

## General conditions of sale of Thermphos International B.V.

### Article 1 Offers and acceptance

All offers from the seller are without prejudice, unless these contain a term for acceptance. If an offer from the seller contains an invitation without prejudice and this is accepted by the buyer, the seller shall be entitled to withdraw the invitation within two working days after receipt of the acceptance.

### Article 2 Calculations

Calculations shall be made on the basis of the prices which apply on the day of delivery. In the event of a price increase the buyer shall be entitled to dissolve the sale agreement within 14 days, following a written notification of the price increase. This right to dissolve the agreement shall not apply in the case of price increases which arise as a result of an increase in transport or customs rates.

For the calculation of goods which are invoiced on the basis of weight or volume, the weight or volume upon dispatch shall apply.

### Article 3 Payment

Payment must be made within 30 days after the invoice date, unless agreement to the contrary has been made in writing.

Costs which are incurred as a result of the payment, such as, for example, the costs charged by the bank upon payment of the invoice amount and the costs incurred when shipping documents are offered, shall be for the account of the buyer.

The buyer may only invoke a claim based on compensation of debts either if its counter claim is acknowledged by the seller or if the well-foundedness of that claim can be established in a simple manner.

### Article 4 Late payment

If the payment term is transgressed the buyer shall be automatically legally in default and the seller shall be entitled to charge the Dutch statutory interest. If an invoice has been sent in the currency of the country of the buyer and that country has a statutory interest, the seller shall, however, be entitled to charge the statutory interest of the country of the buyer. Furthermore, the buyer shall owe reasonably necessary costs for obtaining payment outside of the courts. If the recovery is placed in the hands of a barrister the costs owed by the buyer shall at least equal the current fee rates for barristers which are laid down and published by the General Council of the Dutch Bar (**'Algemene Raad van de Orde van Advocaten'**).

If:

- a. the buyer is in default and/or
  - b. the seller has good grounds to fear that the buyer will not, or will not timeously, comply with its payment obligations;
    1. the seller shall, without being obliged to pay any compensation of damages and without prejudice to all further rights to which it is entitled, have the right:
      1. to demand payment in advance or the provision of security;
      2. to postpone the performance of the sale agreement in whole or in part;
      3. to revoke payment terms which have been agreed upon, whether or not in other agreements, as a result of which all (other) outstanding claims shall be immediately claimable;
      4. to postpone its obligations under all other agreements with the buyer.
- The seller shall only be entitled to take the above mentioned measures to the extent that the (feared) shortcoming of the buyer justifies these measures.

### Article 5 Time of delivery

Agreed terms of delivery shall never be considered as fatal terms, unless express agreement to the contrary has been made. In the event of non-timeous delivery the buyer must therefore give the seller a written notice in default.

### Article 6 Force-majeure

If delivery or collection are delayed for longer than a month as a result of force majeure each of the parties shall be entitled - to the exclusion of further rights - to dissolve the sale agreement in accordance with the law.

This term of a month shall be as shorter or as longer as one of the parties proves that, according to standards of reasonableness and fairness, dissolution is justified at an earlier or later time.

Force majeure for the seller shall in any event be taken to mean:

- the circumstance that a performance which is important in connection with the performance which the seller must make itself is not, not timeously or not properly delivered to the seller;
- strikes;
- traffic disruptions;
- government measures which prevent the seller from timeously or properly fulfilling his obligations.

### Article 7 Unforeseen circumstances

If there is a question of unforeseen circumstances which are of such a nature that the buyer or seller may not reasonably and fairly expect the seller or buyer respectively to perform the agreement unchanged, the court may, at the demand of the seller or the buyer respectively, change the sale agreement or dissolve it whole or in part.

### Article 8 Dispatch

The seller shall, taking the nature of the goods which are to be transported into account, choose the most usual route and the most usual method of dispatch. The seller shall take the wishes of the buyer into account as far as possible. Extra costs caused as a result of this shall be for the account of the buyer. The seller shall not be liable for delays which arise as a result of this.

### Article 9 Claims

The buyer must investigate whether the goods which have been delivered are in accordance with the sale agreement.

The buyer may not invoke a claim based on the fact that the goods which have been delivered are not in accordance with the sale agreement if it fails to make this investigation, or does not notify the seller of the defects within the terms mentioned below. Visible defects must be reported in writing within 14 days after receipt of the goods, and hidden defects immediately after the buyer has discovered them, but at the latest six months after delivery of the goods. Complaints must be submitted in writing together with a statement of the order details, invoice and bill of lading numbers and also, if known, the charge numbers. Goods in respect of which a claim has been made may only be returned with the express permission of the seller.

In the case of well-founded and properly submitted complaints the seller shall, as it chooses and taking the interests of the buyer and the nature of the complaint into account, be obliged to:

- deliver missing goods
- give a price reduction
- repair the goods which have been delivered
- replace the goods which have been delivered
- pay back the purchase price in return for the return of the goods which have been delivered.

The seller shall make this choice within 14 days after a correct notification of the complaint and then comply with its obligations within a reasonable term; failing this the buyer shall be entitled to choose from the above mentioned obligations of the seller.

#### **Article 10 Special instructions and government regulations**

For a number of the goods sold by the seller written instructions are given by the latter for storage, working or processing, use or application, to the buyers.

For goods which have been delivered and which must be accepted by virtue of special laws, such as the Act on Provision of Medicines ('**Wet op de geneesmiddelenvoorziening**') and the Pesticides Act ('**Bestrijdingsmiddelenwet**') and/or similar foreign legislation, standards and acceptance regulations are given by or on behalf of the government.

To the extent that the buyer re-sells the goods which have been delivered - whether or not having worked or processed them - it shall provide its contract partners with the said instructions, standards and acceptance regulations, to the extent that they are applicable. The seller shall not be liable for damages which have arisen as a result of incorrect storage, processing, use or application of the goods which have been delivered. Nor shall the seller be liable if the buyer does not comply with the said government regulations.

#### **Article 11 Liability**

The liability of the seller by virtue of non-delivery or non-timeous delivery or defects in the goods which have been delivered shall be limited to the net invoice value of the goods concerned, this, however up to a maximum of the amount which the seller is able to recover in that respect from third parties or insurers.

The same limitation of liability shall apply if the seller is held liable by the buyer by virtue of reasons other than under the sale agreement.

The above limitations of liability shall not apply with regard to purposeful action or crass fault of directors and supervising subordinates of the seller.

The provisions in paragraph 3 of article 10 shall apply without restriction.

#### **Article 12 Reservation of title**

The title to the goods which have been delivered shall only pass over to the buyer if the latter has complied with everything which the seller has or may in future have to claim from the buyer by virtue of all (earlier or later) sale agreements with the buyer and/or services or work provided by the seller within that framework.

The buyer shall be obliged to provide its cooperation within reasonable limits for all measures which the seller wishes to take in order to protect the goods which have been delivered and/or its reservation of title to those goods.

If third parties wish to vest or invoke any right in the goods which fall under a reservation of title, the buyer shall be obliged to immediately notify the seller of this in writing.

As long as the reservation of title applies the buyer shall only be entitled to work or process or re-sell the goods which have been delivered itself within the normal operation of its business.

After working or procession of the said goods the seller shall become a (co-)owner of the goods which have been formed or partly formed therefrom and the buyer shall automatically proceed to hold these on behalf of the seller.

If, notwithstanding the provisions in the preceding paragraph, the seller does not acquire the title to the goods which have been formed by the buyer, the buyer shall, upon the first request of the seller, provide all necessary cooperation which is required to vest a lien, whether or not without possession, (which also accrues to other entitled parties in applicable cases) in the goods concerned for the benefit of the seller.

If the buyer does not, or does not timeously, comply with its payment obligations, or if there is a well-founded fear that this will occur, the seller shall be entitled to remove goods which have been delivered which are encumbered by the reservation of title referred to in paragraph 1, the goods referred to in paragraph 5 and also the goods referred to in paragraph 6 which are encumbered by a lien without possession, or to have these removed. The buyer shall be obliged to provide all cooperation for this, on pain of a fine of 10% of the amount which it owes to the seller, with a minimum of Dfl. 500.00 per day or part thereof that the buyer is in default in complying with this obligation.

#### **Article 13 Markings**

If the goods which have been delivered have been equipped with a mark the buyer shall only be permitted to use this mark in connection with the Product filled therewith or manufactured therefrom with the express written permission of the party which has the rights to this mark.

#### **Article 14 Transport material and packaging**

Borrowed packaging must be returned in proper condition and without Product remnants at the latest six months after delivery, carriage paid. If the packaging is not returned within the term laid down or is damaged and/or has Product remnants, the costs of replacement or repair and/or cleaning and removal respectively shall be charged to the buyer.

Packaging which has passed over to the ownership of the buyer may only be reintroduced onto the market if the company name and the logo of the seller, its trade marks and other indications have been made unrecognizable. Tanker vehicles, which are the property of or which have been made available by the seller, must be emptied immediately after arrival.

In the event of delivery in a tanker vehicle of the buyer this must be made available in a ready-to-fill condition. The buyer is responsible for compliance of the transport material and packaging which it has provided with the statutory requirements and standards for safe and proper transport. The seller is entitled to refuse to load or fill material and packaging which has been made available by the buyer if this material or this packaging does not comply with the said requirements and standards. In the event of such a refusal the seller shall not be liable for the consequences which arise from the delay.

**Article 15 Incoterms**

In addition the 'Incoterms', published by the International Chamber of Commerce in Paris, shall be applicable, always in the newest version which applies when the sale agreement is formed.

**Article 16 Applicable law and competent court**

Dutch law shall be applicable to all sale agreements. In the event of disputes which are subject to the competence of the District Court, then the only competent court shall be the District Court in the place where the head office of the seller is established; for claims of the seller, however, the District Court of the place of establishment of the buyer shall also be competent.