

## General Terms and Conditions of Sale

### 1. General

1.1 Any delivery of goods and services by Kwizda Agro GmbH ("KWIZDA") as the seller to the customer ("Customer") shall be subject to the Terms and Conditions set forth herein to the extent no other agreements have been explicitly made. The Customer's general terms and conditions that are inconsistent with the Terms and Conditions set forth herein shall only be applicable to the extent KWIZDA has explicitly approved in writing.

1.2 Any claims held against KWIZDA may not be assigned to third parties.

1.3 The sale, resale and the disposal of goods and services including any associated technology or documentation may be governed by Austrian, EU, or international export control regulations as well as by the export control regulations of further countries. Any resale of goods to embargoed countries or to denied persons or persons that use or may use the goods for military purposes, ABC weapons or nuclear technology is subject to an official license. Customer declares with his order the conformity with such statutes and regulations and that the goods will not directly or indirectly delivered into countries that prohibit or restrict the import of such goods. Customer declares to have obtained all licenses required for export and import.

1.4 Under no circumstances shall KWIZDA be obligated to pay any penalty whatsoever due to for example late or incomplete delivery, non-compliance of goods and/or services, non-compliance with logistics requirements or for whatever reason.

### 2. Information, Consultancy

Information and consultancy in relation to KWIZDA's goods and services is provided as deemed appropriate from existing experience. Any values quoted as part thereof, especially performance data, represent average values which have been determined through experiments under standard laboratory conditions. KWIZDA cannot assume any commitment for its goods to precisely meet the quoted values and areas of application. Section 10 of these Terms and Conditions governs any issues of liability.

### 3. Prices

3.1 The prices quoted in the order confirmation of KWIZDA shall solely apply. Additional services will be invoiced separately.

3.2 All prices are quoted as net prices and do not include value added tax, which is to be paid additionally by the Customer in the amount specified by applicable law.

3.3 Unless otherwise expressly agreed, the prices are quoted ex works of KWIZDA. The Customer shall bear all additional freight costs, packing costs in excess of standard packing, public fees (including withholding taxes) and duties.

3.4 Pricing may be increased in the event of any increase in KWIZDA's cost, change in market conditions or any other causes beyond KWIZDA's reasonable control. KWIZDA reserves the right to increase prices in cases where modifications requested by the Customer give rise to additional costs. Verbal price estimates are not binding.

### 4. Delivery

4.1 Unless otherwise expressly agreed, KWIZDA shall deliver ex works (EXW INCOTERMS 2020) of KWIZDA.

4.2 Delivery periods shall only be binding if expressly agreed in writing. Delivery periods shall begin on the date of the order confirmation by KWIZDA, however, in no case prior to settlement of all details relating to an order including the furnishing of any required official certificates. Delivery periods shall be deemed to be met on timely notification of readiness to ship if the goods cannot be dispatched in time through no fault of KWIZDA.

4.3 With respect to delivery periods and dates, which are not expressly defined as fixed in the order confirmation, the Customer may – two weeks after expiry of such a delivery period or date – set an adequate grace period for delivery not shorter than 15 business days. KWIZDA may only be deemed to be in default after expiry of such a grace period.

4.4 Without prejudicing KWIZDA's rights from Customer's default, delivery periods and dates shall be deemed to be extended by the period of time during which the Customer fails to comply with his obligations towards KWIZDA. In case KWIZDA does not comply with its obligations KWIZDA shall only be liable for all types of damages in accordance with section 10 of these Terms and Conditions.

4.5 KWIZDA reserves the right to carry out a delivery using its own delivery organisation.

4.6 KWIZDA may perform partial deliveries and render partial services if such action would not unreasonably affect the Customer.

4.7 The Customer may rescind the contract after two unsuccessful grace periods unless the hindrance is merely temporary in nature and a delay would not unreasonably affect the Customer.

4.8 Any contractual or statutory right of a Customer to rescind the contract, which the Customer fails to exercise within a reasonable period of time set by KWIZDA, shall be forfeited.

### 5. Shipment, Passing of Risk

5.1 Unless otherwise expressly agreed, shipment shall always be carried out at the Customer's risk. The risk shall pass to the Customer as soon as the goods have been made available at KWIZDA's premise.

5.2 The risk of accidental deterioration, loss and destruction shall pass to the Customer on notification of KWIZDA's readiness to ship. Required storage costs

- after passing of risk shall be borne by the Customer. This shall not affect any other claims.
- 5.3 If the Customer defaults in accepting, KWIZDA shall be entitled to claim refund of any expenditure associated therewith and the risk of accidental deterioration, loss and destruction shall pass to the Customer.
- 6. Payment**
- 6.1 Payment shall be made in full within 30 days from the date of the invoice. Payment shall be considered to have been made on the day the payable sum is received by KWIZDA. Bills of exchange and cheques shall not be deemed payment until after they have been honoured and will be accepted without any obligation to make timely presentation and timely protest.
- 6.2 Immediately upon the due date KWIZDA shall be entitled to demand default interest of 8 percentage points above the base lending rate p.a.. KWIZDA reserves the right to claim a higher actual damage.
- 6.3 Customers may only withhold or offset due payments against their own counter-claims if these are uncontested or have been found to be legally binding.
- 6.4 Any of KWIZDA's receivables shall be immediately payable in the event of a default in payment, a notice given in protest against a bill of exchange or suspension of the Customer's payments, independent of the term of the bills of exchange which may have already been accepted. In any of these aforementioned cases, KWIZDA shall also be able to perform remaining deliveries only against advance payment or provision of security, and, if no such advance payment is made or security provided within a two-week time period, to cancel the contract without fixing another extension term. This shall not affect any further claims.
- 7. Retention of Title**
- 7.1 Delivered goods shall fully remain property of KWIZDA (goods sold subject to retention of title) until all receivables, on whatever legal grounds, have been fully paid up.
- 7.2 In case of processing, combining or mixing of goods subject to retention of title with goods of the Customer, KWIZDA shall be entitled to co-ownership of the new property in as much as the invoiced value of goods sold with retention of title relates to the value of the other involved goods. Where KWIZDA's co-ownership becomes null and void due to processing, combining or mixing with other goods, the Customer immediately assigns to KWIZDA those of his rights of ownership in the new property or compound matter which correspond to the amount of the value of goods subject to retention of title by KWIZDA. Customer shall also be responsible for holding such rights in safe custody on the behalf of KWIZDA and at Customer's own expense. Any rights to co-ownership created as a result of such processing, combining or mixing shall be subject to section
- 7.3 The Customer may resell, process, combine or mix with other property, or otherwise integrate goods under retention of title in normal business operations, as long as the Customer is not defaulting. The Customer shall be prohibited from taking any other disposition regarding goods for which KWIZDA retains title. KWIZDA shall be promptly notified about any hypothecation or other seizure of goods under retention of title through a third party. All intervention costs will be charged to the Customer if and to the extent that they cannot be collected from such third party. If the Customer grants his buyer additional time for payment of the sales price, Customer shall reserve title in goods resold with retention of KWIZDA's title under the same terms which KWIZDA has applied when delivering such goods with retention of title. The Customer shall be prohibited from any other kind of resale.
- 7.4 The Customer shall immediately assign to KWIZDA any receivables resulting from a resale of goods initially sold with retention of KWIZDA's title. These will be used to substitute the goods under retention of title as collateral of the equivalent amount. The Customer shall only be entitled and authorised to resell such goods if his receivables therefrom accrue to KWIZDA.
- 7.5 If the Customer resells goods under retention of KWIZDA's title together with goods from other suppliers at a certain total price, Customer shall assign to KWIZDA his receivables from such resale in the same amount as stated in the invoice for goods initially sold with retention of title by KWIZDA.
- 7.6 If an assigned receivable is included into a current account, the Customer immediately assigns to KWIZDA that part of the balance which is equivalent to the amount of such receivable, including the final balance from current account operations.
- 7.7 If KWIZDA claims retention of title, this shall only be understood as rescind of the contract if expressly stated so by KWIZDA in writing. The Customer's right to possess goods under retention of title shall be null and void if he fails to meet his contractual obligations.
- 8. Intellectual Property Rights; Ownership**
- 8.1 "Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to: (i) patents; (ii) trademarks; (iii) internet domain names, web addresses, web pages; (iv) works of authorship, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software, data, data files, records and documentation; (v) trade secrets; and (vi) all other industrial and intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to any of the forgoing, however arising.
- 8.2 Customer acknowledges and agrees that: (i) except to the extent provided in a separate written agreement between Customer and KWIZDA, KWIZDA (or its licensors) will retain all intellectual property rights used to create, embodied in, used in, and otherwise relating to the goods; (ii) any and all KWIZDA's Intellectual Property Rights are the sole and exclusive property of KWIZDA or its licensors; and (iii) Customer shall not acquire any ownership interest in any of KWIZDA's Intellectual Property Rights.
- 8.3 Customer shall not: (i) take any action that may interfere with any of KWIZDA's rights in or to KWIZDA's Intellectual Property Rights, (ii) challenge any right, title or interest of KWIZDA's in or to KWIZDA's Intellectual Property Rights; (iii) make any

claim or take any action adverse to KWIZDA's ownership of KWIZDA's Intellectual Property Rights; or (iv) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the goods.

## **9. Warranty**

9.1 The goods claimed to be defective shall be returned to KWIZDA for examination in their original or equivalent packaging. KWIZDA shall remedy defects if the warranty claim is valid and within the warranty period. It is at KWIZDA's discretion whether KWIZDA remedies the defect by repair or replacement. KWIZDA shall only bear the costs necessary to remedy the defect.

9.2 KWIZDA shall be entitled to refuse to remedy defects in accordance with KWIZDA's statutory rights. KWIZDA may refuse to remedy defects if the Customer has not complied with KWIZDA's request to return the goods claimed to be defective.

9.3 The Customer shall not be entitled to rescind the contract or to reduce the contract price, unless the Customer has previously given KWIZDA twice a reasonable period (not shorter than 15 business days) to remedy the defect which KWIZDA has failed to observe, unless setting of such a period to remedy defects is dispensable. In the event of rescission, Customer shall be liable for any intentional or negligent actions that cause destruction or loss of the goods as well as for failure to derive benefits from the goods.

9.4 Any rights of the Customer to receive damages or compensation shall be governed by the provisions in section 10 of these Terms and Conditions.

9.5 Specifications of KWIZDA's goods, especially pictures, drawings, data about weight, measure and capacity contained in offers and brochures are to be considered as average data. Such specifications and data shall in no way constitute a quality warranty but merely a description or labelling of the goods.

9.6 Unless limits for variations have expressly been agreed in the order confirmation, such variations shall be admissible that are customary within the trade.

9.7 KWIZDA shall not accept any liability for defects in the goods supplied if they are caused by normal wear and tear. The Customer shall have no rights against KWIZDA in respect of defects in goods sold as lower-class or used goods.

9.8 Any warranty shall be void if operating or maintenance instructions are not observed, if changes are made to deliveries or services, if parts are replaced or materials used that are not in accordance with the original product specifications by KWIZDA, unless the Customer can show that the defect in question resulted from another cause.

9.9 The Customer shall be obliged to notify defects to KWIZDA in writing within 5 business days of delivery (apparent defects) or within 5 business days of detection (hidden defects).

9.10 The limitation period for claims for defects shall be 12 months. This shall not apply to Customer's claims for damages based on damages of body or health caused by a defect for which KWIZDA is responsible or claims

for damages based on intentional or grossly negligent conduct by KWIZDA.

## **10. Limited Liability**

10.1 In case of a breach of contractual obligations, defective deliveries or tortuous acts, KWIZDA shall only be obliged to compensate damages or expenses – subject to any other contractual or statutory conditions for liability – if KWIZDA has acted intentionally or with gross negligence or in cases of minor negligence, if such negligence results in the breach of an essential contractual duty (a duty the breach of which puts the fulfilment of the purpose of the contract at risk). However, in case of minor negligence, KWIZDA's liability shall be limited to typical damages which are foreseeable at the time of the conclusion of the contract.

10.2 The liability of KWIZDA for losses caused by late delivery due to minor negligence shall be limited to 5% of the agreed purchase price.

10.3 The limitation period for claims against KWIZDA – based on whatever legal ground – shall be 12 months from the date of delivery to the Customer and in case of tortious claims, 12 months from the date the Customer becomes aware or could have become aware of the grounds giving rise to a claim and the liable person, had the Customer not been grossly negligent.

## **11. Disposal**

11.1 Customer is obliged to closely observe the documents accompanying the goods and to ensure the correct disposal of the goods in accordance with the applicable law.

11.2 Customer shall be obliged to dispose the goods at its own costs. Customer shall be obliged to transfer this obligation on the purchaser of the goods or parts thereof in case of a resale of the goods.

## **12. Confidentiality**

Unless otherwise expressly stipulated in writing, no information provided to KWIZDA in connection with orders shall be regarded as confidential, unless their confidential nature is obvious.

## **13. Data protection**

13.1 With regard to the personal data of the Customer or the employees of the Customer, KWIZDA will comply with the statutory provisions, in particular the EU General Data Protection Regulation ("GDPR") and the Austrian Federal Data Protection Act. For the information required under Art 13 of the GDPR on the processing of personal data, see KWIZDA's "Data Protection Information", which can be found here: [\[link\]](#).

13.2 KWIZDA points out that personal data in relation to the contractual relationship may be stored by KWIZDA and may be transferred to companies associated with KWIZDA in the KWIZDA Group.

## **14. Force Majeure**

14.1 "Force Majeure" means the occurrence of an event or circumstance ("Force Majeure Event") that prevents

or impedes KWIZDA from performing one or more of its contractual obligations, if and to the extent (a) that such impediment is beyond KWIZDA's reasonable control; and (b) that it could not reasonably have been foreseen at the time of the conclusion of the contract; and (c) that the effects of the impediment could not reasonably have been avoided or overcome by KWIZDA.

14.2 Where KWIZDA fails to perform one or more of its contractual obligations because of default by a third party whom it has engaged to perform the whole or part of the contract, KWIZDA may invoke Force Majeure to the extent that the requirements under paragraph 14.1 are established both for KWIZDA and for the third party.

14.3 In the absence of proof to the contrary, the following events affecting KWIZDA shall be presumed to fulfil conditions (a) and (b) under paragraph 14.1, and KWIZDA only needs to prove that condition (c) of paragraph 14.1 is satisfied:

- a) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation;
- b) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy;
- c) currency and trade restriction, embargo, sanction;
- d) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation;
- e) plague, epidemic, natural disaster or extreme natural event;
- f) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy;
- g) general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.

14.4 In case of Force Majeure, KWIZDA is relieved from its duty to perform its obligations and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform.

## **15. Miscellaneous**

15.1 The place of jurisdiction shall be Vienna, Austria. However, KWIZDA may also take legal action against Customer at Customer's place of business.

15.2 Governing law shall be the law of Austria with the exclusion of the international conflict of laws provisions thereof and with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

15.3 Should any of the clauses of these Terms and Conditions be wholly or partially invalid or void, the validity of the remaining clauses or parts thereof shall not be affected.