

GENERAL CONDITIONS OF SALE FOR THE SUPPLY OF PRODUCTS AND SERVICES / Version August 1st, 2018

1. These General Conditions of Sale apply to all contracts concluded between PHORNANO holding GmbH ("Seller") and any buyer ("Buyer"), each of them "Party" and together "Parties", e.g. regarding the supply of products and/or services ("Scope of Supply"). Any general purchase conditions of Buyer are not applicable, even if their application has not been excluded explicitly. Any modifications of or deviations from these General Conditions of Sale must be agreed in writing.
2. The Scope of Supply is fully and exclusively described in Seller's offer ("Offer").
3. All prices are valid Ex Works (EXW) Kleinengersdorfer Strasse 24, 2100 Korneuburg, Austria based on the Incoterms applicable at the time of conclusion of the contract, excluding packing and loading, unless explicitly agreed otherwise.
4. All payments to Seller shall be made in accordance with the agreed terms of payment. All amounts due shall be transferred to Seller by teletransmission or SWIFT to Seller's bank. Buyer shall be deemed to have performed his/her payment obligations when the respective sums have been received in full by Seller's bank in EUR in time. If not otherwise agreed, all payments shall fully be made in advance.
5. In case of payment by documentary credit (L/C), Buyer shall arrange for irrevocable L/C, and subject to Seller's instructions and the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce as in force at the date of conclusion of the contract.
6. In case of late payment, Buyer shall pay the statutory interest
7. All banking charges and any kind of statutory taxes, fees, duties and other charges out of or in connection with any contract concluded between Seller and Buyer shall be borne by Buyer.
8. All Scope of Supply shall remain Seller's property until the agreed price has unconditionally and fully been paid by Buyer.
9. The risk of damage, loss, failure or late delivery passes from Seller to Buyer in accordance with the Incoterm Ex Works (EXW) Kleinengersdorfer Strasse 24, 2100 Korneuburg, Austria in force at the date of the conclusion of the contract, except when agreed otherwise in writing.
10. If the Scope of Supply is to be inspected before delivery in Seller's workshop, the costs which occur at Seller's workshop will be borne by Seller, all other costs by Buyer. In case the inspection includes measurements which cannot be performed with the Seller's standard equipment in the workshop or in a standard timeframe, the additional costs will be borne by the Buyer. The Seller claims the right to decide which equipment is considered standard equipment, or which timeframe is considered standard.
11. Unless explicitly agreed otherwise, delivery dates and deadlines are always considered to be approximate.
12. Seller warrants ("Gewährleistung") only for those characteristics of the Scope of Supply which are described in the Offer. Therefore, for example any information and data contained in general product documentations, whether in electronic or other form, are not binding. Furthermore, Seller does not warrant for any feasibility and/or profitability and/or success. The warranty period is twelve months from the date of delivery if not agreed otherwise by the Parties. Seller is free to choose the warranty remedy ("Gewährleistungsbehelf"). Buyer loses any and all warranty and any and all other claim whenever persons not trained and certified by Seller provide any services, e.g. after sales or warranty service regarding the Scope of Supply. This also applies to the packing or unpacking of the Scope of Supply.
13. Excluded from warranty are parts of wear and tear as well as defects and damages caused by careless or improper handling or use of the Scope of Supply by Buyer. Warranty is also excluded in case Buyer has used any kind of products not intended or designed for the use in combination with the Scope of Supply.

14. Obvious defects must be reported to Seller in writing within seven (7) days upon delivery. Hidden defects which appear within the warranty period must be notified in writing to Seller within seven (7) days after their discovery. In case such report is not submitted (in time), Buyer loses any and all claims out of or in connection with the respective defect.
15. It is Buyer's obligation to verify the compliance of the Scope of Supply with the local requirements and Buyer shall hold Seller fully harmless in case Seller is confronted with any third party claim due to such non-compliance and/or any other behaviour of Buyer. With the exception of the latter, no Party shall be liable to the other Party with the exception of cases of very gross negligence ("krass grobe Fahrlässigkeit") or intent ("Vorsatz"). Furthermore, no Party shall be liable to the other Party for any kind of direct or indirect losses of economic or non-economic profits, loss of production, incidental or consequential damages etc. Seller's liability shall in no event exceed 100% of the total contract price. Any kind of services, e.g. repairs, will be provided by Seller under exclusion of any liability, e.g. for any kind of success as well as for damages of whatever nature.
16. Buyer is obliged to obtain insurance coverage to cover all damages/liabilities associated with the delivery, storage and installation of the Scope of Supply, including start up and performance testing, if not explicitly agreed otherwise in writing.
17. Either Party shall be entitled to suspend performance of its obligations under the contract to the extent that such performance in whole or in part, temporarily or not, is impeded due to circumstances beyond its control, with the exception of payment obligations. Thus, such Party is entitled to invoke force majeure, in particular but not limited to, in case of extreme weather conditions, natural catastrophe, warfare, fire, strikes, transport and supply interruptions, etc. The Party claiming to be affected by force majeure, as described above, shall notify the other Party in writing without delay about the intervention and the cessation of such circumstances. Such information shall be confirmed by the Austrian Chamber of Commerce or by the Austrian Embassy. In case such force majeure in whole or in part exceeds a period of six (6) months, each Party shall be entitled to prematurely terminate the contract.
18. Seller shall be entitled to suspend any of its performances in case Buyer does not comply or is late in complying with any of his/her contractual obligations.
19. For the duration of the contract and a further period of two years, the parties undertake to treat all information e.g. documents, specifications, data and knowledge, whether technical or commercial, out of, related to or in connection with the contract which is made accessible or becomes known to them out of or in connection with the latter strictly confidential, to use this information exclusively for the purpose as provided for, and not to make this information accessible to any unauthorized third party.
20. In case of dissolution or liquidation, bankruptcy, involuntary reorganization, change in the capital ownership and/or management control of Buyer, Seller shall be entitled to - immediately or by granting a grace period - terminate or withdraw from the contract.
21. In case the contract is terminated for whatever reason, e.g. also in case of force majeure, Buyer shall – irrespective of any other claim Seller might have – be obliged to effect payment for all parts of the Scope of Supply already prepared and/or processed and/or manufactured and/or in process of being manufactured or already accomplished as well as for any related expenses of Seller.
22. The contract shall be governed by the substantive laws of Austria, with the exclusion of any conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG). In case Buyer has its seat within the EU, any disputes out of or in connection with any contract between Seller and Buyer shall be resolved by the state court competent for Seller's seat; in all other cases they shall be settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators in accordance with the said Rules. The place of arbitration shall be Vienna and the language of arbitration shall be English.