

# General Terms and Conditions

## 1) Scope of Application:

These general terms and conditions apply to all deliveries, services and offers that Fluna Tec & Research GmbH ("Fluna Tec") provides to its customers.

The exclusive application of these general terms and conditions shall be deemed accepted by the customer with each order placed with Fluna Tec. By doing so, the customer waives the application of its own general terms and conditions that may be contrary or conflicting; without requiring explicit objection of Fluna Tec. The customer's general terms and conditions will only apply if Fluna Tec has officially recognized them in writing and even in this case only to the extent and for the transaction, to which the recognition expressly refers to.

Amendments of and modifications to these General Terms and Conditions, including this clause, need to be in writing in order to be effective.

## 2) Offer, Conclusion of Contract:

Fluna Tec's offers are non-binding and without engagement.

Any descriptions of the delivery items contained in the order or in the written order confirmations only serve the general naming and description thereof and are no assurances of properties or characteristics.

Customer's orders will be accepted only if Fluna Tec confirms the order in writing or by delivery and service. The customer shall be bound by his offer for 30 days. Fluna Tec is entitled to accept only parts of orders or refuse orders without stating any reason.

## 3) Warnings:

Fluna Tec complies with all regulations of the Austrian Chemicals Act 1996 (ChemG 1996) regarding the circulation of chemical substances and will ensure that, where necessary, the appropriate notifications are made. Concerning the packaging and labeling of the delivery items, the standards of Sec. 23 et seq. ChemG 1996 will be complied with. The customer shall not modify the labeling or packaging in a way that contravenes the ChemG 1996 without Fluna Tec's prior written consent. In any case, with the first delivery, the customer will receive a safety data sheet according to Sec. 25 ChemG 1996 and consequently, the customer shall be responsible for ensuring that this sheet, if necessary, is also relayed to its customers. The relevant provisions must be followed for each repackaging. If Fluna Tec becomes liable or is penalized because of a customer's breach of this provision, the customer shall hold Fluna Tec completely harmless.

## 4) Prices:

In the absence of any written agreement to the contrary, all prices are exclusive of VAT packed on pallets ex works from Fluna Tec's warehouse in Vienna. All charges such as freight, insurance, export, transit, import and other permits shall be borne by the customer. Similarly, the customer shall bear all types of taxes, fees, duties and the like, which may arise in connection with the execution of the contract. If between the order and the delivery date the cost of materials increase, Fluna Tec is entitled to increase the agreed purchase price in the corresponding ratio to the increases in cost of materials.

## 5) Payment, Default Interest, Exclusion of Set-Off:

Unless otherwise agreed in writing, the customer shall settle Fluna Tec's invoices free of costs without deduction within 14 days after receipt.

If the customer is in arrears with a payment or there are verifiable indications that the creditworthiness of the customer is questionable, Fluna Tec is - even if other payment terms were agreed upon - entitled to seek payment in advance and to deliver the ordered items only after all outstanding invoices, also from different orders, have been paid.

If the term of payment is exceeded, default interest is to be paid according to Sec. 352 of the Austrian Commercial Code (UGB); this also applies if the customer is not an entrepreneur. Appropriate and necessary costs resulting from any late payment, e.g. expenses for reminders, collection attempts and storage costs, are to be reimbursed by the customer.

The customer may not set off payments or other claims unless these claims have been established by a court or accepted by Fluna Tec. This applies also to warranty and damages claims and any related follow-claims.

## 6) Retention of Title:

Fluna Tec retains exclusive title to the items delivered until the purchase price has been paid in full. This also applies if the delivered items are resold, altered, treated or processed or mixed. Until complete payment of all of Fluna Tec's claims the items delivered must not be pledged or assigned with a claim or be burdened with any third party claim. In the case of seizure or other use of the items delivered, the customer shall call attention to the property rights of Fluna Tec and notify Fluna Tec immediately. The customer hereby assigns all claims and rights resulting from the further sale, processing, blending or other exploitation of commodities and products. Until complete payment of all of Fluna Tec's claims is made, the customer shall take note of the assignment in his books and on his invoices and notify the assignment to all his debtors.

## 7) Delivery Time:

Delivery dates contained in quotations and order confirmations of Fluna Tec are non-binding.

Should binding delivery dates be agreed upon in writing, the delivery period will begin once the necessary technical documents, materials and/or auxiliary items of the customer, all the agreed payments and securities have been received in full by Fluna Tec as well as any necessary regulatory approvals have been granted.

The delivery deadline is met if, until its expiry, the delivery items are ready for shipment at Fluna Tec's warehouse.

The delivery period is adequately prolonged, when circumstances such as epidemics, natural disasters, wars, riots labor disputes, particularly strikes, boycotts, accidents, serious operational problems, delays in the manufacturing by a foreign company or regulatory measures prevent Fluna Tec from observing the delivery period. Also, the delivery period is prolonged when the customer asks for subsequent changes to the delivery items or is in default with his contractual obligations, particularly with payment obligations of other contracts.

## 8) Technical Application Advice:

Fluna Tec provides technical application advice to the best of its knowledge. Any liability of Fluna Tec for the advice given is excluded, in particular for pre-contractual advice. All details and information regarding the suitability and application of the delivery items do not release the customer from checking and testing the suitability of the delivery items for the intended processes and purposes.

The delivery items will be produced in accordance with the details provided by the customer. The customer shall be responsible for the completeness and accuracy of these details, in particular with regard to the intended use of the delivery items.

Testing, warning or information obligations of Fluna Tec with regard to documents, information or instructions made available by the customer do not exist and in that regard any liability of Fluna Tec is excluded.

In this context it is particularly imperative to comply with the provisions of the ChemG 1996 and the customer shall inform Fluna Tec immediately if he detects that not all necessary filing obligations pursuant to this Act are fulfilled.

The customer shall strictly observe the particulars of the security data sheet handed to him by Fluna Tec. If the customer intends to use the delivery items for purposes other than those discussed with Fluna Tec, then this may only take place after extensive testing and with Fluna Tec's written approval.

## 9) Passing of Risk, Shipping:

Unless otherwise agreed in writing, Fluna Tec selects shipping route and method, whereby the customer's interests will be taken into account adequately. A shipping insurance will be concluded only on the customer's written request and at his expense. The risk of destruction, loss and damage shall pass to the customer when the delivery items are ready for dispatch at Fluna Tec's warehouse, regardless of whether the delivery items are consequently handed over to a carrier or any other person for transport. This is particularly true if, contrary to these General Terms and Conditions it is agreed in writing that Fluna Tec bears the shipping costs. The customer shall be responsible for the disposal of the packaging.

## 10) Place of Performance:

Place of performance for all obligations between the customer and Fluna Tec is the seat of Fluna Tec.

## 11) Acceptance, Notice of Defects and Warranty:

The warranty period is six months from the passing of the risk. The customer shall thoroughly examine the items delivered for defects - if necessary by sample processing them. The delivery items are deemed accepted if the buyer does not notify Fluna Tec about any defects in writing within three days after receipt of the items respectively after discovery of a hidden defect. This notice of defects has to describe the alleged defect as accurately as possible. This period of three days is deemed appropriate with regard to Sec. 377 of the UGB. If the customer notifies Fluna Tec about material defects of the items delivered, the submission of processed samples and the packaging containing a detailed description of the process performed with the item are preconditions for a valid notice of defect.

Defects which are claimed by the customer without duly observing the duty to examine and to notify are excluded from warranty.

In the case of a timely and justified notice of defect, Fluna Tec is entitled to cure the defect (by repairing the item, supplementing the missing or delivering substitute items) within a reasonable period of time. If the purchase price has not been paid in full, Fluna Tec may condition its supplementary performance on the customer paying a reasonable - taking into account the alleged defect - part of the purchase price. Should the subsequent performance fail twice, be impossible or finally unduly denied by Fluna Tec, the customer is entitled to choose between reduction of the purchase price and avoidance of the contract.

Further claims, in particular for consequential loss, are excluded. Fluna Tec is not liable for defects and damage caused by improper storage or handling. The customer shall bear the full burden of proof for all conditions of entitlement, particularly for the existence of the defect, the date of its discovery and the timeliness of the notice of defect.

It is the sole responsibility of the customer to ensure that the delivery items - based on the manufacturer's specifications and use by the customer's customers - do not infringe any intellectual property rights.

Where the contractual use of the delivery item causes the infringement of intellectual property rights, and Fluna Tec being responsible for the infringement, Fluna Tec will either obtain the basic rights for the customer to continue using the delivery item or alter the delivery items in such manner that the infringement stops (supplementary performance). If this is not possible on economic reasonable grounds or within a reasonable period of time, then the customer is entitled to avoid the contract. In this case Fluna Tec is equally entitled to avoid the contract. Additionally, Fluna Tec will indemnify the customer against undisputed or legally binding claims that have been established with regard to the owner of the intellectual property rights.

Fluna Tec will only be under the abovementioned obligations if the customer notifies Fluna Tec immediately in writing about any claims asserted by third parties, if the customer does not admit such claim and all defensive measures and settlement negotiations are reserved to Fluna Tec. If the customer discontinues using the delivery items in order to mitigate the damage or because of other important reasons, he shall notify the third party that the discontinuation is not deemed as admittance of an infringement of intellectual property rights.

## 12) Limitations and Exemption of Liability:

Outside the scope of the Austrian Product Liability Act (Produkthaftungsgesetz), Fluna Tec's liability is limited to intent and gross negligence. Any liability for slight negligence, the replacement of consequential and financial loss, lost profits, damaged caused by business interruption, loss of customer orders, unrealized profits, loss of interest, losses from other third-party claims is excluded.

## 13) Intellectual Property Rights, Right of Use, Confidentiality:

The customer acknowledges all trademarks and other intellectual property rights on the delivered items, particularly with regard to Fluna Tec's trademarks. He shall not change or make amendments to the brand names without Fluna Tec's prior written consent. The customer is not entitled and has no right whatsoever to derive a patent application, claim pre-use, license etc based on knowledge and information obtained from the delivery items, from technical application advice or from knowledge obtained from own tests and examinations of the delivery item. The entire knowhow belongs exclusively to Fluna Tec. Furthermore, the customer shall not transfer or make available any such knowledge or information either directly or indirectly to third parties.

In addition, the customer shall not disclose or make accessible any confidential information, be it of technical/operational or commercial nature, obtained during the performance of the contract, without prior written consent of Fluna Tec.

## 14) Place of Jurisdiction and Applicable Law:

The competent courts for Vienna have sole jurisdiction over all disputes out of or relating to the contract. The contract and all disputes resulting thereof are governed by Austrian substantive law. The application of the UN Sales Convention is excluded.

Should any or several terms of these General Terms and Conditions be invalid, this shall not affect the validity of the remaining terms hereof. The General Terms and Conditions are intended for contracts between entrepreneurs. If they are exceptionally applied to a contract with a consumer as defined in Sec. 1 of the Austrian Consumer Protection Act (Konsumentenschutzgesetz, BGBl 140/1979), these terms shall be valid, unless they are inconsistent with mandatory provisions of the chapter of this law.

**Only the German wording of these General Terms and Conditions shall constitute the legally relevant version. The English version shall have no legal effect; in particular it may not be used to interpret the German text.**

Stand 14.8.2014