

General Terms and Conditions of Sale

of new and used products
(valid from September 19, 2011)

1. Application/Incorporation

- 1.1 These terms and conditions of sale shall govern all expressions of intent and all legal declarations that refer to entering or executing any kind of sales or service agreement between Terra Calidus GmbH and its purchasers.
- 1.2 These terms and conditions of sale will be incorporated (i) by an explicit agreement or, (ii) if such an explicit agreement is, due to the nature of sales or service agreement, difficult to enter in and the purchaser accepts these terms and conditions, by entering into the sales or service agreement. If the purchaser is an entrepreneur under sec. 14 German Civil Code (*BGB*) these terms and conditions of sale shall also govern all future transactions between the parties without any further incorporation agreement.

2. Conclusion of Contracts

All public or published offers of Terra Calidus GmbH do not legally bind Terra Calidus GmbH. Offers made to individual purchasers will bind Terra Calidus GmbH for a 30-days-period.

3. Prices/Payment

- 3.1 All agreed prices are fix prices. Prices are ex works, exclusive of the respective statutory VAT and exclusive of costs for packaging, except as otherwise expressly agreed upon.
- 3.2 Additional service which is not included in the sales price will be charged separately. Such an additional charge will be due and payable upon finishing the additional service.
- 3.3 Terra Calidus GmbH is entitled to charge the purchaser with cost increases arising in the meantime if the period between order and proper delivery exceeds four months. If such a cost increase charged to the purchaser exceeds 5 per cent of the agreed original price the purchaser is entitled to cancel his sales order within one week from receiving the message about the surcharge.
- 3.4 Unless otherwise agreed upon the agreed purchase price becomes due and payable within two weeks from receiving the invoice without any further note by Terra Calidus GmbH.
- 3.5 Unless otherwise expressly defined by the purchasers all payments of the purchaser will be regarded as made to the elder claims of Terra Calidus GmbH at first. Sec. 367 of German Civil Code (*BGB*) shall, however, prevail.
- 3.6 In case of delay by purchaser's payments Terra Calidus GmbH is entitled to collect due date interest in the amount of 5 per cent (if the purchaser is an entrepreneur: 8 per cent) above the respective base interest rate p. a. Terra Calidus GmbH reserves all rights to claim further damages for delay.
- 3.7 The purchaser shall be entitled to offset only insofar as the purchaser's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The purchaser is entitled to claim retainer rights only to the extent such rights are based on the same transaction.
- 3.8 The parties mutual agree on, that the deliveries are not subject to any taxation worldwide. In case this assumption is incorrect and Terra Calidus GmbH is requested to pay any additional taxes, the purchaser is obliged to pay these taxes in addition to the agreed prices.

4. Reservation of Right of Modification

- 4.1 Terra Calidus GmbH is entitled to make its own choice between several products equal to the sold product until the product will be delivered at the purchaser.
- 4.2 Terra Calidus GmbH is entitled to deliver another product than the ordered product if (i) the delivered product is of similar quality and value and (ii) the purchaser will not be unreasonably interfered with such a switch.

5. Delivery/Default of Delivery

- 5.1 Part-deliveries by Terra Calidus GmbH are hereby agreed upon. As far as such part-deliveries concern a separate position of purchaser's order the part-deliveries shall be deemed separate delivery.
- 5.2 Unless otherwise agreed in a written way Terra Calidus GmbH shall deliver its products within 30 days from receiving the order. In the event that a pre-payment by the purchaser has been agreed the 30-days-period shall start from receiving the full pre-payment. In case of default of delivery the purchaser has to grant a reasonable extension. If Terra Calidus GmbH does not deliver within such an extension the purchaser may cancel the sale's contract and may collect all his pre-payments. Any further claims against Terra Calidus GmbH shall be excluded unless intent or gross negligence have governed the delay.
- 5.3 Terra Calidus GmbH shall be released from its delivery obligations if (i) a supplier of Terra Calidus GmbH is not able to supply Terra Calidus GmbH or (ii) Terra Calidus GmbH can not be supplied due to any kind of force majeure unless these circumstances have been entered prior to entering into the sale's contract. If such circumstances occur Terra Calidus GmbH will inform the purchaser immediately and will repay any pre-payments to the purchaser; all further claims of the purchaser shall be excluded.

6. Passing of Risk

The risk of loss or damage to the goods passes to the purchaser upon dispatch.

7. Default in Acceptance

- 7.1 In case of default in acceptance or other breach of duties to cooperate by the purchaser Terra Calidus GmbH is entitled to claim any resulting damage.
- 7.2 As a damage compensation Terra Calidus GmbH is entitled to claim a lump-sum compensation of 20 per cent of the agreed purchase price unless the purchaser gives evidence that the damage of Terra Calidus GmbH is lower. Further damages are reserved in the event that Terra Calidus GmbH can state a damage exceeding the 20 per cent of the purchase price.
- 7.3 In case of default in acceptance for a period longer than 30 days Terra Calidus GmbH may claim from 0.5 per cent up to 15 per cent of the purchase price per month as a storage charge, at minimum however 40.00 EURO, unless the purchaser gives evidence that the damage of Terra Calidus GmbH is lower.

8. Warranty

- 8.1 The warranty of Terra Calidus GmbH shall be governed by the following terms exclusively.

8.2 Warranty for new goods

- 8.2.1 In case of non-conformity of the product the purchaser is entitled, but also limited, to alternative performance in the form of remedy of the defect unless a consumer business under sec. 474 German Civil Code (*BGB*) can be assumed. In this case Terra Calidus GmbH may, at its sole discretion, select between repair or delivery of conforming goods. Both have to be completed within one week. If such alternative performance has failed, the purchaser is entitled to reduce the purchase price or to withdraw from the contract. If Terra Calidus GmbH spend spare parts or complete goods Terra Calidus GmbH becomes owner of the replaced parts and goods. Furthermore, the purchaser has to pay Terra Calidus GmbH reasonably for the period of use.
- 8.2.2 In case of remedy a defect the purchaser is obliged to keep the product ready at his location for remedy the defect. If such a remedy of defect is impossible the purchaser is obliged, according to request of Terra Calidus GmbH, to let the product be re-delivered to Terra Calidus GmbH.
- 8.2.3 Warranty claims arise upon purchaser's receipt of the goods and shall be time-barred after 12 months from such a receipt. In the event that a consumer business under sec. 474 German Civil Code (*BGB*) can be assumed, the statute limitation will come up after two years.

8.3 Warranty for used goods

- 8.3.1 For used goods (including goods repaired or renewed by Terra Calidus GmbH) all kind of warranty obligations and damage compensations of Terra Calidus GmbH shall be excluded unless (i) Terra Calidus GmbH has been acted provably with malice or (ii) Terra Calidus GmbH has expressly assumed a guarantee.
- 8.3.2 In the event Terra Calidus GmbH has assumed a guarantee or has to accept warranty claims under clause no. 8.3.1 all claims of the purchaser will be time-barred after four weeks. In the event that a consumer business under sec. 474 German Civil Code (*BGB*) can be assumed the statute limitation will come up after one year.

8.4 Common terms for new and for used goods

- 8.4.1 Regardless of all other duties under this clause no. 8.4 the purchaser has to inform Terra Calidus GmbH by written note within 14 days from receipt of the goods. Perceptible damages of the packaging have to be mentioned on the shipment documents and to be announced within 48 hours to Terra Calidus GmbH by the purchaser. If the purchaser fails with these obligations his warranty claims will be forfeited.
- 8.4.2 Precondition for any warranty claim of the purchaser is the purchaser's full compliance with all requirements regarding inspection and objection established by sec. 377 German Commercial Code (*HGB*). The announcement of any defect by the purchaser has to be made within 48 hours from discovery of the defect.
- 8.4.3 The warranty of Terra Calidus GmbH does not cover those defects which occur after delivery by wear and tear, humidity, unreasonable heat, influences of weather, missing maintenance or unreasonable treatment. Interferences into the product by the purchaser himself or by other unauthorized persons shall be deemed unreasonable treatment under this clause. Furthermore, the warranty of Terra Calidus GmbH does not cover defects caused by use of unauthorized accessories unless Terra Calidus GmbH has released these accessories. Finally, Terra Calidus GmbH does not guarantee for compatibility with products of other suppliers.
- 8.4.4 The warranty of Terra Calidus GmbH does not cover any damages caused by wrong product information unless the damage has been caused by intent or gross negligence of Terra Calidus GmbH. Notwithstanding all kind of liability under clause no. 10.1 any liability of Terra Calidus GmbH caused by gross negligence shall be excluded if the purchaser does not respect written technical advises issued by Terra Calidus GmbH.

9. Retention of Title

- 9.1 Terra Calidus GmbH retains title to the goods until receipt of all payments owed by the purchaser to Terra Calidus GmbH in full. Any kind of resale, pledge or encumbrances shall be legally invalid unless Terra Calidus GmbH has given its prior consent by written note.
- 9.2 The purchaser may, however, resell goods subject to the above retention of title only in the course of his regular business without the consent of Terra Calidus GmbH. For this case, the purchaser hereby assigns all claims arising out of such resale to Terra Calidus GmbH.

- 9.3 In case of levy of execution purchaser has to inform Terra Calidus GmbH immediately to enable Terra Calidus GmbH to intervene against such a levy of execution. The costs of such intervention have to be born by the purchaser.
- 9.4 The purchaser shall handle the goods with due care.
- 9.5 Terra Calidus GmbH is entitled to assign its retention of title and its claim from sales and services (including the pre-assigned claims according to clause 9.2) to abcfinance GmbH. The buyer will be communicated at the conclusion of the contract whether such assignment becomes effective. In this case, payments will only have debt-discharging effect if made to the account of abcfinance GmbH. The bank connection will be communicated to the buyer at the contract's conclusion.
- 9.6 The purchaser shall maintain suitable insurance for the goods covering damages by theft, by fire and by water on his own cost if he maintains his stock on own or rented estate. In case of an event insured purchaser hereby assigns his claims against the insurance to Terra Calidus GmbH.

10. Liability

- 10.1 All kind of damage claims of the purchaser, regardless of the legal construction, shall be excluded unless
- 10.1.1 the damages arise from injuries of life, body or health if such damages have been caused by intent or negligence of Terra Calidus GmbH or by agents or assistants in performance of Terra Calidus GmbH, or
- 10.1.2 the damages have been caused by intent or gross negligence of Terra Calidus GmbH or by agents or assistants in performance of Terra Calidus GmbH, or
- 10.1.3 the damages have been caused by intent or gross negligence of Terra Calidus GmbH or by agents or assistants in performance of Terra Calidus GmbH regarding the breach of a main obligation of Terra Calidus GmbH out of the contract.
- 10.2 If Terra Calidus GmbH is liable under these terms the liability shall be limited to those damages that typically occur. As far as the liability of Terra Calidus GmbH is excluded under these terms the exclusion shall also be valid on behalf of employees, agents and assistants in performance of Terra Calidus GmbH. In the event that purchaser does not claim for his damages, but for the expenses he made by trust in the sales and service performance of Terra Calidus GmbH, such expenses will be reimbursed in a reasonable volume.

11. Place of Performance/Applicable Law/Jurisdiction

- 11.1 Place of performance shall be Gera/Germany.
- 11.2 Independent of purchaser's nationality and residence this contract shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods).
- 11.3 If purchaser is a salesman (*Kaufmann*) under German Commercial Law (*HGB*) exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Gera/Germany.

12. Data Protection

Terra Calidus GmbH will make use from all personal data of purchaser, such as name, address, phone number, for delivery and service purposes only. Any disclosure of these personal data towards third parties shall only happen with purchaser's prior express consent.

13. Copyrights

The copyright of all kind of documentation delivered to purchaser in executing a purchase contract shall remain at Terra Calidus GmbH. Purchaser, however, may use the copyright as a licensee with the non-exclusive and the non-transferable right to use the products of Terra Calidus GmbH.

14. Amendments/Written Note

Additional terms and conditions, supplementing or amending these terms and conditions have to be agreed by written note. This request of written note can only be amended by written note.

15. Collision Clause

- 15.1 Differing or contrary terms of purchaser shall not apply except if expressly agreed by Terra Calidus GmbH upon in writing.
- 15.2 In the event that differing terms cause the application of optional legal rules sec. 9.1 shall remain valid in each case.
- 15.3 The German version of these terms and conditions shall prevail all other versions in case of collision.

16. Legal Invalidity

Should any or more of these terms and conditions be invalid, the parties shall agree on a replacement term that comes as closely as possible to the commercial meaning and purpose of the invalid term.