

General Terms of Sale of Terracult International GmbH

Exclusively for use in business activities. As of October 2017

I. Introduction

1.

The following terms are only valid for contractors according to § 310, section 1 of the German Civil Code (BGB).

2.

The following terms apply to all contracts entered into between us and the Customer that deal with the delivery of goods. They also apply to all future business relations even if they are not yet specifically agreed upon.

3.

Our terms are binding; we do not accept conflicting conditions or any deviating terms from the Customer unless their validity has been agreed upon in writing. Our terms are also valid when we are aware of conflicting conditions or terms of the Customer that deviate with our own and we execute the delivery unconditionally.

4.

All agreements concluded between us and the Customer in connection with the sales contract(s) are put in writing in both the sales contract and these sales terms.

II. Document Rights/Changing the Subject Matter of the Contract

1.

We reserve property rights and copyrights for illustrations, drawings, calculations and other documents. This also applies to such written documents which are described as being confidential. Before passing documents on to third parties, the Customer requires our express written consent.

2.

The subject matter of the contract is subject to change in the legally permitted framework. We particularly reserve structure and form changes according to the technical progress during the delivery time.

When contractual services that require official approvals before execution have been guaranteed, changes in the contract may be executed in order to obtain official approval. All order changes after the conclusion of the contract can only incidentally be taken into account if arising additional costs are covered by the Customer and a sufficient prolongation of the delivery time is specifically allowed on the part of the Customer.

III. Subject Matter of the Contract/Quality Agreement/ Product Composition/Validity of DIN Standards

1.

The stipulated quality is important with regard to the subject matter of the contract. In terms of the stipulated quality we refer in this respect to our technical conditions as well as to the detailed product specifications and the agreed characteristics. We point out the following:

The mentioned concepts and characteristics for the peat and peat products we distribute orientate themselves according to DIN standards, particularly to DIN EN 11540 as amended in April 2005 (Peat and peat products for horticulture and landscaping) and DIN EN 12580 (Regulating the amounts for determining the volume of ready-to-use packages and loose deliveries at the time of the delivery).

2.

We would like to point out that peat and peat products are natural products. In transit and during storage there can be microbial and chemical processes that we can not influence. In order to avoid risks, the subject matter of the contract is only to be used for the purpose it was meant to serve.

3.

Peat substrates should be processed as quickly as possible, however, at the latest within four to six weeks after delivery.

Peat substrates with stock fertilizer/controlled fertilizer are ready-to-use and should be used up within a few days after delivery.

The subject matter of the contract should always be stored in a dry area, protected from the weather.

As with plant cultivation measures, general hygiene precautions should always be taken into account.

4.

Our peat products are organic natural products which are slightly stimulated with microbiological organisms. Dependant on the temperature and the product's moisture content, this can develop differently. The subject matter of the contract

is free from human and phytopathogenic microorganisms. A small number of saprophytic organisms may be present.

5.

Adding calcium carbonate or fertilizer to the substrate can result in the substrate being microbiologically stimulated by fungi, bacteria and other organisms. The activities performed by the saprophytic organisms and their consequences do not represent any product defects such as fungi in the respect that no liability for faulty goods is given.

6.

If the subject matter of the contract is not properly used and if it is inappropriately changed, or if the hygienic, legal or official regulations are disregarded, then this can lead to the exclusion of the liability claims for faulty goods.

7.

The subject matter of the contract is exclusively the sold product with the qualities and the features as well as the intended use of the product specification as described above. Other or additional qualities or features as well as any supplemental uses are regarded as agreed only when this is specifically confirmed by us in writing.

IV. Retention of Title

1.

We assume ownership of the subject matter of the contract up until the receipt of all payments from the delivery contract. Should the Customer exhibit conduct contrary to the contract, in particular a delay in payment, we are authorized to revoke the subject matter of the contract. As soon as we revoke the subject matter of the contract, it is cancelled from the contractual terms. We are authorized to re-use the subject matter of the contract after its withdrawal; the proceeds must be credited to the liabilities of the Customer, less adequate utilization costs.

2.

The Customer is obliged to treat the subject matter of the contract carefully; he/she is particularly obliged to sufficiently insure this against damages due to fire, water and theft at his/her own expense to the replacement value. Provided that maintenance and inspection work is required, the Customer must carry this out in a timely manner at his/her own expense.

3.

Distrains or other interventions of third parties must be reported immediately to us in writing by the Customer so that we can take legal action in accordance with § 771 of the German Code of Civil Procedure (ZPO). As far as the third party is not able to refund us the judicial and out of court costs of a complaint in accordance with § 771 of the German Code of Civil Procedure (ZPO), the Customer is liable for the deficit this has caused us.

4.

The Customer is authorized to resell the subject matter of the contract in the regular course of business; all claims, which have accrued for the Customer from reselling to his/her buyers or third parties and are indeed irrespective of whether the subject matter of the contract was sold without or without further processing, are assigned to him/her, however only as high as the final invoice amount (including value added tax). The Customer remains authorized to the collection of debts even after the assignment. Our authority to collect the debt ourselves remains unaffected. We are obliged, however, not to collect the debt as long as the Customer meets his/her financial obligations from the received earnings, does not have a delay in payment and if there is no proposal for filling settlement or insolvency proceedings and there is no stoppage of payments. However, if this is the case, then we can demand that the Customer notifies us of the conveyed debts and their debtors, announces all required details for the collection, hands over the necessary documents and informs the debtors (third parties) about the assignment.

5.

The processing or reorganization of the subject matter of the contract by the Customer is always conducted for us. If the subject matter of the contract is processed with objects not belonging to us, then we acquire the co-ownership of the new object in comparison to the value of the subject matter of the contract (final amount of the invoice including value added tax) with the other processed objects at the time of processing. The same applies to the object arising from the processing as for the subject matter of the contract delivered under reservation.

6.

If the subject matter of the contract is mixed inseparably with objects not belonging to us, then we acquire the co-ownership of the new object in comparison to the value of the subject matter of the contract (final amount of the invoice including value added tax) with the other mixed objects at the time of intermixing. If the intermixing is carried out in the way that the matter of the Customer is seen as a main issue, it is regarded as agreed that the Customer assigns us with pro rata co-ownership. The Customer keeps the incurred sole ownership or co-ownership for us.

7.

The claims for the protection of our claims against the Customer, which arise by the connection of the subject matter of the contract with a property against a third party, are assigned to the Customer.

8.

We are obliged to clear the securities being entitled to us upon request of the Customer when the practicable value of our securities exceeds the demands to be secured by more than 10%; the choice of the securities to be cleared shall be administered by us.

V. Prices/Terms of Payment

1.

Our prices, not including packing (billed separately), are valid 'ex works', provided that nothing else arises from agreements or from the order confirmation. Delivery 'franco domicile' is, however, possible due to separate agreements if the value of the goods reaches a certain amount.

2.

The offered selling price is binding and the selling price does not include the legal sales tax; it will be listed separately on the invoice upon issue in the respective legal amount.

3.

If nothing else arises from the contract, the selling price is due within eight days with a 2% cash discount, otherwise within 21 days strictly net. The date of the invoice is substantial during the calculation. In other respects, the deduction of cash discounts requires separate written agreements.

4.

Payments are valid on the day when we have the amount at our disposal. In this respect, it does not depend on the delivery but on the receipt of the payment for the timeliness of the selling price payment. Incidentally, the legal regulations are valid with regard to the results of a delay in payment.

5.

All outstanding claims are due if the Customer suspends his/her payments, establishes settlement or insolvency proceedings for his/her assets or if the establishment of such proceedings is declined for lack of matter or if circumstances are disclosed that justify well-founded doubts about the credit rating of the Customer.

6.

If several similar liabilities of the Customer are not fulfilled then the Customer is not authorized to determine which debt he/she pays. Moreover, we can credit incoming payments to outstanding liabilities of the Customer together with costs and interest.

7.

We reserve the right to adequately change our prices if, after the conclusion of the contract, reductions or increases in cost particularly due to wage settlements, freight or material price increases and exchange rate fluctuations result. We will verify these to the Customer upon request.

The right to change prices is entitled to us only when more than six weeks lie between completion of a contract and the delivery date set. The Customer is only entitled to the resignation of the contract if the price increase does not insignificantly exceed the increase in the general cost of living between the time of ordering and the delivery.

VI. Delivery Time/Delay in Shipment/Partial Deliveries/Reservation of Self-Supply/Measures of Industrial Dispute

1.

Delivery dates or periods which have not been particularly agreed upon as being obligatory are exclusively non-committal declarations. The delivery time given by us starts only when all technical questions have been clarified.

2.

The compliance with our delivery commitments requires the punctual and proper fulfillment of the Customer's obligations. The exception of the noncompliant contract is reserved.

3.

In the event that the Customer is in default of acceptance, or if he/she culpably neglects other cooperation duties, we are entitled to require that the resulting damages in this respect, including possible increase charges, be compensated. Additional claims are reserved.

4.

Provided that the prerequisites from paragraph 3 are present, the risk of a coincidental decline or a coincidental deterioration of the purchased item devolves to the Customer at the time he/she is advised in default of acceptance.

5.

Partial shipments or deliveries and/or transfers are permitted as far as they do not unacceptably burden the Customer. Altogether, breaches of duty or defects with respect to a partial shipment or delivery do not authorize the Customer to assert claims with regard to other partial shipments or deliveries from the contract.

6.

If the non-compliance of deadlines can be explained by acts of God, e.g. mobilization, war, riots or similar events, e.g. strikes, lockouts, etc., the deadlines are adequately extended.

Provided that the events described above considerably change the economic meaning or the contents of the delivery or have a considerable effect on our business, the contract is appropriately adapted considering faithfulness and beliefs. As far as this should not be economically justifiable, we reserve the right to withdraw from the contract. In the event that we want to make use of this right of withdrawal, we must immediately inform the Customer after becoming aware of the consequences of the event and namely then if the prolonged delivery time has initially been agreed upon with the Customer or if the deadlines as described above have been adequately extended.

7.

We do not assume any risk of procurement. We are authorized to withdraw from the contract as far as we do not receive the subject matter of the contract despite the previous conclusion of a corresponding covering purchase. Our responsibility towards intention or negligence remains unaffected according to number XI. We will immediately inform the Customer about a non-punctual availability of the subject matter of the contract and if we want to withdraw, we will immediately exercise the right of withdrawal; in the case of withdrawal, we will immediately refund the Customer the corresponding service in return.

VII. Trade Clause/Shipment/Passing of Risk/Packaging Clause

1.

If the goods are to be delivered EXW, FCA, FAS, FOB, CF (or CFR), CIF, CPT, CIP, DAF, DES, DEQ, DDU, DDP or according to other trade clauses from which the interpretation rules of the newest version of the Incoterms must be applied, then the regulations of the Incoterms that are valid for these trade clauses apply to this contract. This is not valid as far as the regulations contradict these General Terms of Sale.

2.

The Konosoment, CMR or the air consignment note have authenticity for the date of the shipment or delivery.

3.

Delivery deadlines and due dates are extended on our part regardless of any further rights for the time period for which the Customer does not meet his/her obligations. If, in such a case, the implementation of the contract cannot fairly be expected from us, the Customer has the authority to withdraw from this contract regardless of other rights. This is particularly necessary if the subject matter of the contract is to be delivered FAS, FOB or FOP airport and the Customer does not timely provide or name the ship or the airplane for the shipment or delivery of the subject matter of the contract.

4.

Shipping and forwarding are carried out uninsured at the risk of the Customer, provided that nothing else arises from agreements or from the order confirmation. The risk of a coincidental loss and a coincidental deterioration of the subject of the contract goes independently from the time the ownership is transferred to the Customer according to the applicable conditions of the Incoterms or if these are not applicable, then at the latest when handing over the subject of the contract to the Customer, his/her representative or the person executing the transportation. (The respectively earliest time is valid). If the delivery of the shipment is delayed for reasons which lie with the Customer, the passing of the risk is carried out with indication of readiness for shipment to the Customer. The Customer carries storage costs after the passing of the risk.

5.

According to the packaging regulation, we do not take back transport packaging or any other packaging. The Customer must dispose of the packaging at his/her own expense.

As far as an inspection must be carried out, this is authoritative for the passing of the risk; it must be executed immediately, alternatively after our notification about the readiness for inspection. The inspection may not be refused by the Customer after presenting a nonessential defect.

6.

If the shipment or the inspection is delayed or stopped as a result of circumstances that are not attributed to us the risk on the day of the notification or the readiness for shipment/inspection devolves to the Customer.

VIII. Non-acceptance/Storage Fees

1.

If the Customer refuses to accept the subject matter of the contract, then we can set him/her an adequate deadline for the acceptance. If the Customer has not accepted the subject matter of the contract within the period set for him/her, then we are authorized to withdraw and/or to ask for compensation from the contract. In this case, we may also demand compensation (20% of the agreed selling price) without proof of the actual damage.

2.

Due to this damage flat rate, the Customer still has the possibility to prove that in a concrete case no or only a considerably lower damage has resulted.

3.

If the Customer declares to us or a third party, before the delivery of the subject matter of the contract, that he/she does not want to fulfill the contract or accept the subject matter of the contract or if his/her intention can conclusively be seen by his/her behavior, we are authorized to demand a damage flat rate in the amount of 20% of the entire agreed selling price, instead of the fulfillment of the contract payment.

4.

If the shipment of the subject matter of the contract, upon request of the Customer, was delayed on our part according to the indication of the readiness for shipment for more than two weeks after the delivery date or if no exact delivery date was agreed upon, then we can charge a flat-rate storage fee for every month in the amount of 0.5% of the price of the subject matter of the contract. The Customer may provide evidence that no damage or a considerably lower damage has resulted for us. We may supply evidence that a higher damage has resulted.

IX. Liability for Faulty Goods

1.

Claims made by the Customer for faulty goods only exist if the Customer has met his/her duly owed legal obligations according to § 377 HGB.

2.

The Customer must report obviously faulty goods immediately to us in writing at the latest within a period of two weeks after receipt of the subject matter of the contract; otherwise the assertion of the faulty goods is excluded. Punctual dispatch suffices to comply with the time limit. The Customer meets the full burden of proof for all eligibility requirements, especially for the faulty goods, for the time the goods were observed to be faulty and for the timeliness of the Customer's complaint.

3.

Faulty goods, not presupposed according to the contract, do not exist when there is only an insignificant deviation of the stipulated properties and condition or when there is only an insignificant impairment of the usefulness. This also implies for natural wear and tear or damages that result because of an incorrect or careless treatment after the passing of risks or because of specific external influences that occur.

Furthermore, faulty goods do not exist when the subject matter of the contract has been used unsuitably or improperly.

4.

As far as one of us has presented faulty goods and the cause was already at the time of the passing of risk, we are committed to a supplementary performance of our choice; the Customer may not withdraw from the contract or reduce the selling price (decrease). This is not valid if we are entitled to refuse the supplementary performance due to the legal regulations.

The Customer must grant us an adequate period for the supplementary performance. The supplementary performance can be made either by the removal of the defect (improvement) or the delivery of a new subject matter of the contract.

5.

In the case of the removal of defects, all of us are obliged to bear the required costs, particularly shipping and handling, labor costs and the cost of materials as far as these do not increase by the fact that the subject matter of the contract was placed in another location other than the place of performance.

6.

If the supplementary performance has failed, the Customer can either demand a reduction of the selling price (decrease) or declare to withdraw from the contract; with the second unavailing attempt, the improvement is regarded as failed as far as further improvement attempts are not adequate and reasonable for the Customer due to the subject matter of the contract.

The Customer may assert claims for compensation on account of the defect only when the supplementary performance has failed. The Customer's right to assert additional claims for compensation remains unaffected by this. We refer to number XI.

7.

With regard to the limitation of the guarantee claims we refer to number XII.

8.

We are committed to take back the new subject matter of the contract or to reduce (decrease) the selling price according to the legal regulations also without the otherwise required deadline if the Customer's buyer as a consumer of the newly sold object (commodity acquisition) could demand that the subject matter of the contract be taken back or the selling price be reduced because of the faultiness of the subject matter of the contract towards the Customer or because the Customer is confronted with the right of recourse that resulted from this. Furthermore, we are obliged to replace charges to the Customer, particularly shipping and handling, labor costs and the cost of materials, which he/she had to bear in proportion to the end consumer in the context of the supplementary performance due to the faultiness of the subject matter of the contract when the risk was passed from us to the Customer. The claim is excluded if the Customer has not met his/her duly owed legal obligations according to § 377 HGB.

9.

Our obligation in accordance with IX, 9 is excluded as far as it deals with a defect due to advertising statements or other contractual agreements which do not originate from us or if the Customer has released a special guarantee towards the end consumer. The obligation is also excluded if the Customer was not obliged to exercise the guarantee rights towards the end consumer due to the legal regulations or has not conducted this reproof with regard to a claim made by him. This is also valid if the Customer has taken on guarantees towards the end consumer which go beyond the legal measure.

10.

In the context of faulty goods and the corresponding properties and condition of the subject matter of the contract, we refer to number III, 1.

The following shall also be valid:

For the properties and condition of the subject matter of the contract, only the product specification is regarded as agreed. Public remarks, targeting or the recruitment of the manufacturer or third party do not represent the information concerning the properties and condition of the subject matter of the contract as stipulated in the contract.

11.

The Customer does not receive guarantees through us. Manufacturer guarantees remain unaffected by this.

12.

For the Customer's claims for compensation we refer to number XI.

X. Supplementary Performance Claim and Right of Retention Regarding Payment

1.

With regard to the price that the Customer must pay as well as when this payment should be made, we refer to number V of these terms.

2.

In the event that faulty goods exist, the Customer is not entitled to the right of retention as long and as far as this is not in adequate ratio to the defects and the expected costs of the supplementary performance (particularly the removal of defects).

The Customer is not authorized to assert claims and rights due to defects if he/she has not made due payments or the due amount (including possibly made payments) is not in adequate ratio to the value of the defect-afflicted services.

XI. Liability

1.

In the case of slight negligence, but only for the breach of essential duties that endanger the contract's purpose, we are liable for claims concerning damages and the reimbursement of expenses from whichever legal ground that arises (e.g. delay, inadequate delivery, default in performance of contract, breach of duties during contract negotiations or delict). Our liability is excluded for slight negligence.

2.

Every liability on our part, independent of default, is excluded.

3.

Our liability is restricted to foreseeable contract typical claims upon conclusion of the contract.

4.

From whichever legal ground that arises, all claims based on compensation and the reimbursement of expenses against us become statute-barred after one year at the latest after passing the risk to the Customer; in the case of tortious liability

as soon as circumstances substantiating the claim and the liable persons are known or grossly negligently ignored. Possible shorter legal limitation periods have priority.

5.

The exclusions of liability and limitations included in the above paragraphs do not apply to intention, manslaughter, bodily harm or health impairments as well as under the law for product liabilities in the case of a liability or in the case of malicious behavior.

In these cases, the exclusions of liability and limitations do not apply to number 6.

6.

The regulations of these numbers are also valid in favor of legal representatives and our employees.

XII. Statute of Limitation

1.

The limitation period for faulty goods is twelve months, calculated as of the passing of the risk. This is however not valid for the cases of § 438, section 1, no. 1 BGB (defects of title for immobile objects), § 438, section 1, no. 2 BGB (buildings, objects for buildings), or § 479, section 1 BGB (contribution claims for the businessman).

The periods mentioned in the preceding second sentence are subject to a limitation period of three years.

2.

Independent of the legal basis of the claim, the limitation periods according to the preceding first sentence also apply to all claims for damages against us which are connected with the defect. As far as there are claims for damages against us that are not connected with a defect, the limitation period in the first sentence applies.

3.

Preceding limitation periods are not valid:

- A) In the case of intention,
- B) If we have maliciously kept the defect a secret or have assumed a guarantee for the quality of the deliveries/services. If we have maliciously kept the defect a secret, the legal limitation periods in number 1 are valid without being malicious, that is § 438, section 1, no. 1 (defects of title for immovable things), no. 2 (buildings, things for buildings) and no. 3 (other delivery) without the extension of time for malice according to § 438, section 3 BGB.
- C) In cases of life-threatening injuries, bodily harm, health impairments or violation of liberty, for claims according to laws for product liability, for grossly negligent breach of duty or for the violation of essential contractual duties. In these cases, the legal limitation periods are valid.

4.

If parts are installed in the context of eliminating the defect, the Customer may assert claims until the expiration of the limitation period of the subject matter of the contract (purchased object) on the basis of the sales contract. A preceding regulation does not apply for the case that supplementary performance (§ 439 BGB) is carried out by the delivery of a non-defect item.

XIII. Retention/Offset

1.

The Customer shall only be entitled to set off his/her counterclaims when they were legally binding or were accepted by us.

2.

The Customer may only exercise retention if his/her counterclaims originate from the same contractual relationship.

3.

In the case that defects exist, retention is only entitled to the Customer according to number X, 2.

XIV. Assignment of Claims/Transferring Rights and Duties

1.

The assignment of claims against us requires our written consent for them to be effective. We will not refuse the consent without a cogent reason. For assignments of claims that are carried out due to a prolonged retention of title, the consent is regarded as issued from the start of assignments. We refer to § 354 a HGB for the rest.

2.

Furthermore, the Customer may not transfer the rights and duties from the contract to third parties without written consent. In this respect, we will refuse a required consent without a cogent reason.

XV. Data Protection/Credit Assessment/Privacy

1.

We only use person-related data from the contract for the purpose of contractual settlements, customer service, market and opinion research as well as for our own advertising campaigns.

2.

In the context of the contractual relationship, we save the Customer's person-related data that is required for the execution of the contract. As far as this is required for the execution of the contract, the data will also be transmitted to third parties that are permissibly entrusted by us when this contract or parts of it are administered.

3.

We are authorized to question the association at the Customer's headquarters that is responsible for the general safeguarding of loan information and serves the protection of credit transfers to insolvent persons about information concerning data and the acceptance and proper transfer of loans.

4.

Furthermore, we may transfer data from the Customer's contract relationship on hand to the association responsible for the general safeguarding of loan information. Such a data transfer, however, is only carried out as far as this is necessary for the protection of our legitimate interests and if the Customer's interests are not affected. For this purpose, we are authorized to inform the association responsible for the general safeguarding of loan information about the data indicated in the contract by the Customer. The Customer fills out the provided forms and provides information other than his/her name and address on a voluntary basis.

5.

The Customer is obliged to keep all know-how and trade secrets to himself/herself that he/she has which learned during the execution of the contract or that is not generally confessed to third parties; the Customer must also require his/her employees to do the same.

XVI. Final Clauses/Place of Jurisdiction/Place of Performance

1.

Provided that the Customer is a merchant, our business headquarters is the place of jurisdiction; however, we are also authorized to sue the Customer at the court where he/she resides.

2.

The laws of the Federal Republic of Germany are valid; the validity of the Uniform Law on the International Sale of Goods (CISG) is excluded.

3.

Provided that nothing arises from the contractual agreements, our business headquarters is the place of performance.

4.

Should individual terms of the contract or with the Customer, including these conditions, be completely or partly ineffective, the validity of the other regulations is not affected by this. The completely or partly ineffective regulation shall be replaced by a regulation that comes closest to the economical purpose of the ineffective regulation. The same applies analogously if a contractual loophole arises during the execution of the contract or if a regulation is useless because of changed conditions or if it is regarded as outdated or infeasible.

5.

By divergent behavior of the contracting parties and due to this agreement, rights and duties agreed upon are neither changed nor lifted and new rights and duties may not be created.

6.

The titles of the individual regulations in this agreement merely serve for better orientation; they are not independent regulations and they have no legal meaning.

The English version of these terms is a translation of the German version. In cases of doubt the German wording is authoritative.