

PHYTEC Holding AG – General Terms of Business

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1. General

- 1.1 These general terms of business, delivery, quotation and payment are valid for all sales contracts and business agreements between PHYTEC and the buying party ("buyer"), collectively referred to as "Parties". Terms other than these, especially general terms of purchase of the buyer, are not valid, even if they are not explicitly contradicted by PHYTEC's General Terms of Business.
- 1.2 The buyer acknowledges PHYTEC's general terms of business, at the very latest, upon acceptance of merchandise from PHYTEC.

2. Quotations and Contracts

- 2.1 All contract negotiations between the Parties, agreements made over the phone or otherwise, especially contract changes, require written consent from both Parties. Any changes, modifications or deviations from a written contract between the Parties requires written confirmation of said changes.
- 2.2 Orders issued by the buyer to PHYTEC are legally binding only upon PHYTEC's written confirmation of receipt of said orders.
- 2.3 An invoice may substitute for written order verification if the order is immediately fulfilled by PHYTEC.
- 2.4 PHYTEC is not bound to accept a sales offer if the order is made by means of a circular letter.
- 2.5 Quotes made by PHYTEC are subject to change if commitment to the quote is not in written form.
- 2.6 The aforementioned terms regarding quotations and contracts are valid for every quote made by PHYTEC.
- 2.7 A product quality guarantee is only part of the contract with explicit written confirmation of said product guarantee.

3. Prices

- 3.1 Prices are understood in terms of Euros for all transactions made within the European Union and U.S. dollars for all transactions made in North America. Prices are exclusive of packing for shipping F.O.B origin, applicable sales tax on the day of accounting and other legal costs of shipping.
- 3.2 Prevailing prices for standard products are taken from current PHYTEC price lists.

4. Shipping and Transport Insurance

- 4.1 Shipping of products is at the expense of the buyer. Transport insurance to the place of delivery, determined by the buyer, will be calculated and paid by PHYTEC with the ceiling being the sales price of the item to be insured, unless waived by the buyer in writing.
- 4.2 Partial deliveries of orders by PHYTEC are permissible.

5. Terms of Payment

- 5.1 For sales in the European Union: All payments are denoted in German Marks or EU Euros and are to be made by the buyer within fourteen (14) days of invoicing and delivery without any allowances. After which, beginning with the first reminder, standard bank interest will be charged, at a rate at least 1% above the current bank rate of the Bundesbank.
- 5.2 For sales in North America: All payments are denoted in U.S. dollars and are to be made by the buyer within thirty (30) days of invoicing and delivery without any allowances. After which, beginning with the first reminder, standard bank interest will be charged, at a rate at least 1.5% per month or part thereof.
- 5.3 Payments will be applied to the balancing of the earliest payable debt, including the interest payable on arrears resulting from it, any legal costs and, lastly, to the sales price.
- 5.4 Promissory notes or predated checks will only be accepted after a written promissory agreement made prior to sale, and only for payment purposes. All taxes, bank, discount, or withdrawal charges are at the expense of the buyer.
- 5.5 When a number of promissory notes are given as payment, then all promissory notes are payable, if the next payable promissory note is not paid according to the time allotted in the promissory note agreement.
- 5.6 If the buyer is derelict in making payments or fails to otherwise to meet the terms from these General Terms of Business, ceases payment, or if the buyer's legal representative files for bankruptcy, then all legal fees become payable toward the sum of the total accounts payable to PHYTEC. In this case PHYTEC has the right to renege on all contracts and to take all previously delivered merchandise back into their possession, as well as to demand restitution for all costs occurred in connection with the repossession of said merchandise. This includes transportation costs, devaluation of merchandise, etc. Merchandise shall be valued at the prevailing price list or purchase contract at the time of purchase.

6. Ownership Proviso, Private Resale, Transfer of Goods

- 6.1 PHYTEC maintains claims on ownership of delivered merchandise until full payment of the purchase price, including any interest resulting from default as well as legal costs, has been made.
- 6.2 Until transfer of ownership of the merchandise from PHYTEC to the buyer has been made, the buyer may neither sell, nor transfer ownership of said merchandise to a Third Party. In the event that the merchandise in question is either forfeited or taken into possession by another Party, the buyer is responsible for notifying PHYTEC. In addition, all costs resulting from the release of said merchandise are the financial responsibility of the buyer. The buyer may, in the course of normal business, sell the merchandise to a Third Party, as long as the buyer is not in default on payments to PHYTEC. The buyer is also responsible for any wear, damage or incidental product failure during the period of the ownership proviso. If the buyer chooses to use other products in combination with PHYTEC products during this time, PHYTEC obtains co-ownership of the additional products in relation to their value when combined with PHYTEC merchandise. The buyer hereby forfeits his or her rights to transfer ownership of the provisioned good, at currently calculated net value, to PHYTEC; PHYTEC hereby accepts this forfeiture. The buyer's right to resell PHYTEC merchandise ends when the buyer is overdue in his payments to PHYTEC, or becomes insolvent. In this case, the buyer maintains possession of the provisioned merchandise only with PHYTEC's written permission.

7. Terms of Delivery

- 7.1 As PHYTEC is not personally the manufacturer of the majority of components used on its products, terms of delivery are only valid for the merchandise that is currently held in storage at PHYTEC. Furthermore, PHYTEC can only reference "foreseeable distribution dates" without being bound in terms of a fixed delivery schedule. PHYTEC is obligated to inform the buyer in writing of any foreseeable delay in any stated, foreseeable delivery date.
- 7.2 If a foreseeable delivery date is unexpectedly delayed, then the buyer has the right to set PHYTEC a four (4) week limit on delivery. After this time has elapsed, if delivery has not been made, the buyer has the right to partially or completely withdraw from the contracted purchase agreement. Unless the buyer can demonstrate that a legal representative or employee of PHYTEC is guilty of malice or gross negligence, further claims or demands are excluded, including claims for loss compensation as a result of failure to comply with the terms of the contract.
- 7.3 The projected delivery date, as originally printed in the sales contract, can be changed due to production setbacks, strikes, lockouts, failure to receive ordered merchandise from distributors and other sources, or other circumstances that are beyond PHYTEC's control.

8. Cancellation of Delivery

- 8.1 If the buyer cancels an order in part or completely, and fails to fulfill its obligation to accept delivery, PHYTEC is then justified in making claims for comprehensive loss compensation.
- 8.2 All products intended for delivery that have already been produced at the point of the buyer's withdrawal from the contracted agreement are to be paid for at the full sales price by the buyer.
- 8.3 For any products that have not yet been produced, a flat-rate compensation of 60% is to be paid, if the cancellation by the buyer is not made at least thirty (30) days before the projected delivery date.
- 8.4 In all other cases of non-delivery at the buyer's behest, a flat-rate compensation of 40% of the net-worth of the delivery goods will be calculated.
- 8.5 If the buyer can document proof that the amount of actual loss is smaller than that claimed by PHYTEC, then PHYTEC shall only be entitled to compensation equal to this the determined amount of loss. Likewise, PHYTEC is also free to calculate the exact sustained loss in the case of a breach of contract and demand this sum as compensation from the buyer.
- 8.6 PHYTEC maintains the right to demand default compensation after discontinuing delivery if the buyer fails to pay for partially delivered products according to the terms of contract.

9. Merchandise (Hardware) Warranty

- 9.1 PHYTEC guarantees that the delivered merchandise has no material or manufacturing flaws that will affect its value or function, as specified in the Parameters of Use section of these Terms of Business.
- 9.2 The warranty also covers any failure to perform functions that are explicitly guaranteed by PHYTEC to the buyer.
- 9.3 The merchandise warranty is valid up to six months after the buyer has received merchandise.
- 9.4 Missing items and/or damage ("defects") sustained to merchandise during shipping is to be reported to PHYTEC by the buyer in writing within eight (8) days of receiving merchandise. The buyer is obligated to inspect the merchandise immediately after delivery and, in the case of defects, to inform PHYTEC of said defects in writing. The buyer is also responsible for returning the defective articles to PHYTEC along with providing a detailed description of alleged defects. If the buyer fails to notify PHYTEC, then it is assumed that the merchandise was received and considered acceptable. That is, unless even by close inspection of the merchandise no visible defects could be found. In this case, the buyer must immediately inform PHYTEC of such defects for verification by PHYTEC. Otherwise the merchandise will be considered accepted regardless of any defects.
- 9.5 In the instance of a substantiated buyer complaint, PHYTEC makes good its warranty by repairing or replacing any material or manufacturing defects in the effected merchandise.
- 9.6 If the buyer is not in agreement with these terms of the warranty, then it is left with no claims for compensation, including compensation for assembly or installation costs of the merchandise.
- 9.7 PHYTEC warrants no product defects that result from improper use, negligence, modification, improper installation, improper product testing methods, repairs made by the buyer, or other coincidental factors.
- 9.8 Removal of the original "CE" technical quality assurance emblem will void this guarantee.
- 9.9 Upon PHYTEC's failure to repair or to replace any defective merchandise, the buyer has the right to demand a discount on the sales price or annulment (or a rewriting) of the sales contract.
- 9.10 PHYTEC can exclude its warranty on the sale of used hardware.
- 9.11 PHYTEC employees cannot be held personally liable for any product defects.

10. Merchandise (Software) Warranty

- 10.1 If software developed and sold by PHYTEC does not function according to the parameters described in the contract or product description, and a complaint is made to PHYTEC in writing, PHYTEC is obligated to make all necessary repairs, gratis, within twelve (12) months.
- 10.2 For software resold but not produced by PHYTEC, PHYTEC shall recognize no warranties given PHYTEC's rights as stated in the current licensing terms with the original software manufacturer.
- 10.3 Software discrepancies and limitations caused by innovations in the market (such as changes to operating systems) are not considered defects. The buyer only has claims to continued software maintenance and adaptation if a consultation service is a component of a sales agreement.
- 10.4 Compensation liability for immediate or subsequently incurred damages is excluded, unless it can be demonstrated that a legal representative or employee of PHYTEC is guilty of malice or gross negligence.

11. Manufacturer's Liability

- 11.1 According to prevailing product liability laws in the European Union and the United States, PHYTEC is exempt from liability if product defects were caused by buyer usage of a PHYTEC product for purposes other than which it was intended.
- 11.2 PHYTEC is exempt from liability if defects result from improper use, negligence, modification, improper installation, improper product testing methods, repairs made by the buyer, or other coincidental factors.
- 11.3 PHYTEC is exempt from liability if the original "CE" technical quality assurance emblem is removed from PHYTEC merchandise.
- 11.4 The exemption from liability also ends if PHYTEC manufactures a product on the order of a buyer without knowledge of the end product usage or without PHYTEC's ability to control or monitor the products end application.
- 11.5 The buyer receives no exemption from liability if PHYTEC can make valid claims for liability exemption according to Article 7 of the European Union General Commercial Rules or applicable liability laws in the United States.

12. Export and Re-export

- 12.1 All of PHYTEC's deliveries are made according to export allowance in accordance with German (Bundes-deutsches Aussenwirtschaftsrecht) and U.S. American commercial export law. It is the obligation of the buyer to be aware of these laws.
- 12.2 Technical proprietary knowledge, licenses, copyrights and trademarks associated with all PHYTEC products remain under the ownership of PHYTEC. The resale or re-export of single or system-integrated PHYTEC products requires PHYTEC's permission. Any such permission granted to buyers from PHYTEC does not include transfer to Third Parties of any technical proprietary knowledge, licenses, copyrights and trademarks associated with all PHYTEC products.

13. Jurisdiction

- 13.1 The venue for any legal actions for any and all disputes about or resulting from these General Terms of Business or any separate contractual relations with PHYTEC are to be held in Mainz, Germany or Kitsap County, Washington unless otherwise agreed to in writing between PHYTEC and the buyer.
- 13.2 All legal proceedings between PHYTEC and buyers fall exclusively under the legal jurisdiction of the Federal Republic of Germany or the State of Washington.

14. Parameters of Use

- 14.1 Copyrights, as well as application and exploitation rights to the a final product in which a PHYTEC product has been incorporated, remain dependent on the delivery of PHYTEC products to the buyer as stipulated by contract. Deconstruction or reverse engineering of single parts or PHYTEC systems is only allowed with the expressed written consent of PHYTEC.
- 14.2 Reproduction of PHYTEC software without the expressed written consent of PHYTEC is only allowed for buyer's internal usage or for backup.
- 14.3 PHYTEC products may not be installed in life-sustaining, medical, or military systems without the expressed written consent of PHYTEC.

15. Miscellaneous

- 15.1 If the buyer should happen to fail to meet the terms from a sales contract, PHYTEC can refuse further delivery without danger of invalidating its legal rights and contractual obligations.
- 15.2 If the decree of these General Terms of Business is declared legally ineffective, then it is considered to have been substituted for by a provision which approaches the intended function of the now ineffective decree and takes the interests of both parties involved into consideration.
- 15.3 The buyer cannot transfer or forfeit its rights to a Third Party without the written consent of PHYTEC.
- 15.4 If the buyer claims protection under of the data security and proprietary property copyright and patent laws, the buyer must declare itself in agreement with PHYTEC's right to a thorough analysis of said data or proprietary property, to the extent that such an analysis is deemed necessary.

The current copyright provisions are also valid for products not produced by PHYTEC.