



**COTUBES, S.A.**  
**GENERAL TERMS AND CONDITIONS**

**I. CONTRACTS**

1. Every agreement done by COTUBES (hereinafter referred to as seller) with any of their purchasers (hereinafter referred to as the purchaser) of its goods will be exclusively subject to these terms, unless otherwise agreed in writing.
2. Other statements or recommendations of the purchaser are binding only, when being confirmed by the seller in writing.
3. The offers of the seller are without obligation and only become binding with the written confirmation of order. Silence with regard to an offer or order shall not be deemed to be acceptance.
4. Quantity variances are agreed on order and put down in writing in the confirmation.
5. In case of suspension or cancellation done by any of the parties, shall the other party be indemnified for all losses and damages arising from it.
6. For the business transactions are applicable the Incoterms in the respectively last valid version, stated in the confirmation of order.

**II. ACCEPTANCE AND DELIVERY**

1. Partial deliveries are admissible.
2. Delivery deadlines and other terms start to run with the date of the confirmation of order of seller.
3. The delivery obligation is also considered fulfilled, when readiness for shipment or acceptance was notified, but the goods are not accepted or cannot be picked up or shipped in time without the fault of the seller.
4. In case of an acceptance default, the seller reserves a withdrawal from the contract. As far as this was culpably caused by the purchaser or the persons employed by him/her to fulfill the obligations, the purchaser indemnifies the seller for all subsequent damages and against legal action.
5. If the purchaser gets into acceptance default or if in case of blanket orders the order is not effected within 30 calendar days after the agreed order date, the seller is entitled to ship the goods at the risks and costs of the purchaser at the choice of seller or to store them in an optional manner.
6. At this point of time, the goods are considered delivered as per agreement in every respect and the risk passes to the purchaser, in case it has not already passed before. The purchaser immediately has to effect the payments, which are due for the case of delivery or which are caused by the delivery.

**III. SHIPMENT AND PASSAGE OF RISK**

1. The goods are considered shipped in orderly condition. Damages are considered to have occurred during transportation until the opposite is verified. As far as according to the Incoterms the damage has occurred in the area of risk taking of the seller, the purchaser has to preserve the rights of the seller against the carrier or its transport insurer with the otherwise loss of possible claims against the seller.
2. For possible losses, damages or confusions, the purchaser is obliged to immediately effect the official confirmation required for the assertion of claims for compensation on receipt of the goods and to pass it on to the seller.

**IV. PAYMENT**

1. All prices are understood excluding domestic value added tax.
2. The agreed place of payment is the territory of the seller and it will be requested as agreed in the confirmation of the order. Payment is executed net cash, free of charges. Set-off or retention in connection with asserted counterclaims is excluded. Due dates shall be 60 after delivery or the what parties agree in writing.
3. Seller reserves the acceptance of discountable and regularly charged bills; it takes place, however, on account of payment in any case.
4. In case of default in payment of the invoices, the purchaser will be charged default interest and further charges arising notwithstanding the further legal consequences. As default interest, 3% over the respective 3-month-EURIBOR valid at the point of time of the default in payment is considered agreed.
5. Incoming payments are notwithstanding contradictory payment dedications charged up against the respectively oldest outstanding claim; first of all to the costs and other supplementary fees, then to interests and finally to the capital.
6. Until the complete payment of purchase price (including interest and fees), the goods remain property of the seller.
7. The purchaser undertakes to reimburse the fines and collection charges arising for the seller in case of default with the purchasers contractual payment obligations.
8. In case the terms of payment are not fulfilled or the seller learns about circumstances, which in their opinion are suitable to reduce the credit standing of the purchaser, all claims of seller, also such from other contracts, become immediately due, independent of the term of possibly taken in and credited bills.
9. The seller is then also entitled to execute still outstanding deliveries against advance payment only.

## **V. OBLIGATION FOR EXAMINATION AND TO GIVE NOTICE OF DEFECTS**

1. The purchaser has to examine deliveries of the seller immediately after receipt and immediately has to notify in the following calendar week the seller about possible complaints, especially deviations from the order. This applies to material defects, short deliveries and differing deliveries.
2. Hidden defects as well as other deviations from the order, which are not immediately recognizable, have to be asserted judicially within 3 calendar months in any case.
3. On violation of the obligation for examination and to give notice of defects or on assertion later than 3 months after delivery, all legal dispositive rights and claims for damages of the purchaser from a possible deviation of the delivery from the order are excluded.

## **VI. FORCE MAJEURE**

1. Events of force majeure and other circumstances beyond the sphere of influence of the seller, like e.g. operational interferences, traffic interferences as well as difficulties in the supply of the factories with power, raw materials, fuels and auxiliary materials and further hindrances in production and delivery exclude claims for damages of the purchaser and entitle the seller either to extend the delivery deadline or to completely or partially withdraw from the contract.
2. Force majeure further includes strike, lockout and further circumstances, which essentially complicate the delivery or even make it impossible, whereby it is of no importance, whether they occur at the seller or one of its sub-suppliers.
3. The seller undertakes to inform promptly the purchaser about the occurrence and the termination of it.
4. In case of a justified withdrawal of the purchaser due to force majeure or similar delivery hindrances, the costs and charges accrued at the seller are borne by both contract parties by one half each according to equity.
5. If the circumstances, under which the contract was concluded, changed that considerably, that rightly it may be assumed, that the conclusion would not have taken place at all under the changed circumstances or at least at other terms, seller is entitled to withdraw from the contract or to demand a change of the contractual provisions, like e.g. payment in other currency, change of the delivery modalities, etc., which would take the changed circumstances into account.
6. The change of the circumstances can also be justified with substantial changes of the economic and financial conditions of the purchaser.

## **VII. WARRANTY**

1. Until verification of the opposite, on handover the goods are considered delivered as per contract. The warranty obligation is 12 months in any case from delivery of the goods or 18 from the order confirmation.
2. In case of defects, which are perfectly verified and exclude the applicability of the goods, the seller accepts the warranty in such manner, that it takes back the goods at his choice at the calculated price, eliminates the defect or free of charge replaces the goods by new ones, which correspond the order. The complained goods are to be sent back to the seller.

## **VIII. LIABILITY**

1. All claims for damages, especially also such for consequential damages of defects against seller or the persons employed in the performance of its obligations, are excluded, as far as this is legally admissible and they are not based on intent or gross negligence of the seller.
2. The purchaser has to furnish the proof of the presence of gross negligence.
3. The purchaser relinquishes possible claims of recourses, which could arise him against the seller due to own liability. The purchaser undertakes to pass the relinquishments on damages and recourse as well as the obligation for passage in case of reselling of the goods to his/her purchasers. In case of violation of this obligation, the purchaser indemnifies the seller for all claims of third parties caused by that and indemnifies also against legal actions.
4. Claims for damages and recourses have to be legally asserted against the seller within 3 months, with otherwise forfeiture.
5. Seller will not be responsible in any case of the treatments done to the goods after the delivery.

## **IX. GENERAL**

1. Should individual provisions of these terms of sale be or become completely or partially ineffective, invalid or unenforceable, this does not affect the effectiveness, validity or enforceability of the further provisions.
2. COTUBES products procured by the purchasers from COTUBES or any subsidiary of Tubacex Group may not be used, resold, diverted, transferred, or otherwise exported, directly or indirectly in any manner that would violate none of applicable Export rules and controls.
3. Sellers territorial law is applicable to the legal relations of the contract parties.
4. In case of lawsuits, both parties submit to the relevant competent court at the site of seller but the seller reserves the right to attend to the Courts of the purchaser's country to claim any amount pending of payment.