

# General Terms of Sale of Ecolab Deutschland GmbH

As of: February 2020

## 1. **Scope of Application**

The seller's deliveries shall take place only on the following Terms of Sale. Agreements or terms of business of the purchaser that deviate from these Terms of Sale shall, insofar as they conflict with these provisions, only be effective with the seller's express written consent. The seller's Terms of Sale shall become part of the contract no later than upon acceptance of the delivery.

## 2. **Contract**

2.1. The seller's offers shall be subject to change without notice. Supply agreements shall be effective only if confirmed by the seller in writing.

2.2. The price valid on the day of delivery, plus the taxes to be openly shown in the invoices, shall be deemed agreed upon. Price lists handed over shall form part of the contract, except where they conflict with the General Terms of Sale and/or with separate agreements.

## 3. **The Purchaser's Duties**

If the purchaser does not accept the delivery, the seller may, after having set a four-week grace period, rescind the contract or claim damages for non-performance. In the latter case, the damages to be paid shall amount to a flat rate of 10 % of the agreed net fee in the case of purchase contracts or services agreements. Both parties reserve the right to prove that a different level of loss was incurred or no loss was incurred. No reversal of the burden of proof shall be associated with the above provision. Instead of claiming these rights, the seller may, within a reasonable extended delivery period agreed upon with the purchaser, make a delivery of the same kind on the agreed terms. The cost of any second or further delivery shall be borne by the purchaser.

## 4. **Payment**

4.1. The amounts invoiced shall be paid by direct debit or in accordance with the seller's terms and conditions contained in its acknowledgement of the order or in its invoice. Invoices shall be payable net within 30 days of the invoice date. The invoice shall, regardless of the agreed terms of delivery, be issued when the goods are handed over to the carrier. Payment deadlines stated in the acknowledgement of the order and/or in the invoice, including in particular the period calculated for cash discounts, shall begin on the invoice date. Agreed cash discounts shall be permissible only insofar as no invoices already due are to be settled. If payment deadlines are exceeded, the purchaser shall be in default without a reminder having to be issued; the seller shall be entitled to claim interest at the rate of 5 % above the respective valid base interest rate of the Deutsche Bundesbank [German Central Bank], but at least 6 %. Default interest shall be due immediately. The purchaser shall only be entitled to set off on the basis of claims that are uncontested or have been determined by a final and non-appealable court judgement. It shall be impermissible to withhold the purchase amount or make deductions of any kind.

4.2. Regardless of the agreed payment method, payment or security may already be requested at any time prior to delivery if, after the conclusion of the contract, legitimate doubts arise regarding the purchaser's ability to pay or its credit-worthiness, agreed terms of payment or delivery are not met in key points, or the purchaser's business situation materially changes. In such case, the seller shall also be entitled to wholly or partly rescind at any time all contracts in progress with the purchaser or claim from the purchaser the reimbursement of its expenses or damages for non-performance. The seller shall be free to choose which right it wishes to exercise regarding each individual contract.

4.3. Travelling salespersons shall be authorised to collect payment only if they show a specific instruction from the seller's head office.

## 5. **Delivery**

5.1. In the absence of a specific directive from the purchaser, the forwarding route shall be chosen by the seller at its dutiful discretion. The delivery shall be made on a CPT ("carriage paid to" under Incoterms 2010) basis to the purchaser's domicile, provided that the currently valid minimum purchase values or volumes per delivery address are taken into account when the order is placed. Otherwise, a contribution to freight charges shall be levied at the respective valid rate. Additional freight costs in the case of express deliveries etc. shall be borne by the purchaser. There shall be no freight reimbursement in the case of collection.

5.2. The weight ascertained at the time of dispatch at the supplier's factory or at the warehouse shall be decisive for determining the weight of the delivery.

5.3. The agreed delivery period shall begin on the date of the agreement, but not before the documents, permits and clearances to be obtained by the purchaser have been provided. If an agreed delivery date is exceeded by more than four weeks, the purchaser shall have the right to rescind the contract. A right of rescission shall not exist where the seller is, through no fault of its own, unable to meet the delivery date. In this case, the purchaser may rescind the contract three months after the original delivery date was exceeded. Events that, through no fault of the seller, make it impossible or unreasonably more difficult to deliver or transport the

goods shall entitle the seller to rescind the contract or defer the delivery until the hindrance has been eliminated. These circumstances shall be communicated by the seller to the purchaser without delay. Sub-deliveries already made shall be deemed to be an independent transaction; settlement of the sub-delivery shall not be refused on account of the quantities still outstanding. If delivery is deferred for the aforementioned reasons, this shall not entitle the purchaser to the setting of a grace period or to rescission. Damage claims on account of rescission are ruled out. Where delivery or a sub-delivery is delayed due to at least gross negligence, and in cases of non-delivery / partial non-delivery, the damage claim shall be limited to the foreseeable loss. In all other respects, damage claims are ruled out.

**6. Passage of Risk**

The risk of loss of, or damage to, the goods shall pass to the purchaser when the goods are handed over to the carrier at the supplier's factory or at the seller's warehouse, unless otherwise agreed upon. The purchaser shall also bear the risk for all returned deliveries during return transportation.

**7. Warranty / Product Return**

7.1. Notification of detectable defects shall be given to the seller no later than within seven days of receipt of the delivery at the destination. Notification of non-detectable defects shall be given to the seller no later than seven days after their discovery. Samples of the delivery complained of shall be sent in. If samples are taken by neutral samplers at the place of loading, these shall be solely decisive for the appraisal of the delivery. Warranty claims in respect of processed deliveries or following reshipment shall be assertable only if samples taken on a neutral basis exist. The original residual units of the seller's delivery taken as a basis for the processing or reshipment shall be deemed to be equivalent to samples taken on a neutral basis. The same shall apply to residual units of the production batch at the seller from which the delivery complained of originates.

7.2. In the event of a defect, the purchaser shall only be entitled to request replacement of the delivery complained of, unless otherwise agreed upon. If the replacement delivery does not result in the defect being remedied, the purchaser shall be entitled to reduction of the contract price or to rescission. The agreed liability for defects shall apply in the case of all deliveries made as part of the remedying of defects. If guaranteed features are lacking, the purchaser shall have the right to, at its option, rescission, reduction of the contract price or damages. However, the seller shall be liable for defect-related consequential loss only insofar as such loss was the subject of the warranty declaration. Any claims of the purchaser that are based on a defect in the item delivered shall become statute-barred 12 months after delivery of the item. In all other respects, further claims for indirect or direct loss arising from a positive breach of obligation, from culpa in contrahendo or from tort are ruled out. This shall not apply to personal injury or damage to privately used property under the *Produkthaftungsgesetz* [Product Liability Act] or in cases of mandatory liability due to wrongful intent or gross negligence on the part of the supplier, its statutory representative or its authorised agents. Insofar as the seller's liability is ruled out, this shall also apply in favour of its employees if a claim is brought directly against these employees by the purchaser. Claims on the basis of absence of features guaranteed or arising from guarantee undertakings shall be assertable only if the features guaranteed or the guarantee undertakings have been confirmed in writing by the seller.

7.3. Goods that are defect-free and unobjectionable in all other respects when delivered shall be taken back by the seller only in accordance with its respective valid return rules.

**8. Retention of Title**

8.1. The goods shall remain the seller's property until all claims, including subsidiary claims, and all damage claims have been settled, and all cheques and bills of exchange have been honoured. The retention of title shall remain in effect even if individual claims of the seller are included in a running account, and the balance is determined and acknowledged. If goods under retention of title are processed by the purchaser in such a way that a new movable item is created, this processing shall, without the seller being obligated as a result hereof, take place on the seller's behalf. The new item shall become the seller's property. If the goods under retention of title are processed, mixed or blended with goods not belonging to the seller, the seller shall acquire co-ownership of the new item in the ratio of the invoiced value of its goods under retention of title to the total value.

8.2. The purchaser shall be entitled to on-sell, further process or use the goods under retention of title within the framework of a contract for work and services or a service agreement only on condition that the following provisions are taken into account, and the claims under subsection 8.3. also actually pass to the seller. The purchaser's powers to sell in the ordinary course of business the goods under retention of title, process these goods or use these goods within the framework of a contract for work and services or a service agreement shall come to an end if revoked by the seller as a result of any sustained deterioration in the purchaser's financial position, but no later than if the purchaser ceases its payments, or insolvency proceedings concerning its assets are applied for or instituted.

- 8.3 a) The purchaser hereby assigns to the seller the claim, along with all subsidiary rights, arising from on-selling of the goods under retention of title or from any other use of these goods within the framework of a contract for work and services or a service agreement, including any balance claims.  
b) If the goods have been processed, mixed or blended, and the seller acquires co-ownership of these goods in the sum of its invoiced value, the seller shall be entitled to the claim proportionately to the value of its title to the goods.  
c) If the purchaser sells the claim as part of genuine factoring, the seller's claim shall fall due immediately, and the purchaser shall assign to the seller the substitute claim against the factor and, without delay, pass on to the seller its proceeds from the sale.
- 8.4. As long as the purchaser meets its payment obligations, it shall be authorised to collect the claims assigned. This collection authority shall come to an end when revoked, but no later than if the purchaser defaults on payment, or the purchaser's financial situation materially deteriorates. The seller is hereby authorised by the purchaser to give the buyers notification of the assignment in such case and collect the claims itself. The purchaser shall, on request, hand over to the seller a precise list of the claims to which the purchaser is entitled, along with the names and addresses of the buyers, the sum of the individual claims, the invoice date etc., provide the seller with all information necessary for asserting the claims assigned and permit the seller to check this information.
- 8.5. If the value of the security existing for the seller exceeds the seller's total claims by more than 20 %, the seller shall, at the request of the purchaser or a third party impaired by the seller's excess security, release security of its choosing to this extent.
- 8.6. It shall be impermissible to pledge or assign as security the goods under retention of title or the claims assigned. The seller shall be given immediate notification of attachments, along with the name of the pledgee. If the seller repossesses the delivery item on the basis of the retention of title, this shall only constitute rescission of the contract if the seller expressly declares so. The seller may satisfy its claims by selling on the open market the repossessed goods that are under retention of title. The purchaser shall hold in safekeeping for the seller, free of charge, the goods under retention of title. It shall insure these to the ordinary extent against customary risks such as, for example, fire, theft and water. The purchaser hereby assigns to the seller, in the sum of the invoiced value of the goods, the compensation claims to which it is entitled from claims of the aforementioned kind against insurance companies or other parties liable for damages. The seller hereby accepts this assignment.
- 9. Loaned Packaging / Pallets**
- 9.1. Insofar as an agreement concerning the provision of goods on pallets is concluded, the seller shall be prepared to deliver lots on Euro-pool pallets of the dimensions 800 x 1200 mm. Delivery shall take place only on a one-to-one swap basis, i.e. the pallets delivered with the goods shall be swapped for the same number of undamaged empty pallets (only Euro-pool pallets in each case). Pallets returned to the seller damaged, but in repairable condition, shall be charged at the repair cost; non-repairable pallets shall be charged at the replacement value. It shall be incumbent upon the customer to prove in individual cases that pallets were already damaged when it took possession of them. If pallets are lost, the recipient shall obtain replacements or pay to us an amount equal to the replacement cost.
- 9.2. All packaging that is not expressly referred to in the invoices as loaned packaging or returnable containers shall be subject to the statutory provisions. The seller shall make available returnable containers on loan until emptied. These containers shall be returned by us to the production sites for further use.
- 10. Final Provisions**
- 10.1. If any individual provisions of these terms of delivery, or individual provisions governing the delivery transaction, are or become ineffective, this shall not affect the effectiveness of the remaining provisions. The contractual partners shall agree upon a new provision that most closely reflects the purpose pursued with the correct provision.
- 10.2. Unless otherwise agreed upon, the seller's registered office shall - insofar as legally permissible - be the exclusive place of performance for all obligations ensuing from the delivery transaction and be the place of jurisdiction for all disputes in connection with the delivery transaction and/or any documentary procedure.
- 10.3. The relations between the seller and the purchaser shall be subject exclusively to the laws of the Federal Republic of Germany. The provisions of the Uniform Law on the International Sale of Movable Goods, the Uniform Law on the Formation of Contracts for the International Sale of Moveable Goods and the United Nations Convention on Contracts for the International Sale of Goods are inapplicable.