

1. General

- 1.1 These General Terms and Conditions are valid for all contracts and for the entire business relationship between PHYTEC and the customer, unless agreed otherwise in a separate contract.
1.2 General Terms and Conditions belonging to the customer are not valid.

2. Quotations and orders

- 2.1 Orders that the customer submits to PHYTEC are only accepted after being confirmed in writing by PHYTEC.
2.2 If the order is being executed immediately, the written acceptance is replaced by the invoice.
2.3 PHYTEC has no obligation to accept an order.
2.4 Quotations from PHYTEC are non-binding and subject to change, unless specified otherwise in writing. PHYTEC is only bound by quotations for a period of five working days. Brochures, lists, circulars, etc. do not constitute quotations.
2.5 These provisions are a component of every quotation from PHYTEC.
2.6 Assurances about product characteristics are only a component of the contract if expressly made in writing. Details in brochures are not classed as assurances of characteristics, unless expressly agreed in writing.
2.7 Warranty claims can only be asserted if PHYTEC has expressly offered a warranty in writing.

3. Prices

- 3.1 Prices are quoted in EURO (EUR) excluding packaging, for delivery from Mainz, plus VAT at the rate that applies on the day of invoicing, plus any other statutory shipping charges.
3.2 The latest version of the PHYTEC price list applies in each instance.

4. Shipping and transfer of risk

- 4.1 Goods are shipped at the customer's own risk and expense. Transport insurance to the delivery location specified by the customer is arranged and charged by PHYTEC, unless waived in writing by the customer; the level of coverage is equal to the purchase price.
4.2 PHYTEC is entitled to make partial deliveries.

5. Payment terms

- 5.1 Payments are due 14 days after delivery, without any deductions. After the first reminder, the interest rate will increase to 1% above the applicable Lombard rate of the Bundesbank, provided that this rate is higher than the statutory interest rate; in such case, the customer is entitled to provide counter-evidence of lesser damages.
5.2 Payments are used to settle the oldest debt plus any corresponding default interest and legal expenses first, then as payment against the purchase price, unless the customer has expressly specified a different method of apportionment.
5.3 Bills of exchange and pre-dated cheques are only accepted if separately agreed in writing beforehand and only on account of payment. Bill of exchange taxes, as well as bank, discount and collection charges, are borne by the customer.
5.4 If several bills of exchange are provided as payment, they will all become due if the next one due is not redeemed on time.
5.5 If the customer fails to meet its payment obligations and/or other obligations from the General Terms and Conditions without proper justification, or if it ceases its payments, or if insolvency proceedings are initiated over its assets or those of its legal representatives, then the entire legal debt will become payable immediately. In such case, PHYTEC is entitled to declare its withdrawal from all contracts, to take back any delivered goods under retention of title, and to demand reimbursement of all costs caused by the withdrawal (e.g. return transportation, loss of value, etc.).
5.6 For a receivable that does not relate to the contract in question, the customer may only assert a right of retention if the claim is undisputed or has been legally determined. Payment against the purchase price can only be offset against claims that are undisputed or legally determined, provided that the customer is not asserting warranty claims from the contract in question.
5.7 PHYTEC may refuse delivery of the goods for as long as the customer is in arrears with previous goods or services provided by PHYTEC.
5.8 For paid repair work or other orders for which the payment to PHYTEC would only become due after acceptance, the due date of the payment is brought forward to the time of handover/delivery. In such case, PHYTEC can demand that payment is made concurrently with the delivery/handover.

6. Retention of title, pledging, assignment

- 6.1 Until all receivables (including all claims relating to running account balances) that are due to PHYTEC from the customer, either now or in the future and on any legal grounds whatsoever, have been settled in full, PHYTEC shall be provided with the following security: The goods remain the property of PHYTEC. The goods are always processed or altered on behalf of PHYTEC as the manufacturer, but without obligation for PHYTEC. If PHYTEC's (co-)ownership lapses due to goods being combined, it is hereby agreed that the customer's (co-)ownership of the combined item will transfer to PHYTEC ad valorem (invoice value). Goods to which PHYTEC is entitled to (co-)ownership are referred to as "retained goods" in the following.
6.2 The customer may process or sell the retained goods in the normal course of business, provided that the customer is not in arrears with its payments to PHYTEC. The retained goods may not be pledged or assigned as security.
6.3 The receivables (including all claims relating to running account balances) for the retained goods which are due from their resale or on other legal grounds (insurance, prohibited usage) are hereby assigned in full to PHYTEC by the customer by way of security. PHYTEC irrevocably authorises the customer to collect the receivables assigned to PHYTEC in its own name for PHYTEC's account. This collection authorisation can only be revoked if the customer fails to properly meet its payment obligations.
6.4 If third parties gain access to the retained goods, the customer shall make them aware of PHYTEC's ownership and inform PHYTEC immediately. In the event of a breach of contract by the customer, especially a payment default, PHYTEC may take back the retained goods or demand that the customer assigns its handover rights vis-à-vis third parties. Provided that consumer credit law does not apply, any repossession or seizure of the retained goods by PHYTEC will not constitute withdrawal from the contract. Should the value of the security that PHYTEC is entitled to under these General Terms and Conditions exceed the value of its receivables due from the customer by more than 20%, PHYTEC will release security of its choosing at the customer's request.
6.5 PHYTEC has the right to assign its claims against the buyer/customer to a third party.

7. Delivery times

- 7.1 As PHYTEC is not the actual manufacturer of the components that it processes or the products that it offers, binding delivery dates can only be provided for goods that are held in stock. If the delivery dates are not expressly described as binding in the quotation/contract, they shall merely be considered estimates with no obligation to deliver on specific calendar dates. However, PHYTEC is obliged to inform the customer immediately of any expected delays.
7.2 If an expected delivery date is delayed to an unacceptable extent for the customer, and for reasons attributable to PHYTEC, then the customer shall grant PHYTEC a reasonable extension of at least two weeks.
7.3 The expected delivery dates will be extended accordingly in the case of force majeure, such as unavoidable operational disruptions, strikes, lock-outs, non-delivery by upstream suppliers, and other incidents that PHYTEC has no control over.

8. Delivery cancellation

- 8.1 If the customer cancels orders either partially or in full and is unable to meet its purchase obligation through no fault whatsoever of PHYTEC, then PHYTEC is entitled to claim lump-sum compensation for the incurred damages in accordance with the following rules.
8.2 The purchase price of the delivery items that have already been produced by the point of withdrawing from the contract must be paid in full.
8.3 For goods that have not yet been produced, 60% of the net purchase price is payable if there are no more than 30 days between the event under item 8.1 and the agreed delivery date.
8.4 In all other cases, lump-sum compensation amounting to 40% of the net purchase price is payable.
8.5 The customer reserves the right to prove lesser damages on the part of PHYTEC.
8.6 This shall not affect PHYTEC's right to demand compensation for non-fulfilment if the customer does not pay for partial deliveries in accordance with the contract and PHYTEC therefore refuses to make the remaining deliveries.

9. Warranty and withdrawal

- 9.1 The warranty period comprises 12 months from delivery of the goods to the customer, provided that PHYTEC has not deliberately concealed the defect.
9.2 Transit damage and incorrect quantities must be reported in writing within eight days of receiving the delivery. The customer is obliged to inspect the goods immediately upon being delivered by PHYTEC and to inform PHYTEC immediately in writing of any discovered defects or other deviations and to return the faulty goods together with an exact description of the alleged problem. If the customer fails to notify PHYTEC, the goods shall be deemed as accepted, except in cases where the defect could not be detected during a precise inspection. Such a defect must be reported immediately upon discovery, otherwise the goods will be deemed as accepted even in consideration of this defect.
9.3 In the case of justified complaints, the customer has the statutory warranty rights with the following limitations: PHYTEC may decide at its own discretion whether to respond to the customer's request for remedial action by repairing the goods or by providing a faultless replacement of the purchased item. In principle, the customer shall grant PHYTEC at least three attempts at remedial action, unless the nature of the purchased item or defect or any other circumstances require otherwise. The customer shall grant PHYTEC at least 14 days for each attempt at remedial action, unless the nature of the purchased item or defect or any other circumstances require otherwise. In the case of slight negligence on the part of PHYTEC, the customer may not demand compensation for non-fulfilment in place of fulfilment. In such case, the customer is also entitled to a reduction in price, to withdraw from the contract, or to demand fulfilment of the contract. For the remainder, item 10 applies. In the case of slight negligence on the part of PHYTEC, any compensation claim by the customer is limited to the purchase price, whereby the objective value of the defective purchase item shall be offset in addition to fulfilment. For the remainder, item 10 applies.
9.4 By removing the original technical markings or by manipulating or changing the purchased item (provided that the item is not intended for this purpose), any obligation for PHYTEC to prove the existence of a defect will reverse.
9.5 No warranty whatsoever is provided for the sale of used hardware, unless a defect has been fraudulently concealed or certain characteristics have been assured.
9.6 The customer may not withdraw from the contract due to PHYTEC being in breach of an obligation, unless PHYTEC is at fault or a right of withdrawal exists due to the purchased item being defective.

10. Liability

- 10.1 If certain characteristics have been assured, then PHYTEC's liability for consequential damage is limited to those assurances that are expressly intended to protect against the occurrence of such consequential damage.
10.2 PHYTEC assumes no liability for slight negligence, unless essential contractual obligations (cardinal obligations) have been breached.
10.3 In the event of lost data, PHYTEC is only liable for the extent of damage that would have occurred if the data was backed up on a daily basis.
10.4 Irrespective of the aforementioned provisions, PHYTEC is liable for a maximum of EUR 250,000.00 per year and per breach of obligation.
10.5 The limitations of liability do not apply to liability under product liability law, or for damages resulting from death, bodily injury or impairment of health.
10.6 The possibility of liability insurance shall not give rise to liability beyond that mentioned above and governed in item 9.3.
10.7 The general limitation period under Art. 195 BGB (German Civil Code) is reduced to 12 months.

11. Export and re-export

- 11.1 All deliveries of PHYTEC are subject to an export licence pursuant to German foreign trade legislation, which the customer must make itself aware of.

12. Place of jurisdiction

- 12.1 The place of jurisdiction for all disputes arising from or in relation to this contract is Mainz.
12.2 The legal relationships between the parties are subject exclusively to the laws of the Federal Republic of Germany, under exclusion of international codifications such as the UN Convention on Contracts for the International Sale of Goods.
12.3 The buyer/customer must pay all fees, costs and expenses relating to any successful legal proceedings against it outside of Germany.

13. Miscellaneous provisions

- 13.1 All agreements between the parties, including changes thereto, must be made in writing.
13.2 If the customer fails to fulfil its obligations under the purchase contract, PHYTEC may refuse further deliveries without prejudice to its other rights.
13.3 Should a provision of these General Terms and Conditions be declared legally invalid, it shall be deemed to have been replaced with a provision that most closely corresponds to the economic sense and purpose of the invalid one and which takes into account the interests of the involved parties.
13.4 The customer is not permitted to assign its rights to third parties without the prior written consent of PHYTEC.
13.5 If a customer falls under the data protection law's personal scope of protection, it hereby agrees to its data being processed to the extent required to execute the contract.
13.6 Copyrights, patent rights and other usage and exploitation rights relating to the sold product shall remain with PHYTEC irrespective of the sale of the product, unless stipulated otherwise in the contract. The resale/transfer of the product is permitted in the specific form in which it is provided. The retrofitting of individual components or systems of PHYTEC or the product is only permitted with the written consent of PHYTEC.
13.7 The customer is only permitted to reproduce PHYTEC software and make backup copies for in-house use, provided that this does not give rise to any other usage possibilities.
13.8 PHYTEC products or components thereof may not be used in life-support, medical or military systems without the permission of PHYTEC. PHYTEC assumes no liability for damages arising from a breach of this obligation.
13.9 Items 13.6 and 13.8 do not include open source components of the PHYTEC software. These may be used under the conditions of the open source licences that apply in each case. More information about these open source components is provided together with the respective PHYTEC products.