of delivery, if this is not out of the ordinary. Within the scope of reasonable expectation, we may demand changes in the design and workmanship and in the quantity of the goods being supplied. The effect of said changes, in particular with regard to additional or reduced costs or to delivery dates, shall be taken into reasonable consideration.

The risk of the goods delivered shall pass to us upon delivery to a point of receipt indicated by us. Pending further notice, your taking out transport insurance is hereby waived (SLVS<sup>1</sup> – waiver declaration).

Separate invoices are to be sent for each order indicating our reference number.

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<sup>1</sup> Abbreviation for: Speditions-, Logistik und Lagerversicherungsschein = Forwarding, logistics and ware-house insurance policy

## 5 Warranty, Liability, Product Liability

The supplier warrants that the goods to be supplied are free of defects, comply with the specifications we stipulated, have been developed and manufactured in accordance with the state of the art, are usable without limitation for the purpose for which they are intended under the terms of the contract and are in compliance with all relevant legal provisions, regulations and directives imposed by governmental authorities and specialist associations.

Warranties and warranty periods are governed by the applicable statutory provisions unless otherwise agreed hereinbelow.

In the event of repair work or subsequent delivery on account of reported defects, said period shall be extended by the period elapsed between delivery and the repair work or subsequent delivery.

For the duration of any negotiations which may be conducted with the supplier on repair work or subsequent delivery, on the amount of any damage compensation to be paid or on the amount of any price reduction, and for a further period of six months after the conclusion or failure of such negotiations, the supplier waives any claim that a limitation period has expired.

We must notify the supplier without any culpable delay during the proper course of business of any defects revealed during examination.

Thus, notifications of defects shall be deemed punctual, if externally discernible defects are reported immediately upon discovery thereof during the course of processing; in the case of concealed defects and defects in deliveries for which only random tests are possible initially, the supplier must be notified immediately after discovery of the defects.

To this extent, the supplier waives the defence of delayed notification of defects or waives the defence of expiry of a limitation period, unless the supplier proves that the notification of the defects was culpably delayed.

Payments made and/or certificates of acceptance of goods shall not constitute an acknowledgement of defect-free delivery. Goods subject to complaint shall be returned at the expense and risk of the supplier – insofar as possible.

In the event of a complaint by Phytron, the supplier shall satisfy himself within 3 working days of the defectiveness of the complained goods, and in the event of a defect, the supplier shall provide supplementary performance within a reasonable period.

In such cases, the supplier shall bear the additional costs. If a defect in the goods delivered is not discovered, through no fault of our own, until after production has commenced, we may demand – irrespective of the aforementioned rights – compensation of the damage we incurred through our own additional expenditure.

The supplier explicitly agrees that the goods delivered by the supplier may also be installed or processed, and may be sold by us worldwide. The supplier shall assume product liability for its goods in accordance with the applicable statutory provisions.

If a claim should be raised against us in connection with one of the supplier's products, the supplier undertakes to indemnify us, in our internal relationship, from all liability, if and to the extent that the defect lies within the supplier's area of responsibility according to the principles of prima facie evidence.

In addition to normal third party liability insurance, the supplier undertakes also to take out product liability insurance with an adequate liability sum for product liability risks. Phytron has the right to demand corresponding evidence thereof.

## 6 Drawings, Models, Copyright

All items, tools, models, drawings, films, DA data formats etc. shall remain our property. Such documentation and items shall be returned to us upon request. It/they may not be made available for use by third parties or made accessible to third parties without explicit consent. Copying is only permissible within the scope of business necessity and in compliance with provisions of copyright. This must be made clear to third parties by affixing clearly visible notices.

The same applies to items, drafts, drawings, samples etc. which were manufactured for us or partially for us at our expense. Drafts, drawings, samples etc., manufactured by the supplier, shall only be paid for if a specific agreement has

been made to this effect. Goods manufactured in accordance with our stipulations or models may not be shown, offered or delivered to third-party companies as a sample or made available in any other way.

The supplier represents that its goods or services are free of third party property rights and that, in particular, no third party patents, licenses or property rights are being infringed by Phytron due to the delivery, use, further processing or resale of the goods.

## 7 Tools, Retention of Title

Insofar as the supplier manufactures the goods using tools, devices, machinery or other production equipment provided by Phytron or paid for by Phytron in whole or in part, the agreements reached separately by and between the parties shall apply.

If no such separate agreements have been reached in writing, the title to such items shall pass to Phytron as of this moment.

The supplier shall store such items free of charge and with care, and they shall be adequately maintained, insured and marked with an undetachable label as being the property of Phytron. If the supplier encounters production problems and in the event of supplier's and Phytron's failure to reach agreement on the price or the delivery date for the parts which are to be manufactured with the tools etc., Phytron shall have the right to demand the immediate surrender of the aforementioned items.

Insofar as we make parts available to the supplier, we retain title to and in such parts.

If property provided by us is processed or indivisibly amalgamated with other items not belonging to us, we acquire joint ownership in the property with reserved title (purchase price + VAT) in proportion to the other items processed or amalgamated at the time of such processing.

## 8 Payment

Payment will be made according to individual agreement. If premature deliveries are accepted, the due date shall be based on the agreed delivery date. In the event of faulty delivery, we shall be entitled to withhold payment proportionally until proper fulfilment.

All our payments are made subject to reservation pending such time as the material and formal accuracy of the supplier's invoice has been established. We reserve the right to pay by cheque/bill of exchange.

## 9 Export Regulations, Export Requirements, Certificate of Origin

To comply with the statutory export/re-export regulations, the export classifications and the US Export License/License Exception if applicable must be given on the order confirmation in the case of deliveries of goods or services that are governed by national and/or EU or US export regulations.

In addition, all invoices and delivery documents must basically show the classification of the goods according to the US Commerce Control List (ECCN) and national export regulations, as the case may be, along with all customs-relevant information (HS Code, country of origin) according to the relevant national and international statutory requirements.

In the case of cross-border transport, the supplier must enclose, free of charge, the valid preference certificate (declaration of origin, goods traffic certificate, preference certificate of origin, etc.) which is required in the destination country of the goods, for import or for preferential import tax payment.

The supplier is obliged to obtain all export licences at his own expense. The supplier undertakes to find out in good time about possible export bans or export restrictions. Under such circumstances, it is agreed that there will be a right of withdrawal free of charge.

## 10 Secrecy

The contracting parties agree to keep secret any and all information stemming from the contractual cooperation. Save to the extent that such information is generally known, legally acquired from third parties or independently generated by third parties, such information shall be used exclusively for the purposes of this contract. Protected information includes, in particular, technical data, purchase quantities, prices and information on products and product developments, on current and future research and development projects, customer data and all the corporate data of the other contracting party. The supplier shall also pass the foregoing confidentiality obligations on to its employees and subcontractors.

## 11 Cancellation, Impediment

Phytron has the right to terminate the contract for good cause either in toto or in part or to demand performance at a later time without any additional claims by the supplier.

Good cause shall be, in particular, strike, lock-out or other stoppages, suspension of payments by the supplier, or the filing of an application for insolvency proceedings with respect to the supplier's assets.

## 12 Severability, Governing Law, Place of Performance

If individual provisions of these Terms and Conditions should be or become invalid or ineffective, the effectiveness of the other provisions shall remain unaffected thereby.

The parties are obliged to replace an invalid, ineffective or unfeasible provision by a provision, which is valid and feasible and constitutes the closest possible economic equivalent of the void provision.

The law of the Federal Republic of Germany applies exclusively.

In addition, the provisions of the German Civil Code (BGB) shall apply.

The place of performance for both parties shall be Munich. In case of disputes, the courts of Munich shall have jurisdiction and venue hereunder, which may be Munich Regional II (LG München II).