

General Terms and Conditions of Sale

1.0. Applicability of these General Terms and Conditions of Sale

1.1. The following General Terms and Conditions of Sale ("this Agreement") shall apply to any sale of products ("the Products") by PT. BD Agriculture Indonesia ("BD") to its customer ("Customer"). BD reserves the right to make changes to this Agreement from time to time.

1.2. This Agreement shall override any contrary, different or additional terms or conditions (if any) contained or referred to in any other order form or other correspondence from Customer, unless otherwise expressly agreed by BD in writing. Additional obligations assumed by BD shall not affect the validity of this Agreement.

2.0. Price and Payment

2.1. The prices for the Products are as specified in BD's invoice ("Quotation") or sale contract, as the case may be, and Customer shall pay BD in accordance with the payment terms set forth therein.

2.2. If the raw material purchase price for steel and/or plastic according to the indices: for steel www.mintecanalytcs.com, (1K03 - Steel galvanised (HDG) / China), for plastic www.kiweb.de (Price Chart KI Polymer Prices PP Copolymers - S), does not increase by more than 5 % since the time of conclusion of the contract (starting point) compared to the time 12 weeks before the respective planned delivery date (end point), the net price for the corresponding delivery part of the object of purchase shall remain unchanged.

If, at the end point, the raw material purchase price for steel and/or plastic has increased by more than 5 % according to the indices, the net price (net value of goods) for the corresponding delivery portion of the object of purchase shall increase by 2.50 % for each 5 % or part thereof above the 5 % limit, in each case in relation to the material cost portion (steel: 66 %, plastic: 34 % of the net purchase price for the object of purchase).

If the raw material purchase price according to the aforementioned indices for steel and/or plastics increases by more than 5 % but not more than 10 % compared to the starting point, the net purchase price for the corresponding delivery share of the object of purchase shall increase by 2.5 % of 66 % or of 34 % of the net purchase price for the object of purchase.

The quoted freight charges are subject to the BD's actual costs. BD reserves the right to increase the freight charges per shipment if it is able to present three (3) quotations with prices higher than the freight charges quoted to the Customer.

2.3. All payments shall be made in the currency as specified in the Quotation. All payments shall be made without any deduction, set-off, counter-claim, demand and shall be free of any bank charges. Payment shall only be considered as being made upon the date of receipt of the same by BD.

2.4. BD shall be entitled at its own discretion to set-off or credit any payments received towards satisfaction of any liabilities of Customer or claims BD has against Customer.

2.5. Without prejudice to any other rights or remedies available to BD hereunder or at law, in the case of any late, delay or default in payment: (a) Customer shall be liable to pay BD the following (i) any and all costs incurred by BD in pursuing the claim (including without limitation, legal fees on a full indemnity basis); and (ii) interest on the amount due at the rate of eight per cent (8%) per annum calculated on a daily basis until such time that payment is received by BD; and/or (b) BD shall have the right to suspend any or all further deliveries until such time that payment is received by BD.

2.6. In the case of arrears in payment on the part of Customer or in the case of other serious indications of a risk of non-payment, BD shall be entitled, without prejudice to its other rights and remedies hereunder or at law, to demand immediate payment for deliveries already made and, at its own option, require pre-payment or payment upon delivery for future deliveries. Alternatively, BD may require Customer to provide adequate security and/or guarantees for payment and the form of such security and/or guarantees shall be determined at BD's discretion.

3.0. Delivery and Passing of Risk

3.1. Any time or date for delivery given by BD is given in good faith, but is an estimate only and BD shall not be liable for any delay in delivery of the Products.

3.2. Customer shall examine the Products immediately upon delivery and in the course of the same, shall check each individual delivery in every respect for material deviations from the terms of the Quotation. If Customer discovers any material deviations from the terms of the Quotation, Customer shall notify BD of the same in writing, immediately or in any event within seven (7) days from the date of delivery failing which Customer shall be deemed to have accepted the Products in good order and condition. Defects found in part deliveries shall not entitle Customer to reject the entire delivery.

3.3. Notwithstanding anything to the contrary and without limiting the generality of Clause 3.1, BD shall not be liable for any delay in the adherence to any agreed time schedules, if (a) Customer fails to comply with any of its obligations hereunder or otherwise fails or delays in rendering any co-operation or assistance required by BD; (b) the delay was caused by event of Force Majeure; (c) the delivery of the Products and/or installation or assembly of the same is delayed due to circumstances attributable to Customer; Customer fails to furnish within due time any or all necessary documents, clearances, licences, permits, approvals, permissions or releases.

3.4. BD shall only be obliged to deliver the Products and/or assemble and/or install the same when Customer has made the agreed advance payments and has fulfilled all its other obligations hereunder. In the event of Force Majeure or other impediments not caused by BD, the delivery period shall be extended by a reasonable period as determined by BD.

3.5. Unless otherwise specified in the Quotation or agreed by parties in writing: (a) In the case of sale of the Products only without assembly and installation by BD, the risk of loss and damage to the Products shall pass to Customer upon loading of the same, regardless of who carries out the transport; (b) Should the transportation or delivery of the Products be delayed due to circumstances for which Customer is responsible, the risk of loss and damage to the Products shall pass to Customer upon notification of the readiness of the Products for despatch from BD's premises.

3.6. Notwithstanding the provisions of INCOTERMS 2010 and unless otherwise expressly agreed in writing by the parties or specified in the Quotation, BD shall not be obliged to (a) organise the transport of the Products; (b) insure the Products; (c) furnish certificates or documents not expressly agreed upon by the parties; (d) obtain any licences, permits, approvals, permissions or observe other formalities for the import and/or export of the Products or otherwise deal with or obtain customs clearance; (e) comply with or observe any laws, regulations, orders, notices, directives or provisions applicable outside Malaysia relating to measures and weight systems; and/or (f) package, label or mark, or accept any return of packaging material from Customer.

3.7. Customer shall obtain at its cost and expense any and all necessary licences, permits, approvals and/or permissions which are required for the importation, use, delivery, assembly and/or installation of the Products.

4.0. Reservation of Title/Insurance

4.1. Title to the Products shall only pass to Customer when payment in full for the Products has been received by BD. If full payment is not received by BD, BD shall be entitled to sue for payment once the same has become due. In the event Customer fails to pay BD within the time stipulated, BD shall be entitled, without prejudice to any other right or remedy, at its absolute discretion to enter Customer's premises to repossess the Products, at the cost and expense of Customer.

4.2. In the case of re-sale of the Products by Customer prior to the passing of title pursuant to Clause 4.1, such re-sale shall be subject to the reservation of title in Clause 4.1. Customer shall be obliged to disclose the reserved ownership of BD and to transfer the Products in such a manner that BD retains title to the Products. Any claims arising from such re-sale are hereby assigned to BD. Proceeds from the re-sale shall be deemed to be collected for BD and are to be remitted to BD in so far as BD has claims over the same. Customer shall at its own cost and expense render all necessary assistance and support to BD in protecting the property of BD in the relevant country wherein the Products are re-sold.

4.3. The Customer shall insure the Products against fire, water, burglary as well as all other risks. The amount covered is to correspond to at least to the total contract price of the Products delivered by BD. The Customer herewith assigns to BD the amount of the claims he may have against the insurance company at any time but limited to the amount he owes to BD. The Customer shall inform the insurer of the foregoing assignment and apply for a certificate from the insurer confirming that the insurer is aware of the assignment. The Customer is obliged to pay the insurance premiums due in order to ensure that insurance protection continues uninterrupted. In the case of non-payment of the insurance premiums, BD is entitled to pay these premiums to the insurance company and claim the amount paid from the Customer.

5.0. Assembly and Installation

5.1. BD shall not be obliged to assemble and/or install the Products unless otherwise specified in the Quotation or agreed by parties in writing.

5.2. Where BD agrees to assemble and/or install the Products, Customer shall at its own cost and expense provide the following: (a) adequate access to the assembly and installation site and sufficient space for unloading the Products; (b) proper and adequate structural conditions for the assembly and/or installation works; (c) adequate heating in the site in which the assembly and/or installation works are carried out during winter; (d) electricity, water and lighting; and (e) the necessary conditions as required by BD for the performance of test runs.

5.3. Where BD agrees to assemble and/or install the Products, BD may at its discretion require either (a) partial acceptance from Customer for self-contained parts of the Product which have been completed; or (b) full acceptance from Customer upon completion of the assembly and installation of the Product. Where partial acceptance is required, Customer shall only be entitled to refuse to accept the same in the case of material defects and BD's determination as to what constitutes "material defect" under this Agreement shall be final and conclusive as against Customer.

6.0. Warranty and Liability

6.1. Subject to Clause 6.3 and during the Warranty Period, BD warrants that the Products will be free of material defects (fair wear and tear excluded). Any other statements, warranties and/or representations made by BD or by any employee, representative or agent of BD or third parties in relation to the Products are hereby excluded and shall not be taken into consideration in determining the quality of the Products or the performance thereof. Employees, representatives or agents of BD are not authorised to give warranties or to make statements or representations in relation to the Products which are beyond those under this Clause 6.1. The warranty in this Clause 6.1 shall be valid only for: (a) a period of twelve (12) months from the date of completion of the installation of the Products, or (b) a period of eighteen (18) months from the date of delivery of the Products to Customer, whichever shall be the shorter period. ("Warranty Period")

6.2. In the event of any material defects in the Products, BD will at its option and subject to verification and inspection of the same by an authorised representative of BD, do any one of the following: (a) remedy the said material defect; (b) replace the said Product (or part thereof); or (c) reduce the price of the Products. The foregoing shall be Customer's sole and exclusive remedy for any breach of warranty.

6.3. The warranty in Clause 6.1 and provisions in Clause 6.2 shall not apply to the extent that: (a) the material defect or loss or damage is caused by any act, omission, default or misuse of the Products (or part thereof) by Customer or any third party or by failure to follow any instructions or specifications of BD or by modification of the Products; (b) Customer has failed to notify BD in writing of the material defect within the Warranty Period; or (c) Customer attempts to remedy the material defect by itself without first having given BD a reasonable period of time to remedy the same.

6.4. To the greatest extent permitted by any applicable law, the warranties referred to in this Clause 6 shall be sole and exclusive and in lieu of all implied or statutory warranties (including without limitation, the implied warranties imposed by the Malaysian Sale of Goods Act 1957 and all other warranties implied by law as to merchantability, satisfactory quality or fitness for a particular purpose, or otherwise arising from course of dealing or usage of trade) or any other express or implied warranties or representations. Without limiting the generality of the foregoing, BD does not warrant that the Products comply with the laws and regulations of Customer's country or country in which the Products are used.

6.5. To the greatest extent permitted by any applicable law, BD's liability, whether based upon warranty, contract, tort, negligence or otherwise, arising out of the manufacture, sale, delivery, assembly or installation of the Products or its use, performance or disposition, shall not exceed the actual purchase price paid by Customer for the Products. In no event shall BD be liable to Customer or any other person or entity for special, indirect, incidental or consequential damages (including, but not limited to, loss of profits, loss of business or loss of use) arising out of the manufacture, sale, delivery, assembly or installation of the Products, even if BD has been advised of the possibility of such damage or loss. The foregoing exclusions and limitations of liability shall also apply to the personal liability (if any) of the employees, representatives and/or agents of BD.

7.0. Cancellation

7.1. In addition and without prejudice to any other rights or remedies available to BD hereunder or at law, BD may forthwith terminate or cancel any contract of sale or order for the Products without liability and compensation: (a) if any payments (or part thereof) shall be unpaid for a period of thirty (30) days after any of the same shall have become due and payable in accordance with the terms of the Quotation (whether or not formal or legal demand shall have been made); (b) if Customer commits, permits or suffers to occur any breach of this Agreement and/or the contract of sale and such breach, if capable of remedy is not remedied within thirty (30) days of written notice of such breach from BD to Customer identifying the breach and requiring its remedy; (c) if Customer becomes or threatens to become or is in jeopardy of becoming subject to any form of insolvency administration or ceases or threatens to cease conducting its business in the normal manner; (d) if Customer contradicts or challenges the validity of this Agreement; (e) if Customer has provided BD with inaccurate or false information concerning its creditworthiness; or (f) if BD receives information about a serious deterioration in the financial condition or situation of Customer.

8.0. Confidentiality & Intellectual Property Rights

8.1. Customer shall at all times keep confidential (and to ensure that its employees, representatives and agents shall keep confidential) any information which it may acquire in relation to the business, operations, intellectual property rights or affairs of BD and shall not use or disclose such information except with the prior written consent of BD. The restriction in this Clause 8.1 shall not apply to any information: (a) which is publicly available or becomes publicly available through no default, act and/or omission of Customer, (b) which was lawfully in the possession of Customer prior to its disclosure; or (c) which is disclosed in accordance with the requirements of law.

8.2. Customer agrees and gives its consent for BD to store and/or process any data and/or information relating to Customer which BD receives as a result of the business relationship hereunder.

8.3. Customer acknowledges and agrees that any and all intellectual property rights or other industrial or proprietary rights subsisting in and/or arising from the Products, any processes, information, methodologies, know-how, data, ideas, concepts, manuals, tools, project design details, specifications, techniques, materials, illustrations, drawings, calculations and all other documentation; shall belong to and at all times remain the property of BD (or its designee). The foregoing rights may only be used subject to the prior written consent of BD and in accordance with such terms and conditions stipulated by BD.

9.0. General

9.1. This Agreement and the contract of sale for the Products shall be governed by the laws of Malaysia. Any controversy, dispute or claim arising out of this Agreement, the interpretation of any of the provisions hereof, or the action, inaction, or breach of any party hereunder shall be settled by arbitration in Singapore in accordance with the Rules for Arbitration of the Singapore International Arbitration Centre ("Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the Parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof. There shall be one arbitrator, mutually agreeable to the Parties, or if the Parties cannot agree on an arbitrator, then an arbitrator shall be appointed by the Chairman of the Singapore International Arbitration Centre. The losing Party shall pay all the expenses of the arbitration. No action at law or in equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by any Party except: (a) an action to compel arbitration pursuant to this Agreement, or (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this Agreement. This Clause shall not preclude the making of an application to any Court for injunctive relief. The language of the arbitration shall be English.

The parties agree that the UN Convention on the International Sale of Goods (CISG) shall not apply to this Agreement (and any contract of sale made hereunder) and the provisions of the CISG are therefore expressly excluded.

9.2. If any provision (or part thereof) of this Agreement is held to be illegal or invalid under present or future laws or regulations, such provision (or part thereof) shall be fully severable and this Agreement shall be construed as if such illegal or invalid provision (or part thereof) had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal or invalid provision (or part thereof) or by its severance from this Agreement.

9.3. Failure by BD to enforce, at any time, any provision of this Agreement and/or contracts of sale made hereunder shall not be construed as a waiver of its rights to enforce the breach of such provision or any other provision in this Agreement and/or contracts of sale made hereunder or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of this Agreement and/or any contracts of sale made hereunder.

9.4. This Agreement, the contracts of sale made hereunder or any rights hereunder shall not be assigned, transferred or dealt with in any way by Customer (whether by assignment, sub-licensing or otherwise) without BD's prior written consent.

9.5. BD will not be liable to Customer for any breach of this Agreement and/or any contract of sale made hereunder or for any delay or failure to perform under this Agreement and/or any contract of sale made hereunder if the breach, delay or failure is due to an event of Force Majeure. Neither party has the right to demand for compensation or damages from the other party. BD shall however be entitled to demand payment in accordance with the proportion of the performance of the contract fulfilled. An event of "Force Majeure" means an event not within the control of BD, which BD is unable to prevent, avoid or remove and shall include without limitation (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, civil war, terrorism; (b) natural catastrophe including but not limited to earthquakes, floods, subsidence, lightning, fire and exceptionally inclement weather; (c) burglary, theft, riot and disorders, criminal damages, sabotage, strike, lockout, revocation of work permits, shipping delays, labour unrest or other industrial disturbances; (d) government imposed lockdowns or quarantines, government enforced movement control orders or restrictions, and/or (e) epidemic, pandemic, outbreaks of infectious disease or any other public health crisis and/or (f) disruptions or shortage in materials, equipment or labour. If BD considers the event of Force Majeure to be of such severity or to be continuing for an aggregate period of fourteen (14) days such that BD is unable to perform any of its obligations, any contract of sale made hereunder may be terminated without liability by BD by notice in writing to Customer, which termination may take effect immediately or on the date specified in the notice of termination at the option of BD.