

# INTERNATIONAL SALES CONDITIONS

## 1. GENERAL TERMS

1.1 All and any business undertaken by Pindstrup Mosebrug A/S (hereinafter called (the "Company") in respect of its products (hereafter called the "Goods") is transacted subject to conditions hereinafter set out, each of which shall be deemed to be incorporated in and to be a condition of any contract between the Company and any person, firm or company who purchases the Goods from the Company (the "Customer").

1.2 No agent, representative or employee of the Company, save only the managing director for the Company, has the authority to alter or vary these conditions, and the Company does not recognise any terms and conditions of contract supplied by the Customer unless so specifically agreed in writing. Execution of, or compliance with or implementation of orders does not imply acceptance of the Customer's terms and conditions.

## 2. OFFERS AND ORDERS

2.1 The Company's offer is valid for 4 weeks, unless otherwise agreed in writing.

2.2 A binding contract of sale only exists, when the Customer has received a written order confirmation from the Company.

2.3 Whilst every effort will be made to despatch the exact quantities ordered, due to weight restrictions on certain vehicles, containers, etc., the Company reserves the right to despatch the nearest combination to that ordered.

2.4 Any date of delivery specified in the written order confirmation is solely a guideline.

## 3. CONSULTATION AND THE CHARACTER OF THE GOODS

3.1 The Company and its employees give each form of consultation – spoken and written – from their best knowledge and on the basis of their own experiences. The particulars and details concerning application and use of the Goods are not binding for the Company and do not exempt the Customer from testing the Goods or research. The Customer is responsible for legal and official regulations while using the Goods.

3.2 Any oral or written instructions, guidelines, taking measurements, calculations, etc., that the Company or anyone acting on behalf of the Company may provide in connection with the Customer's purchase of the Goods are information only and cannot lead to any liability for the Company.

3.3 The Customer is solely responsible for the Goods conforming to the specific purpose of the Customer, and the Company assumes no liability whatsoever for the Goods not conforming to the Customer's intentions or not being fit for any purpose of the Customer, regardless whether the Customer has disclosed such intentions or proposed purpose with the Goods to the Company.

3.4 Where chemicals or controlled release fertilisers have been incorporated it is the Customer's responsibility to refer to manufacturers recommendations on all matters relating to conditions of use, including storage time, plants sensitivity etc.

## 4. PRICES

4.1 All prices are quoted without engagement and all price lists are subject to alteration without notice. The Company reserves the right to invoice at prices ruling at the date of despatch irrespective of the date of order.

4.2 All prices are in DKK excluding any carriage costs, VAT, taxes and any processing fee, unless otherwise specifically agreed.

## 5. PAYMENT AND SECURITY

5.1 Terms are strictly net cash with order, unless credit facilities have been arranged or other arrangements been made.

5.2 Where credit facilities have been granted, payment must, unless otherwise specifically agreed, be made to the Company within 30 days of the date of invoice and a surcharge of 2% per month will be payable for each month thereafter provided always that, where a credit period has been allowed by the Company to the Customer, the

Company shall, notwithstanding that allowance, be entitled at any time during such period to serve notice requiring immediate payment by the Customer in any of the following circumstances:

(a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

(b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under this agreement or any other agreement between the Company and the Customer; or

(c) the Customer encumbers or in any way charges any of the Goods; or

(d) the Customer fails to pay any amount owing to the Company which shall have come due; or

(e) the Customer is in breach of any agreement with the Company; or

(f) in the opinion of the Company, the Customer is or is likely to become insolvent; or

(g) the Customer suffers a change of management or control which in the opinion of the Company shall adversely affect its suitability for extended credit.

5.3 If the Customer fails to pay on time, the Company shall be entitled to interest from the day on which payment was due and to compensation for recovery costs. The rate of interest shall be as agreed between the parties or otherwise 2% per month. In case reminders are sent out, the Company is entitled to charge a reminder fee.

5.4 In case of failed payment, the Company is entitled to refer the matter to debt collection without notice. The Customer is liable to pay the fixed collection charges, which may exceed the amounts set out in the Executive Order on Extrajudicial Collection Costs relating to overdue payment (Bekendtgørelse om udenretlig inddrivelsesomkostninger i anledning af forsinket betaling).

5.5 The Company is always entitled to require security for due payment.

5.6 If the Customer fails to pay on time, the Company is entitled to withhold all further deliveries to the Customer, regardless of whether the deliveries are mutually interrelated.

## 6. SET-OFF AND WITHHOLDING OF PAYMENT

6.1 The Customer has no rights to set-off against the Company's claims, unless the counterclaim has been established as legally valid by an arbitral tribunal, or is due and uncontested by the Company.

6.2 The Customer has no rights to reserve or withhold payment or raise any objections based on claimed defects or any other grounds, unless the Company has accepted the Customer's right in writing or the Customer's right has been legally established by an arbitral tribunal.

## 7. CANCELLATION

7.1 The Customer cannot change or cancel orders later than 3 weeks before indicated dispatch date. The Company may, at its discretion, accept to re-direct loads in transit, but any additional costs incurred will be charged to the Customer.

7.2 If the Customer in spite of the above clause fully or partially cancels or changes an order, the Customer will be liable for any loss of profit and any other costs / losses incurred by the Company.

## 8. DELIVERY AND PASSING OF RISK

8.1 Any date of delivery specified in the written order confirmation is solely a guideline.

8.2 Unless otherwise agreed, the Goods are delivered Ex Works (Incoterms 2010) at the Company's registered address or any other place specified by the Company. Accordingly, any shipment or transport is at the Customer's risk and cost.

8.3 If a time of delivery has been agreed, the Company has the right to an extension in the following situations:

(a) Force majeure, see Section 16.

(b) In case of delay caused by the Company's suppliers, transporters or other third parties.

(c) Unusual weather conditions.

(d) Labour disputes and strikes (for any reasons).

(e) Public orders or prohibitions which the Company could not have foreseen.

8.4 The Company shall have no liability in respect of failure to deliver arising from circumstances outside its control.

8.5 Time for delivery will be estimated as accurately as possible but is not guaranteed, and the Company accepts no liability for loss, damage or consequential loss in respect of delay in delivery.

8.6 If an unloading zone has not been specified at the time of delivery, the Goods will be unloaded without risk for the Company, where the transporter deems it reasonable.

8.7 The Customer is obliged to inspect and examine the received Goods and provide the necessary manpower for unloading.

## 9. RETENTION OF TITLE

9.1 Ownership of the Goods shall – to the extent permitted by law – not pass to the Customer (retention of title) until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods.

9.2 Until ownership of the Goods has passed to the Customer, save however where the Customer in its ordinary course of business has taken the Goods into use so that the Goods can no longer be identified or separated from other products, the Customer shall:

(a) hold the Goods on a fiduciary basis as the Company's bailee;

(b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

(d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

9.3 The Customer's right to possession of the Goods shall terminate immediately if:

(a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer, or

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(b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under this agreement or any other agreement between the Company and the Customer; or

(c) the Customer encumbers or in any way charges any of the Goods; or

(d) the Customer fails to pay any amount owing to the Company which shall have come due; or

(e) the Customer is in breach of any agreement with the Company; or

(f) in the opinion of the Company, the Customer is or is likely to become insolvent.

9.4 The Customer shall ensure that if the Goods become, or could be regarded as becoming, fixed to any land, building or other property, every person who has an interest in that land, building or property will give the Company a written waiver and a right to enter that land or building to retake possession of the Goods. However, in the event that title should not remain with the Company, the Customer will be liable for any loss of profit and any other costs / losses incurred by the Company.

9.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

9.6 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

9.7 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

9.8 On termination of any agreement between the Company and the Customer for the sale and purchase of the Goods, howsoever caused, the Company's (but not the Customer's) rights contained in this Section 9 shall remain in effect.

9.9 The retention of title shall not affect the passing of risk, see Section 8.

## 10. NO RESELLING

10.1 The Customer may not resell or otherwise dispose of the Goods, unless prior written approval has been obtained from the Company. If the Customer resells or disposes of the Goods, the Company undertakes no liability whatsoever, neither towards the Customer or any third party, and any costs or losses incurred by the Company in this regard shall be fully reimbursed by the Customer.

## 11. NOTICE OF AND LIABILITY FOR DELAY

11.1 Time for delivery will be estimated as accurately as possible but is not guaranteed.

11.2 In case of delay, the Customer must send a written notice to the Company.

11.3 In case of delay, the Customer is entitled to serve notice requiring delivery within a reasonable time.

11.4 In case of significant delay, or delay in delivery following a notice under Section 11.3, the Customer may declare the Order avoided. However in case of subsequent deliveries, the Customer will only be entitled to declare the delayed partial delivery avoided, although the deliveries are interrelated.

11.5 The Customer is only entitled to compensation if the Customer – subject to Section 11.4 – declares the Order avoided. The compensation is calculated as an amount equal to the additional costs incurred by the Customer following a purchase of similar goods from others. The compensa-

tion shall never exceed the contract price of the particular consignment of Goods, and the Customer cannot claim anything else from the Company.

11.6 Except for the above Section 11.5, the Company accepts no liability for late delivery, including liability for loss, damage or consequential loss, whether direct or indirect.

## 12. THE CUSTOMER'S DUTY OF INSPECTION AND NOTICE OF DEFECTS

12.1 The Customer must immediately upon delivery – and before use – inspect and examine the Goods delivered.

12.2 Any shortages or damages must be recorded on the Company's delivery docket, and both the carrier and the Company must be notified in writing within four (4) days of delivery. Claims for shortages, together with a signed copy of the Company's delivery docket must be received by the Company within two (2) weeks of delivery. Otherwise, the claims will not be accepted.

12.3 Any notice of defects, which the Customer has or should have discovered, must be submitted in writing immediately and within seven (7) days from the discovery hereof. Otherwise, the claims will not be accepted.

12.4 The Company shall in no event be liable for defects or any consequences hereof if notice has not been received in writing by the Company within one (1) year from delivery.

## 13. LIABILITY FOR DEFECTS AND CERTAIN DAMAGE OR LOSS (INGREDIENTS/COMPONENTS)

13.1 All descriptions and illustrations contained in the Company's catalogues, price lists, advertisements, or other documents and verbal advice and information communicated to the Customer are intended to represent a general idea of the Goods so described and their appropriate use and nothing in any of them shall form any part of the contract.

13.2 The Customer accepts that peat and related products are natural in origin and that naturally occurring variations in quality and homogeneity of goods of this type are normal.

13.3 The Goods must be used, handled, stored, mixed or applied only in accordance with the Company's recommendations. The Company shall not be liable for any loss or damage resulting from any use, handling, storage, mixing or application otherwise than in accordance with those recommendations. The Customer undertakes to notify any person to whom he passes the Goods of the need to comply with the Company's recommendations as to use, storage, mixing, handling or application, and the Customer shall indemnify the Company in respect of any loss or damage incurred by the Company as a result of any failure by the Customer so to do.

13.4 In case of defects, and subject to a timely notice under Section 12, the Company can either remedy the defects or deliver substitute Goods.

13.5 If the Company has not remedied the defects or delivered substitute Goods within a reasonable time, the Customer can declare the Order avoided by written notice to the Company.

13.6 The Customer is only entitled to compensation if the Customer – subject to Section 13.5 – declares the Order avoided. Save as stipulated in Section 13.7, the compensation is calculated as an amount equal to the additional costs incurred by the Customer following a purchase of similar goods from others. The compensation shall never exceed the contract price of the particular consignment of Goods, and the Customer cannot claim anything else from the Company.

13.7 In the event that the Goods due to defects, for which the Company is liable in negligence under applicable law, cause damage to or loss concerning the Customer's property;

- a) which the Goods have been made part of, mixed with or incorporated into, joined with, used as packaging for, or

with which the Goods are otherwise connected,

- b) which the Goods are processed into or used in the processing of or for which they are used as feedstuff,
- c) where the Goods are used in the manufacturing, processing or other kinds of treatment of such property,

the Customer is entitled to compensation for any direct loss incurred whenever, as a result of the defective Goods, a manufactured or processed object has to be discarded, scrapped or repaired, its manufacturing or processing costs increase or its value decrease, provided always that the Customer shall be entitled to compensation only if and to the extent such compensation is covered under the Company's product liability insurance.

The compensation shall be calculated as the decrease in the value of the manufactured or processed object, extra manufacturing or processing costs, or the repair costs itself.

In no event can the total compensation for defects in Goods delivered in one calendar year exceed the value of the manufactured or processed object(s) without defects or DKK 1,000,000, whichever the lower.

13.8 The above-mentioned remedies are the Customer's sole remedies, and the Company accepts no liability for any indirect, special, punitive or consequential losses or damages, including but not limited to loss of profit, loss of business, operating losses, and legal costs or fees, regardless whether such losses or damages are suffered by the Customer or a third party.

## 14. NO LIABILITY FOR ADMIXTURE OF THE GOODS

14.1 Adding ingredients or components to the Goods may amend the characteristics of the Goods and cause loss or damage. Accordingly, the Company accepts no liability for any admixture of the Goods. This waiver of liability applies if the Customer, or anyone acting on the Customer's behalf or under the Customer's instructions, prior to use of the Goods adds or mixes any ingredients or components, such as e.g. peat, clay, composted green waste, etc. with the Goods. The waiver of liability also applies if the Company has made the admixtures to the Goods following instructions from the Customer.

## 15. ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE GOODS (PRODUCT LIABILITY)

15.1 To the extent permitted by law, and save as explicitly stipulated in these Conditions of Sale, the Company shall, regardless of cause, have no liability for damage to the Customer's or a third party's property or for losses relating thereto.

15.2 For the avoidance of doubt, nothing in these conditions shall be construed as excluding any liability following from mandatory provisions in the Danish Product Liability Act for any death, personal injury or damage to consumers' items.

15.3 The Company shall be liable for physical damage to commercial property caused by defects in the Goods, for which the Company is liable in negligence under applicable law, provided always that the Company shall only be liable if and to the extent there is coverage under the Company's product liability insurance, and in no event shall the Company's total liability relating to Goods delivered in one calendar year exceed DKK 1,000,000.

15.4 The Company shall in no event, regardless of cause, be liable for any indirect, special, punitive or consequential losses or damages, including but not limited to loss of profit, loss of business, operating losses, and legal costs or fees, regardless whether such losses or damages are suffered by the Customer or a third party.

15.5 In respect of all third party claims, including but not limited to property damage, death or personal injury, the Customer shall, to the extent permitted by law, hold harmless and indemnify the Company fully against any and all claims, costs and fees exceeding the Company's relevant limits of liability expressed elsewhere herein.

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## 16. LIABILITY FOR MICROORGANISMS

16.1 The Goods are free of human or phytopathogenic microorganisms, despite the fact that the Goods are a growing media. However, the Goods are not sterile, but microbially active. Microorganisms can be autochthonous or can colonise the Goods (being a growing media) during storage or crop cultivation which may depend on the season and cultivation conditions. By far the largest percentage of all the Goods when being a growing media contain high percentages of organic materials which are automatically exposed to microbial decomposition by means of fungi, bacteria, actinomycetes and other organisms. Saprophytic nematodes can be present in small numbers due to the Goods being a growing media. The addition of nutrients and lime can promote the growth of saprophytic organisms.

16.2 The Company accepts no liability for damage to property or financial losses which are caused by ubiquitous colonisation of microorganisms as well as by a ubiquitous occurrence of saprophytic organisms, such by the growth of fungus on or in the Goods, and such cases shall not be considered a defect in the Goods.

16.3 The above exclusion of liability shall, however, not apply in cases where the Goods (being a growing media) are contaminated anthropogenically with an unnaturally and / or atypically high number of saprophytic organisms or microorganisms at the time the risk passes cf. Section 8, provided that the Company has caused this anthropogenic contamination by intent or gross negligence. Unless the damage / loss has been caused intentionally, the Customer's remedies, and the Company's liability, shall be equivalent to those applicable to defects and product liability as set out elsewhere in these Conditions of Sale, including Sections 13, 15 and 19.

## 17. NO DIRECT CLAIMS

17.1 Except when prior written approval from the Company has been obtained, the Customer can under no circumstances make a direct claim against a subcontractor or subsupplier of the Company, regardless the basis on which such claim is based, including, but not limited to, product liability, negligence claims, warranty, tort or professional liability.

17.2 Nothing in this Section 17 shall be construed as excluding any admissibility of claims based on mandatory law provisions.

## 18. FORCE MAJEURE

18.1 The Company will endeavour to carry out any contract entered into under these International Sales Conditions but due performance of it is subject to variation or cancellation as a result of force majeure, an act of God, war, strike, lock-out, riot, civil disturbance, criminal damage, inclement weather, flood or any other cause beyond the Company's control or owing to the Company's inability to procure materials or articles except at increased prices due to any of the foregoing causes.

18.2 The Company accepts no liability for loss, damage or consequential loss in respect of delay in delivery or cancellation in the above-mentioned situations.

## 19. GENERAL LIMITATION OF LIABILITY

19.1 Save as otherwise stated in these International Sales Conditions, the Company shall in no event, regardless of cause, be liable for any indirect, special, punitive or consequential losses or damages, including but not limited to loss of profit, loss of business, operating losses, and legal costs or fees, regardless whether such losses or damages are suffered by the Customer or a third party. For the avoidance of doubt this limitation of liability shall apply regardless the basis on which such losses or damages are based, including but not limited to delay, defects, product liability, professional liability, contract, warranty and tort.

## 20. SEVERANCE

20.1 If any provision of these International Sales Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the International Sales Conditions and the remainder of such provision shall continue in full force and effect.

## 21. GOVERNING LAW AND JURISDICTION

21.1 All contracts shall be governed by and construed in accordance with the laws of Denmark, including the International Sales of Goods Act (CISG), excluding any choice of law rules provided that such rules would lead to the application of other laws than the laws of Denmark.

21.2 Any dispute arising out of or in connection with these Conditions of Sale or any contract between the Company and the Customer, including any disputes regarding the existence, validity or termination thereof, shall be settled by arbitration administered by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced.

The place of arbitration shall be Copenhagen, Denmark, and the language of the procedures shall be Danish. However, either party shall be entitled to submit documentary evidence in either Danish or English.

21.3 Irrespective of Section 21.2, the Customer shall on request from the Company assist or become formally involved as a party, as the case may require, in any dispute between a third party and the Company no matter the jurisdiction, the venue and the language for such dispute.