



# General Sales and Performance Conditions of Fermacell GmbH, Version 11/2002

## 1. General Points – Area of Application

### 1.1 Area of Application

These sales and performance conditions apply as part of the overall business relationship for all declarations as well as contractual and other activities, including consultation work unless we have set out special general terms of business.

### 1.2 Other General Terms of Business

Customers' general terms of business are only taken into account if it can be proven that they have been brought to our knowledge in writing. If such conditions deviate from our general terms of business, general legal provisions apply.

### 1.3 Written Form Requirement, Receipt of Declarations

Changes to agreements between the parties must be made in writing. This also applies to cancellation of the requirement for written form. Automatically generated acknowledgements of receipt (e.g. e-mail or fax) do not prove receipt of declaration to us.

### 1.4 Contractors, Consumers

These general sales and performance conditions apply to all customers, unless a distinction is made between contractors and consumers.

## 2. Conclusion of Contract

### 2.1 Offer Documents, Samples, Analysis Values etc

The information, drawings, illustrations, technical data, weight, dimension and performance descriptions etc contained in the price lists, prospectuses or other information are, in accordance with tolerances which are appropriate and usual in the sector, only approximately decisive and only then if we are responsible them, unless confirmed by way of a separate agreement. Samples are non-binding visual samples and remain our property. Analysis values always show mean values; they are only binding for a delivery if this has been separately agreed. We retain our property and copyright rights to all cost quotations, drawings and other documents; they must not be made available to third parties without our consent.

### 2.2 Acceptance of Orders

We can tacitly declare acceptance of orders by way of implementing them within four weeks.

## 3 Prices

### 3.1 Selling Prices

The selling prices quoted by us are binding if they are notified in writing. They are free loading ex despatch location of the goods, excluding packaging, transport, other additional costs such as the costs of return of the packaging material. If a price has not been expressly agreed, the list prices published on the day of delivery apply, or at our discretion prices in accordance with normal market conditions.

### 3.2 Price Adjustment

We reserve the right to adjust prices, if, after conclusion of the agreement cost changes occur, in particular on the basis of collective bargaining agreements and material or energy price changes and a period of more than two months lies between conclusion of the contract and delivery. We will on request provide evidence of the cost changes. In the case of consumers we will only make price adjustments in the case of an agreed delivery time of more than four months; in the event of a price adjustment of more than five percent we and the consumer are entitled to withdraw from the contract.

### 3.3 Turnover Tax

Statutory turnover tax is charged at the rate applicable on the day of delivery or performance. Prices for consumers are inclusive of turnover tax.

## 4. Payment Terms

### 4.1 Due Date

The purchase price is due on delivery, or in the event of invoicing before delivery, on receipt of the invoice. Granting of a payment deadline requires a written agreement. Other claims are due at the time they arise.

### 4.2 Discount, Reduction

Discounts require a separate written agreement. The period within which the agreed discount is granted does not hinder the due date of the claim, but the start of the arrears (cf. point 4.3). A discount claim is on condition that the due invoice sums from other deliveries and performances have been settled. The granting of discounts or other reductions relates only to the net goods values, in particular without turnover tax, freight and packaging.

### 4.3 Start of Arrears

The customers is in arrears at the latest if payment is not made within 30 days of the due date and receipt of the invoice. The arrears begin at the earliest on expiry of an agreed discount period (cf. point 4.1). If the start of arrears in accordance with the first sentence is in doubt, the contractor is in arrears at the latest 30 days after the due date and receipt of the consideration. Arrears also start after a reminder, expiry of a contractually agreed payment period or a contractually agreed payment deadline

### 4.4 Consequences of Arrears

In the event of arrears we are entitled to charge interest at a rate of 8 percentage points above the base interest rate. We can also enforce further claims over and beyond this.

## 4.5 Fixing of Due Date, Withdrawal

In the event of payment default, loss of assets, suspension of payments, threatened or already existing inability to pay, over-indebtedness, appointment of an interim liquidator, opening of insolvency procedures, rejection of insolvency procedures return unsatisfied or, if in any other way, we have good grounds for doubting the creditworthiness of the client, we can determine a due date for all due payments. We are then entitled to demand payment in advance for all further owed payments and/or, in the case of contracts with contractors to withdraw from the contract without notice and, in the case of contracts with consumers to withdraw from the contract in the event of fruitless expiry of an appropriate deadline.

## 4.6 Reimbursements

If agreements have been concluded on the basis of which a party other than the client benefits, we can retain all sums until the time of payment of all claims forming the basis of this payment to third parties, or demand them back until the time of settlement of such a claim which is in arrears, and/or offset them against a claim which is in arrears.

## 4.7 Rights of the Customer in Return

The customer may only offset counterclaims if these are undisputed, approved in writing or have been legally established. Rights of retention are only granted to the customer on the basis of the individual contractual relationship.

## 5 Delivery (including collection)

5.1 We are entitled to make partial deliveries unless otherwise agreed.

### 5.2 Delivery deadlines

Binding delivery deadlines must be agreed in writing. If the customer has not fulfilled the cooperation obligations required for the delivery in good time, without us being responsible for this, we are entitled to adjust agreed delivery times. If a customer requires delivery earlier than previously agreed, we are entitled to charge an additional urgency payment at an appropriate rate if we meet this request.

### 5.3 Observing deadlines

#### 5.3.1 Punctuality

For the observance of deadlines the time of despatch ex works or store is decisive. If the goods cannot be despatched punctually for reasons for which we are not responsible, the delivery deadlines are considered has having been met at the time of notification of readiness to despatch. We are entitled to deliver to a contractor earlier than the agreed delivery deadline, unless this results in inappropriate disadvantages for the contractor. Equally, with regard to a contractor, an agreed deadline for the delivery or making available for collection of the goods is considered as having been met if we deliver the goods or make them available for collection within an appropriate period after this deadline, unless expressly agreed otherwise.

#### 5.3.2 Acts of God

The consequences of Acts of God entitle us to later delivery within an appropriate period of time. Equivalent to Acts of God are all circumstances which make delivery considerably more difficult or impossible, such as, for example, state measures, strikes, lock-outs, operational disruption, transport delays through traffic problems or export and/or trade restrictions. If it becomes unreasonable for us to carry out the work due to prolongation of the Act of God, or concern that this may be the case, we are entitled to withdraw.

#### 5.3.3 Withdrawal of the customer

If we do not fulfil our obligations in good time and are responsible for this, the customer can withdraw, if he has set us an appropriate additional deadline. Both declarations must be made in writing.

## 5.4 Invoicing Basis

The quantities, weights or numbers determined on despatch are decisive for invoicing. Shaking and water losses etc are at the expense of the customer.

## 5.5 Returns

The voluntary return of goods requires a special agreement.

## 5.6 Acceptance Delay, Late Collection, Accessibility, Waiting Time

In the event of delayed acceptance we are entitled, in conjunction with an appropriate additional deadline, to withdraw from the agreement and demand compensation for non-fulfilment. Appropriate additional costs as of the start of the acceptance delay, and damages as of the expiry of the additional deadline, are charged to the customer. Additional costs also include the costs of despatch or, at our choice, storage if the customer is in arrears with the agreed delivery. It is also considered as delayed acceptance if the client has not ensured that the delivery can reach him (e.g. adequate condition of the roads) or that a delivery can be unloaded within an appropriate period.

## 6. Transfer of Risk and Despatch

### 6.1 Transfer of Risk

In the case of agreements with contractors the risk, even in the case of delivery free ex-station, free store etc, is transferred on handing over of the goods to freight despatch at the despatching station or the transport company at the loading site. In the case of agreements with consumers the risk is transferred at the time of handing over the goods.

### 6.2 Insurance

Insurance is only taken out after agreement and at the expense of the customer.

## 7. Retention of Ownership and Advance Assignment

### 7.1 Principle

The delivered goods remain in our ownership until complete fulfilment of all claims, including balance claims vis-à-vis the customer. This also applies if the customer has expressly paid for these goods.

### 7.2 Processing, Consolidation, Mixing

The customer is entitled to work on and process the retained goods in normal business operations. In this case the work and processing take places for us as the manufacturer in accordance with § 950 BGB. The worked-on and processed goods are considered as retained goods in the sense of point 7.1.

### 7.3 Assignment of Claim when Combined with a Property

If retained goods are incorporated as an integral part of a property, the customer assigns to us at this point the claims he has against a third party, to the amount of the value of the retained goods with all secondary rights, including that of provision of a conventional mortgage.

### 7.4 Joint Ownership in Other Cases

If the retained goods are mixed, consolidated or processed with other items, we acquire joint ownership of the new articles according to the proportion the value of the retained goods in the other goods at the time of consolidation, mixing or processing. Furthermore, at this point the customer assigns to us his ownership or joint ownership rights to the mixed item or new items and keeps this for us.

### 7.5 Disposal of the Retained Goods

The customer is revocably entitled to sell and/or otherwise use the retained goods during the normal course of business insofar as the sale or usage claim vis-à-vis his customers passes to us in accordance with point 7.6. Otherwise any disposal of the goods is expressly forbidden. The customer is also forbidden to mortgage or pledge the retained goods.

### 7.6 Assignment in Advance

If the customer sells the retained goods – irrespective of in which condition – or uses the goods in any other way, he herewith assigns to us until full settlement of all our claims resulting from goods deliveries, the claims he has against his customers as a result of this sale or other use (even if a lump-sum payment is involved), to the amount of the sale price of the goods, i.e. without a wage portion, with all secondary rights, more particularly that of provision of a conventional mortgage (§ 648 BGB).

### 7.7 Collection Authorisation

The customer is authorised to collect the debts for our account and to dispose of the sums obtained through the collection so long and in so far as he fulfils his payment obligations. He is not entitled to dispose of the debts in any other way, e.g. through assignment or pledging. If the customer does not meet his payment obligations, we are entitled to revoke this collection authority at any time. At our request the customer must notify assignment to the third party and provide us with the information and documents required to enforce our rights vis-à-vis the third parties.

### 7.8 Release Claim

If the realisable value of the existing securities exceeds the secured claims by 10%, or the estimated value of the secured claims by 50%, we are obliged, at the request of the customer to release or transfer back securities of our choice.

### 7.9 Impairment of the Rights by Third Parties

The customer must inform us immediately of any pledging or other impairment of our rights by third parties and must make available to us all information and other documents required for guaranteeing our rights. Enforcement officials and/or third parties must be made aware of our property.

### 7.10 Reclaiming the Retained Goods

After withdrawal in accordance with point 4.6 the retained goods can be reclaimed.

## 8 Defect Claims

### 8.1 Inspection and Complaint Obligation

The contractor's guarantee rights assume that he will, in accordance of his inspection and complaint obligations in the sense of § 377 HGB, immediately notify in writing defects after their discovery, in the case of recognisable defects within 5 days of delivery of the goods. We reserve the right to inspect, examine and tests goods subject to complaint.

### 8.2 Remedy

If the purchased items exhibit defects, the customer is entitled, within the relevant guarantee period, to demand remedy, i.e. the elimination of the defect or delivery of a defect-free item. In the case of agreements with contractors we are entitled to choose. In the case of replacement delivery, the customer must, at our choice, return the defective items or, after consultation with us, dispose of them at our cost.

### 8.3 Costs in the Event of Remedy

The costs involved in remedy, more particularly transport, travel, working or material costs are borne by us. For contractors this only applies if the costs are not disproportionate; here is it assumed that costs are disproportionate if they are based on the goods being taken to a location which was not expressly and separately indicated as the destination at the time of concluding the agreement.

### 8.4 Further Rights in the Event of Defects

Further rights in the event of defects are set out by law, unless otherwise set out below, in particular in section 9 (Liability, Contractual Penalties).

## 8.5 Declaration in the Event of Withdrawal

If the customer is entitled to withdraw, or if he has set a deadline, on expiry of which he is entitled to withdraw, we can set the contractor an appropriate deadline within which he can announce withdrawal; the right of withdrawal ceases on expiry of the deadline.

## 8.6 Expiry of Complaint Claims

Claims due to defective construction materials used for construction work and causing its defectiveness expire within 5 years. Otherwise purchase agreement complaints by contractors expire within one year, except in the case of intent. The deadline begins at the time of hand-over.

## 9 Liability, Contractual Penalties

### 9.1 Liability Limitation

We are liable for claims

- a) in the event of a grossly negligent breach of obligations or intentional or grossly negligent breach of obligation by a legal representative or vicarious agent of ours, well as if we have maliciously concealed a defect.
- b) insofar as there is harm to life, body or health, which is due to negligent breach of obligations by us or deliberate or negligent breach of obligations by a legal representative or vicarious agent of ours.
- c) insofar as claims are based on a given guarantee.
- d) insofar as liability in accordance with the Product Liability Law is present.
- e) insofar as we are responsible for a breach of essential contractual obligations.

Liability for compensation over and beyond this is ruled out. Furthermore, our liability in the event of breach of essential contractual obligations by use or by our vicarious agents is limited to compensation for typical contractual and rationally foreseeable damages.

### 9.2 Personal Liability

Insofar as our liability is ruled out or limited, this also applies to the personal liability of our legal representatives, employees and vicarious agents.

### 9.3 Notification of Claims

Claims being made against us must be notified to us immediately and, as far as possible, documented in writing to us.

### 9.4 Lump-Sum Compensation, Contractual Penalties

Lump-sum compensation or contractual penalties require a separate written agreement with us.

## 10 Other Provisions

### 10.1 Place of Implementation

The place of implementation for our deliveries and services is always our business domicile. If a customer knows in advance or recognises that the delivery is being carried out from a particular other location or the work is being carried out at a particular other location, this location applies at the place of implementation. The place of implementation for payments by the customer is our business domicile.

### 10.2 Legal Venue

The legal venue for contractors, juridical persons in public law or public law funds is our business domicile or, according to our choice, the business or residential domicile of the customer for all disputes arising directly or indirectly out of the business relationship. The same applies of the customer does not have a general legal venue in Germany, or if his domicile or usual place of abode is not know at the time bringing an action.

### 10.3 Customer Data

We are entitled to process customer data obtained in connection with the business relationship in accordance with the Federal Data Protection Law, irrespective of whether this data originates from the customer or third parties.

### 10.4 Applicable Law

The material law of the Federal Republic of Germany applies. The provisions of UN purchase law do not apply.

### 10.5 Partial Invalidity

Invalidity of individual aspects of these provisions does not affect the validity of the remaining provisions. The contractual parties must replace the invalid sections in a manner which comes as close as possible to the economic content of the invalid provision.