

## General Terms and Conditions of Sale and Delivery

Foerg GmbH&Co.KG – Stand 01.01.2014

### I. General Terms

1. The present general terms and conditions exclusively apply to all current and future sales contracts unless, and in so far as, nothing else was agreed in writing. Other provisions supplied by the buyer may not be applied even if not explicitly negated by the seller. Any modifications made to the general terms and conditions are valid as of the date of their respective introduction.

2. The present terms and conditions apply to the sale of **SSL Sprit-SaveLiquid** to business partners domiciled in Europe and exercising their commercial or independent professional activities as well as to European public authorities and juristic persons in the public domain.

3. Upon placing the order, the contractual partner recognises the present general terms and conditions.

4. Contractual clauses customary in trade, referring to the type of sale (i.e. CIP etc.) will be defined in each case according to the Incoterms 2010 of the ICC/Paris, valid when the contract is concluded.

### II. Conclusion of the Contract

1. Quotes of the seller are non-binding.

2. The buyer is bound to his order for **SSL SpritSaveLiquid** for a period of 6 weeks, for goods that are in the seller's stock for 2 weeks. The sales contract is considered concluded if the seller confirms the acceptance of the order for the merchandise described in detail, within this period of time in writing or via e-mail. In any case, the sales contract is concluded after the delivery has been made. The seller undertakes to immediately inform the buyer if he does not accept the order.

3. All agreements made with the conclusion of the contract have to be made in writing. There will be no others than those in writing. Modifications or amendments to the contract as well as oral statements have to be made in writing or per e-mail.

### III. Delivery and Price

1. Partial deliveries are acceptable provided that the buyer can reasonably be expected to accept them.

2. The seller does not assume any procurement risk regardless of liability.

3. The prices are calculated as value of goods and services ....net, without discount or other deductions plus the turnover tax valid at the time.

4. Loading of the goods, packing, shipping and any insurance taken out solely based on special agreements, are paid separately by the buyer. Any purchase order for a quantity of more than 5 litres will be delivered free domicile. The provision under VI remains unaffected.

### IV. Payment, Delay of Payment and Compensation

1. Terms of payment: unless otherwise agreed upon: 14 days - net.

2. Payment has to be made without any deductions in the currency indicated on the invoice so that the seller does not carry any cost.

3. Money orders, cheques and bills of exchange will only be accepted on account of performance, taking account of all discount and collection expenses.

4. Default interest is calculated at 5% p.a.

5. In case of default on the part of the buyer, the seller is entitled to claim payment in advance for all future shipments and deliveries.

6. The buyer can offset claims made by the seller only against claims that are uncontested, recognised or legally binding. A right of retention can only be brought to bear with regard to uncontested, recognised or legally binding claims based on the sales contract.

### V. Delivery Date, Delayed Delivery and Force Majeure

1. Binding or non-binding delivery dates can be agreed on in writing or per e-mail. Delivery time is counted from the day of the conclusion of the sales contract.

2. The buyer may claim delivery 6 weeks after a non-binding delivery date or at the end of a 6-week non-binding delivery period. The seller is in default from the time the claim is made by the buyer. If the buyer wants to withdraw from the contract or claim compensation instead of goods, he has to set a reasonable time limit for the seller to effect delivery at the end of these 6 weeks, according to phrase 1 of this section. In case of a slight fault on the part of the seller, the buyer cannot claim damages. If, by mischance, the seller cannot effect delivery while he is in default, he shall be liable, taking into account the aforementioned limitation of liability. The seller is not liable for damages that would have occurred if the delivery had been made in due time.

3. If a binding delivery date or delivery period has not been adhered to, the seller is considered to be in default due to non-compliance with the delivery date or the delivery period. In this case, the buyer's rights according to section 2, phrases 1 to 3 above, become effective.

4. If the seller, through no fault of his own and due to a force majeure or interruption of operations at his site or that of a supplier is temporarily prevented from delivering the goods on the agreed date or within the agreed period, the deadlines and periods mentioned in section 1 to 3 are extended for the duration of these interruptions. If the interruptions mentioned in phrase 1 result in a delay of the deliveries of more than 4 months, seller and buyer may withdraw from the sales contract. This does not affect any other rights of withdrawal.

### VI. Transfer of Perils, Duty of Inspection, Notification and Rejection

1. The risk is transferred to the buyer when the goods are handed over to the shipping company, latest when the goods leave the seller's warehouse.

2. The contractual partner undertakes to inspect the goods for defects and immediately call for rectification of any defects in writing, no later than within 10 working days.

## **VII. Defects**

1. Claims made by the buyer due to defects of the delivered goods fall under the statute of limitations one year after delivery to the buyer, according to the legal provisions.

2. In case of not only insignificant material defects and defects of title the seller is entitled to carry out the following compensatory measures in addition to the legal provisions: the seller is entitled to correct twice. Should it emerge from the type of defect or from other circumstances that the correction has not yet failed and the contractual partner can reasonably be expected to accept this, the seller is entitled to carry out additional corrections.

3. Should the corrections fail, the buyer is entitled to redhibitory action or abatement according to the legal provisions

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## **VIII. Haftung**

1. In accordance with the law, the seller assumes unlimited liability for bodily injuries to persons due to negligent or wilful breach of duty by the seller or his legal representatives or auxiliary persons as well as for damages which fall under his liability according to the law on product liability. Any damages that do not fall under the aforementioned provisions and that are based on grossly negligent violations of the contract or deceitfulness on the part of the seller, his legal representatives or auxiliary persons, the seller assumes liability according to the legal provisions. In this case, the seller's responsibility is limited to damage compensation for the foreseeable, typically occurring damage, insofar as the seller, his legal representatives or auxiliary persons did not act with intent. The extent to which the seller furnished a guarantee of quality with regard to the goods or parts thereof, he is also liable within the coverage of this guarantee. Any damages due to the lack of this guaranteed quality but not directly occurring to the goods, the seller, however, is only liable if the risk of such damages is evidently covered by the guarantee of quality.

2. The seller is also responsible for damages caused by simple negligence insofar as this negligence applies to the breach of a duty which is especially important for the adherence to the purpose of this contract. However, the seller assumes liability only for damages that are typically tied to the contract and foreseeable.

3. Any further liability is excluded, regardless of the legal nature of the claim. This applies in particular also to claims due to tortious acts or claims on the substitution for futile expenses instead of the performance.

4. Insofar as the seller's liability is excluded or limited, this is also true for the personal liability of the seller's employees, representatives and auxiliary persons

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## **IX. Reservation of Proprietary Rights**

1. The objects of purchase remain the property of the seller until the claims owing to the seller by virtue of the sales contract have been met. The reservation of proprietary rights also applies to the seller's claims vis-à-vis the buyer deriving from the continuing business relationship until the claims owed to the seller by virtue of the contract are met.

2. The buyer undertakes to safeguard the goods subject to the reservation of title, free of charge and with the due diligence of a scrupulous businessman.

3. The buyer may not put the goods subject to the reservation of title in pawn or transfer them by way of security. In case of seizure or appropriation or any other stipulations imposed by third parties the seller has to be informed immediately and be handed over the documents required for an opposition.

4. At the request of the buyer, the seller, at his option, undertakes to release collateral according to the aforementioned provisions, insofar as the value of the collateral exceeds the value of the secured claims from the continuing business connection by 20%.

5. A seizure carried out by the seller as well as the withdrawal do not constitute a cancellation of the contract. The contractual partner has the obligation to return the goods. A right of retention is excluded.

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## **X. Place of Fulfilment and Jurisdiction, Applicable Law.**

1. Place of fulfilment of the delivery of the objects of purchase is the seller's warehouse, in this case Stuttgart.

2. Exclusive jurisdiction for any disputes deriving from or due to this contract are the courts at the registered business address of the seller. The seller may however choose to bring the matter before a court at the buyer's residence.