

# General Terms and Conditions of Sale and Delivery of Products

**1. Conclusion of Agreement.** The agreement for sales and deliveries of products ("Products") by Mercodia Inc. ("Mercodia") to its customers ("Customers") is created when Mercodia accepts a Customer order, either by sending a written order confirmation or by shipping the ordered Product ("Agreement"). These general terms and conditions of sale and delivery ("GTCs") are incorporated into and is an integral part of the Agreement and shall exclusively apply to any sales and deliveries of Products. By placing an order, Customer accepts these GTCs and any application by Customer of its own divergent or supplementary terms and conditions is not accepted and shall be excluded in their entirety, even if such terms and conditions are not expressly objected to by Mercodia.

## **2. Ordering and Delivery.**

**2.1** Mercodia will accept orders based on availability of Products. Once Customer has placed an order, the order may not be cancelled by Customer unless agreed by Mercodia in writing. Upon acceptance of an order, Mercodia may send an order confirmation or directly proceed to deliver the ordered Products to Customer.

**2.2** All products are delivered FedEx overnight from Mercodia facilities in Winston Salem, NC. Transportation services and insurance may be ordered and included in a delivery only upon prior written request and at the expense of the Customer. Mercodia has the right to deliver orders in installments, unless Customer has specifically required one delivery.

**2.3** Unless agreed otherwise in each case, delivery dates and times are estimates only. Mercodia will try to meet any delivery dates specified in the order, depending on availability and any lead times that may apply. Mercodia will promptly inform Customer of any expected delay of delivery, the reasons and effects thereof as well as the estimated new delivery time, if possible, however, Customer may not hold Mercodia liable for any losses, expenses or damages caused by a late delivery.

## **3. Inspection and Acceptance.**

**3.1** Customer shall inspect the Products within 48 hours upon their receipt and shall without delay notify Mercodia in writing of any lack of conformity or of any defect in the Products. Customer is obliged, wherever possible, to take precautions to prevent any further damage to the Products. If any defects in the Products are limited to certain parts of the delivered Products, Customer may not reject all of the Products delivered by Mercodia.

**3.2** Customer may return products that are damaged or defective on delivery, and request correction of any shortages, if Customer contact Mercodia within five days from the day Customer receives the Products. Otherwise the products will be deemed accepted, however, Customer will not lose any warranty rights. All Product returns must be pre-approved by Mercodia.

**4. Price.** The price for the Products will be stated in the order confirmation, or, if Mercodia does not provide Customer with an order confirmation or the price is not referenced in the order confirmation, the price will be the list price that applies to the ordered Products on the date of Mercodia's receipt of the Customer order. All prices are excluding any applicable VAT and any other taxes, charges or fees, including shipping and handling, which shall be borne by Customer.

## **5. Payment.**

**5.1** Customer shall pay invoices within 30 days from the invoice date in the currency specified in the invoice. Each order is a separate transaction, and Customer may not set-off payments from one order against another. If Customer is late in making payment, without affecting Mercodia's other rights, Mercodia may suspend delivery or cancel the Agreement, reject any future orders, and charge Customer a late-payment charge, from the due date until paid, at the rate of one percent (1%) per month (12% per year) or, if less, the maximum amount allowed by law. Mercodia has the right to appoint a collection agency or an attorney to recover any unpaid amounts and Customer agrees to pay all such reasonable costs of collection.

**5.2** Should Mercodia become aware of a deterioration in Customer's financial situation after the conclusion of the Agreement, suspend payment or become in default with a payment, all claims of Mercodia against Customer shall become due immediately and Mercodia shall be entitled to make any outstanding deliveries only against prepayment or upon the provision of security. If such prepayment or security has not been rendered even after the expiry of a reasonable grace period, Mercodia may, without prejudice to its further rights, partially or totally rescind the Agreement.

**6. Product Use and Restrictions.** Customer may only use the Products in accordance with their directions for use. Customer is solely responsible for making sure that the Products are suitable for Customer's intended use and that the use of the Products complies with applicable laws, regulations and governmental policies.

## **7. Limited Warranties.**

**7.1** Mercodia warrants that each Product will meet its specifications either as stated in Mercodia's published catalogs or as agreed specifically for a particular delivery until the Product's expiry or "use by" date. Mercodia will not deliver Products with less than three months' shelf life.

**7.2** Mercodia's warranties do not apply to defects or failures caused by (a) removal, or use, storage, or handling in an improper, inadequate, or unapproved manner, such as failure to follow Mercodia instructions or directions for use; (b) contact with improperly used or unapproved chemicals or samples; (c) modification or alteration of the Product by anyone other than Mercodia or a person authorized by Mercodia; or (d) manufacture in accordance with specifications provided by Customer. Customer's warranty rights also require that Customer properly inspects the Products upon delivery in accordance with section 3.

**7.4** Customer's warranty rights are restricted to the delivery of a Product that meets the applicable specification (supplementary performance) and Customer shall give Mercodia the necessary period of time and opportunity for such supplementary performance. Mercodia shall bear the material, shipment and working costs which accrue for the purpose of the supplementary performance, provided that the defect claimed by the Customer is accepted by Mercodia. Ownership of Products which have been replaced by Mercodia shall pass onto Mercodia and Customer shall return such Products to Mercodia upon request.

**7.6** In no event shall Mercodia total liability for breach of warranty exceed the purchase price of the Product. These warranties are exclusive and Mercodia makes no other representations or warranties of any kind whatsoever, express or implied, including without limitation any implied warranties of merchantability or fitness for a

particular purpose, of non-infringement, or regarding results obtained through the use of any Product, whether arising from a statute or otherwise in law or from a course of performance, dealing or usage of trade, all of which are expressly disclaimed.

## **8. Intellectual Property Rights.**

**8.1** Customer acknowledges that all intellectual property rights relating to the Products are solely and exclusively owned by Mercodia and the purchase of Products only grants to Customer a limited, non-transferable right under such intellectual property, for Customer only to use the Products that Customer has purchased for its internal research purposes without a right to resell the Products. Mercodia provides no rights to use the Products in commercial applications of any kind, including, without limitation, manufacturing, quality control or commercial services.

**8.2** Mercodia will defend and indemnify Customer from and against infringement damages finally awarded in any legal action brought by a third party against Customer to the extent that the action is based on a claim that Mercodia's manufacture and sale of a product infringes any patent, copyright, trademark or other intellectual property right of such third party, if Mercodia had actual knowledge of such intellectual property right and the actual infringement at the time of delivery of the Product to Customer. This indemnity does not apply to claims that arose based on (a) Customer's failure to comply with the Agreement, (b) Customer's use or resale of Products, or (c) modifications made by Customer or any third party. This indemnity is Mercodia's only liability to Customer, and the only remedy for any infringement or claimed infringement of intellectual property rights by or in connection with a Product.

**8.3** As a condition to the indemnity in this section 8, Customer must (a) notify Mercodia in writing, as soon as Customer becomes aware of any claim; (b) not admit any liability or take any action in connection with the claim that could affect the defense; (c) allow Mercodia to solely control the defense or settlement of the claim; and (d) provide information, co-operation and assistance in defending the claim.

**8.4** If there is reason to believe that a Product may be subject to a claim for intellectual property infringement, then Customer shall allow Mercodia, at Mercodia's option and expense, to either: (a) secure for Customer the right to continue using the product; (b) substitute the product with another suitable and non-infringing product with similar functionality; or (c) require Customer to return the product for a refund of the purchase price Customer paid.

**8.5** If a third party makes a claim against Mercodia for infringement of its intellectual property rights based on (a) Customer's failure to comply with the Agreement (b) Mercodia's use of materials provided by Customer, or (c) Customer's modification, use or resale of a product, then Customer will indemnify and hold Mercodia harmless from and against any and all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees and other costs of defending and/or settling any action) that Mercodia may have to pay as a result of the claim.

**12. Limitations of Liability.** To the maximum extent permitted by law, Mercodia will not be liable for any indirect, special, incidental, punitive, multiple, exemplary or consequential damages (including but not limited to loss of business, loss of revenue, lost profits, lost data or loss of goodwill) that Customer might incur under the Agreement, or that may arise from or in connection with the Products, even if Mercodia had notice of the possibility of such damages. In addition, Mercodia's maximum aggregate liability arising out of or in connection with the Agreement, or any Product, is limited to the amount Customer paid for such Product. However, these provisions do not limit liability for death or personal injury caused by negligence or any other liability that cannot be excluded by law.

## **14. Force Majeure.**

**14.1** Neither party shall be liable for delays and damages caused by an impediment beyond its control, which that party could not have reasonably taken into account at the time of the conclusion of the Agreement, and whose consequences could not reasonably have been avoided or overcome. Strike, lockout, boycott and other industrial action shall constitute a force majeure event also when the party concerned is the target or a party to such action.

**14.2** A force majeure event suffered by a subcontractor of a party shall also discharge such party from liability, if subcontracting from other source cannot be made without unreasonable costs or significant loss of time.

**14.3** Either party shall without delay inform the other party of a force majeure event in writing. The party shall correspondingly inform the other party of the termination of the force majeure event. If the end of such event is not foreseeable or should it continue for a period longer than two months, each party is entitled to rescind the Agreement.

**15. Confidentiality.** Mercodia and Customer shall each keep in confidence all material and information received from the other party marked as confidential or which should be understood to be confidential, and may not use such material or information for any other purposes than those set forth in the Agreement. The confidentiality obligation shall, however, not be applied to material and information which, (a) is generally available or otherwise public; (b) the party has received from a third party without any obligation of confidentiality; (c) was in the possession of the receiving party prior to receipt of the same from the other party without any obligation of confidentiality related thereto; or (d) a party has independently developed without using material or information received from the other party.

**16. Miscellaneous.** Any failure by a party to exercise any rights under the Agreement is not a waiver of any rights to damages for breach of Agreement and is not a waiver of any subsequent breach. If any provision or part of the Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the Agreement. In such case, the parties undertake to replace the invalid provision by a valid provision coming closest to the commercial purpose of the invalid provision.

**17. Governing Law.** The Agreement, including these GTCs, will be governed by and construed in accordance with the laws of New York, without regard to provision on the conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

**18. Dispute resolution.** Any dispute or claim arising out of or in connection with this Agreement or the breach, termination or invalidity thereof, shall be exclusively submitted to the state or federal courts in the city, county and state of New York.