

## General Sales Conditions

Mantis ULV-Sprühgeräte GmbH  
Vierlander Str. 11a  
21502 Geesthacht, Germany  
(„Vendor“)

### 1. Scope of Validity

- 1.1. The following Sales Conditions apply to all contracts concluded between Vendor and Client for the supply of goods and services. They also apply to all future business transactions between the contracting parties, even if they have not been expressly agreed upon.
- 1.2. Only these General Sales Conditions apply. Deviations from these conditions will only be expressly agreed on in writing. The applicability of any term or provision referred to by the Client is expressly excluded.
- 1.3. All agreements made between Vendor and Client relating to the purchase of goods and services, are recorded in the purchase contract, these conditions and the confirmation of order by the Vendor. Possible supplementary agreements, which have been made, are invalid.
- 1.4. With regard to the interpretation of these General Sales Conditions, the original German version (“AGB”) supersedes this translation into English, which is provided for informational purposes only.

### 2. Offer and Acceptance

- 2.1. Vendor’s information as communicated in catalogues, brochures, price lists, quotations, and offers is subject to change without notice and non-binding, unless Vendor has expressly indicated in writing that this is binding. Catalogues, drawings, quotations and other documents remain the property of the Vendor. The Copyright of the Vendor remains unaffected at all times.
- 2.2. The contract materializes after the written confirmation of order by the Vendor. If there is no written confirmation of order, both the delivery note, and invoice of the Vendor are also valid as a confirmation of order. In these cases, the contract materializes following acceptance of the delivery by the Client.

### 3. Delivery

- 3.1. Delivery dates or deadlines, which have not been expressly agreed, are only unbinding approximate statements.
- 3.2. If the delivery item is en route to the Client or has been declared ready for shipment prior to expiry of the delivery date, then the delivery date has been met.

- 3.3. The Vendor is authorized in justified special cases, particularly for operational reasons, to carry out part deliveries without prior notice and to charge for them separately.
- 3.4. The Vendor is not responsible in case the delivery of goods and/or service are delayed due to force majeure or special events upon which the Vendor has no influence and which can be proven to have considerable influence on the delivery, this includes in particular strikes, lock-outs, official directives, material shortfalls, non-availability of goods, or the inability to deliver goods, materials or parts by Vendor’s suppliers and/or sub-contractors. The Vendor must inform the Client immediately of the start and end of such a delay. In the case of a temporary delay, the Vendor is authorized to postpone the delivery for the length of the delay plus an appropriate lead-time. If this is impractical, Vendor has the right to partly or completely withdraw from the contract for to the part, which has not been fulfilled. The Client can require the Vendor to clarify if he is withdrawing or will deliver within an appropriate time period. If the Vendor does not provide such clarification, Client can withdraw, if as a result of the delay, the delivery cannot be expected.
- 3.5. Vendor will inform the Client immediately if the delivery items are not available and, in the case, a complete or partial withdrawal, refund the Client immediately for any corresponding advance payments.
- 3.6. If the Vendor does not meet binding delivery dates or experiences a delay with the delivery, the Client is entitled to withdraw from the contract after the expiry of a reasonable extension period.
- 3.7. Vendor is liable for delays due to intent or gross negligence on the part of the Vendor or of a representative or person employed to fulfill the contract according to the legal regulations in force. The liability of the Vendor is limited however, in cases of gross negligence, to predictable damages typical for this type of contract. Apart from in the case of intent or gross negligence, Vendor’s liability is limited to compensation for damages and futile expenses of 5% in total due to delay in services and to 5% of the delivery total in lieu of performance. Further claims from the Client are excluded, including after any expiry of deadline for services set by the Vendor. The preceding limits

are not applicable to liability due to injury to life or bodily harm. The above provisions do not imply a change to the burden of proof to the disadvantage of the Client.

- 3.8. Vendor is liable if delivery is impossible due to intent or gross negligence on the part of the Vendor or of a representative or person employed to fulfill the contract according to the legal regulations in force. The liability of the Vendor is limited however, in cases of gross negligence, to predictable damages typical for this type of contract. Apart from in the case of intent or gross negligence, Vendor's liability is limited to compensation for damages and for futile expenses of 10% in total of the value of the delivery. Further claims from the Client are excluded. The above provisions are not applicable to liability due to injury to life or bodily harm. The right of the Client to withdraw from the contract, in the case of Vendor's impossibility to deliver, remains unaffected. The above provisions do not imply a change to the burden of proof to the disadvantage of the Client.
- 3.9. If Client defaults in taking receipts of the goods or services, Vendor has the right, after an appropriate period of grace linked to a penalty of non-performance, to demand compensation for damages due to failure to fulfill obligations amounting to 10% of the contract value total, irrespective of the possibility to prove higher damages. On his part, Client has the right to prove that damage did not arise or were considerably smaller.

#### 4. Ownership and Transfer of Risk

- 4.1. The place of fulfillment for the services is the registered office of the particular supplier or warehouse of the Vendor.
- 4.2. Dispatch always takes place at the risk of the Client, also in case of part deliveries or in case the Vendor has accepted to take on additional services or obligations such as transport costs.
- 4.3. In the absence of special instructions, packing and the choice of means and route of transport will be carried out according to best judgment of the Vendor. The act of taking delivery of the goods without written complaint, is considered a confirmation that packaging was in perfect condition upon receipt and excludes the Vendor from liability for damage or losses due to inappropriate packaging or loading of goods, except for liability due to intent or gross negligence.
- 4.4. The risk of accidental damage or deterioration of the goods automatically transfers to Client at the point at which the goods are handed over to the transport company, irrespective of the means of

transport. If the Client is collecting, or arranging collection of, the goods, the risk transfers to the Client upon notification that the goods are ready for collection.

- 4.5. If dispatch or receipt is delayed on the request or at the fault of the Client, the risk of accidental damage or deterioration transfers to the Client at the time, when the Vendor has given notice in writing that the goods are ready for dispatch or collection. In this case, the Vendor is entitled to charge storage costs of 0.5% of the invoice total per month, beginning two weeks after notice of readiness for dispatch. The Client has the right to prove that the costs do not exist or are considerably lower. The Vendor is allowed to prove that higher costs have been incurred.
- 4.6. The Vendor is entitled to insure the transport risk and to invoice the costs of such insurance to the Client, unless the Client has files written opposition to such insurance.

#### 5. Terms of Payment

- 5.1. Prices are calculated strictly net, ex works, excluding packaging, insurance, import/export or other additional costs and are excluding applicable statutory value added tax. Packaging is calculated at cost price by the Vendor.
- 5.2. If the agreed delivery date exceeds a period of 4 months from signing of the contract, or delivery is delayed over 4 months from signing of the contract for reasons, which are the sole responsibility of the Client, or which fall into Client's risk area, the Vendor is entitled to calculate the price valid for delivery on the day. If the price increase is more than 5% of the initially agreed purchase price, the Client is entitled to withdraw from the contract. This right of withdrawal does not apply if the Client does not exercise it within a period of 2 weeks from the date of notification of the new price.
- 5.3. Payment is due in its entirety upon delivery or acceptance of the offer (See § 2 & 3 above). The Client is in default of payment, without further notification by the Vendor, 30 days after the due date. Payment terms are considered to have been complied with, if the Vendor is in possession of the amount due latest on the agreed payment date. In the case of the existence of defects, the Client does not have the right to withhold payment, unless the delivery is obviously deficient. In such a case, the Client is only entitled to withhold payment, to the extent that the retained payment is in reasonable relation to the defects and the estimated costs of making the improvements (in particular the removal of the defect). Client is not entitled to any demands or claims due to defects, if payments have not been made (including

possible payments on account) and any outstanding payments can only be in reasonable relation to the defects of the delivery.

- 5.4. Only at Vendor's choice, can payments be allocated against other outstanding debt.
- 5.5. Withholding or offsetting payment by the Client is not allowed, unless the withholding or offsetting is undisputed or legally established. Vendor is entitled to assert any right of retention in the form of a security deposit or bank guarantee.
- 5.6. In case of a delay in payment, Vendor is entitled to charge interest on arrears of 8 percentage points over the base-lending rate (according to § 247 BGB). Moreover, the Vendor is entitled to charge an administration fee, for costs that arise due to the delay, to the amount of 10, -- Euro. Client is allowed to prove that no damage or considerably less damage has arisen. In turn, Vendor is allowed to prove that higher damages have arisen.

## **6. Retention of Title and Ownership**

- 6.1. Vendor reserves the right to ownership of the goods (retention of title) until all payments of the purchase contract have been received.
- 6.2. Client must notify Vendor immediately in writing of all access by third parties, in particular of enforcement measures and other infringements on his ownership. Client must compensate Vendor for all damage and costs, which arise due to a breach of this duty and due to necessary intervention measures against access by third parties.
- 6.3. If Client does not comply with the obligation of payment, Vendor can demand the withdrawal of goods subject to the retention of title without prior notice. The resulting transport costs are the responsibility of the Client. Seizure of the goods under retention of title by the Vendor shall always represent a withdrawal from the contract. The Vendor is authorized to dispose of the goods under retention of title. The proceeds of the sale, minus reasonable administration costs, will then be offset against the Vendor's liabilities.

## **7. Warranty**

- 7.1. The Vendor warrants that the products and spare parts sold are free from defects in title, material and workmanship upon delivery.
- 7.2. Warranty claims lapse after 24 months, respectively after 12 months in case of commercial use of the goods. The limitation period begins at delivery. The warranty expires, if the delivered goods change or are handled incorrectly.
- 7.3. Defects resulting from normal wear and tear, negligence or misuse, remodeling or accidents, as well as those that occur after modifications or repairs, are not covered by the warranty.

- 7.4. If the transaction is of commercial nature for both Vendor and Client, Client must examine the goods immediately upon receipt, as far as this is possible during the regular course of business. In case of a defect, Client must inform the Vendor immediately
- 7.5. If the Client does not make a complaint, the goods are considered approved, unless there is a defect, which was not visible during the examination. Furthermore §§ 377 ff. HGB applies.
- 7.6. The Vendor may choose to eliminate the defects or deliver an item free of defects, (rectification of defect(s)). If the defect(s) cannot be rectified, the Client has the right to choose to either demand a reduction in price or to withdraw from the contract.
- 7.7. The obligation of the Vendor is limited to the replacement of the parts, which in the opinion of the Vendor have material defects. The Client is required to carry out the repair or replacement of the part to be replaced.
- 7.8. Further claims from the Client, in particular due to consequential damage caused by a defect are in principle disqualified. This does not apply in cases of intent, gross negligence or breach of contract by the Vendor, nor in cases of injury to life, or bodily harm. The right of the Client to withdraw from the contract remains unaffected.
- 7.9. The Vendor is not responsible for material defects on deliveries, which he sources from third parties and forwards unchanged to the Client. Responsibility in the case of intent or gross negligence remains unaffected. The preceding regulations do not imply a change to the burden of proof to the disadvantage of the Client.
- 7.10. Claims for defects do not exist in the event of a minor deviation from the agreed condition of the delivered goods, or in case of insignificant impairment of usability.
- 7.11. The Vendor reserves the right to check the defective parts to determine whether the defect was caused by incorrect use, improper handling or changes to the products by the user.
- 7.12. Client shall bear the costs of additional shipping charges for the purpose of the rectifying defects, if they are higher due to delivery to a different place than the place of business of the Client, unless this place is where the goods or services are used during the normal course of business.

## **8. Liability**

- 8.1. Vendor is liable in cases of intent or gross negligence by the Vendor or a representative or person employed to fulfill the contract according to the legal regulations. Apart from that the Vendor is only liable according to the *Product Liability Act*, for culpable fundamental breaches of

contract. A claim for damages for fundamental breaches of contract is however limited to predictable damage typical for the contract, unless at the same time a case of intent or gross negligence, as described here above, exists. In cases of gross negligence, the liability of the Vendor is also limited to predictable damage typical for the contract, if at the same time another of the exceptional cases set out in the beginning of this paragraph (§) does not exist.

- 8.2. The provisions of the preceding § 8.1 shall apply to all claims for damages (in particular compensation for damages in addition to performance and compensation in lieu of performance), irrespective of the legal basis, in particular for defects, the violation of obligations arising from the contractual relationship or tort. They also apply to the claim for reimbursement of futile expenses. However, the liability for default is determined according to § 3.7, the liability for impossibility according to § 3.8.
- 8.3. The above provisions do not imply a change to the burden of proof to the disadvantage of the Client.

## **9. Final Clauses**

- 9.1. The place of jurisdiction for deliveries and payments (including checks and bills of exchange) as well as all disputes arising between the contracting parties shall be the Vendor's court of jurisdiction. The Vendor reserves the right to bring an action against the Client at any other place of legal jurisdiction of its choice. The relationships between the contracting parties are governed exclusively by the applicable law of the Federal Republic of Germany to the exclusion of the UN Convention on contracts for the International Sale of Goods.
- 9.2. Client can only transfer his rights and obligations from this contract to a third party with the explicit written consent of the Vendor. This agreement is however not necessary, if the transfer takes place within the scope of an effective extended reservation of title, which the Client has agreed with a third party within the scope of § 6.
- 9.3. Should individual provisions of the above General Sales Conditions or parts thereof be invalid, the validity of the remaining provisions shall remain unaffected. An ineffective provision of these General Sales Conditions shall be replaced by the effective provision closest in its economic results to the ineffective provision.

BGB: <http://www.gesetze-im-internet.de/bgb/index.html>

Product Liability Act: <https://www.gesetze-im-internet.de/bundesrecht/prodhaftg/gesamt.pdf>

## **Links and References:**

HGB: <http://www.gesetze-im-internet.de/hgb/index.html>