

## **DELIVERY CONDITIONS DUTCH PLANTIN COIR INDIA PVT. LTD.**

**Dutch Plantin Coir India Pvt. Ltd.**, a company incorporated under the laws of India, having its principal office at Coimbatore, India (hereinafter referred to as the "Substrate Manufacturer/Supplier")

### **ARTICLE 1 - GENERAL**

1.2 In this Agreement the Buyer means the party with whom the Substrate Manufacturer enters into a legal relationship.

1.3 In this Agreement, "Order" means the fact that the Buyer, after requesting a quotation, orders the delivery of substrate or other products and services, including any advice - free of charge or otherwise.

### **ARTICLE 2 - GENERAL / SCOPE**

2.1 Any other agreement apart from this Agreement is expressly rejected.

2.2 These terms apply to all legal relationships in which the Substrate Manufacturer acts as (potential) sellers or suppliers of goods or services. The Substrate Manufacturer mainly focuses on sales of substrates. Nevertheless, this Agreement also forms a part of any legal relationship that relates in whole or in part to services provided by the Substrate Manufacturer.

2.3 These terms may only be departed from if laid down in writing by both parties or confirmed in writing by the Substrate Manufacturer.

### **ARTICLE 3 - CONCLUSION OF THE AGREEMENT**

When the Buyer places an Order, the agreement shall not come into effect until the Substrate Manufacturer has accepted it in writing or unmistakably commenced its performance.

### **ARTICLE 4 - ENTIRE AGREEMENT**

The Parties will be bound only by the terms of this Agreement and no other terms will be applicable. This Supply Agreement forms the entire understanding between the Parties. .

## **ARTICLE 5 - PRICES**

5.1 Unless otherwise agreed in writing, all prices are ex-warehouse or where applicable, ex-storage. All prices are exclusive of GST.

5.2 The Substrate Manufacturer is automatically entitled to pass on future changes in labour wages, transport costs, cost prices of raw materials or materials or exchange rate changes not already known at the time of concluding an agreement, which relate to the agreed performance.

## **ARTICLE 6 - DELIVERY / DELIVERY TIME**

6.1 Delivery times agreed with the Substrate Manufacturer are indicative and not deadlines. In the event of late delivery, the Buyer must therefore give the Substrate Manufacturer written notice of default.

6.2 Unless otherwise agreed in writing, delivery shall be ex-warehouse or, if applicable, ex-storage.

6.3 If the Substrate Manufacturer arranges transport, it will also determine the method of transport and insurance during transport, both of which may be charged separately to the Buyer. Transport is at the Buyer's risk.

6.4 The Substrate Manufacturer is entitled to meet its contractual obligations in parts unless this is expressly contrary to agreements made in writing with the Buyer.

6.5 The Buyer is obliged to take delivery of the purchased goods at the time of delivery. If the Buyer refuses to take delivery or fails to provide the information or instructions necessary for delivery, the goods will be stored at the Buyer's risk. The Buyer will in that case be liable for the payment of all additional costs, at least including storage and transport costs.

## **ARTICLE 7 - PAYMENT**

7.1 Invoices of the Substrate Manufacturer shall be paid before the due date indicated on the invoice in the manner specified by the Substrate Manufacturer. Payment is to be made in the agreed currency. The Buyer is not entitled to deduct/set off any amounts from the payable invoices on account of an asserted counterclaim. Nor is the Buyer entitled to suspend the fulfilment of its payment obligation if it lodges a complaint with the Substrate Manufacturer regarding the products delivered, unless the Substrate Manufacturer expressly agrees to suspension in exchange for security.

7.2 In the event of late payment, all payment obligations of the Buyer, regardless of whether the Substrate Manufacturer has already invoiced them, shall become immediately due and payable. The Substrate Manufacturer shall notify the Buyer in writing if the Substrate Manufacturer invokes this provision and sends an appropriate invoice. In that case, the Substrate Manufacturer is entitled, among other things, to suspend its delivery obligation and may require sufficient security as referred to in Article 9 of this Agreement or shall have the right to dissolve the agreement - in part or otherwise - as referred to in Article 13 of this Agreement.

7.3 In the event of late payment, the Buyer shall be liable for interest in accordance with the prevailing statutory RBI lending interest rate.

7.4 If the Buyer fails to fulfil one of its obligations or fails to do so on time, in addition to the agreed price and costs, all extrajudicial collection costs shall be borne by the Buyer, which also includes the costs of preparing and sending reminders, making a settlement proposal and gathering information. If the Substrate Manufacturer proves to have incurred higher costs, these are also eligible for reimbursement.

7.5 To avoid the need for legal proceedings, if the Substrate Manufacturer is held accountable by the Buyer on any grounds whatsoever and the Substrate Manufacturer is thus forced to engage an expert to establish the facts on which the Buyer bases its claim, the Buyer shall be obliged to reimburse the Substrate Manufacturer for the costs charged to the Substrate Manufacturer by this expert if and insofar as the claim or claims of the Buyer, whether or not after invoking the General Conditions, prove to have been unjustified. The Buyer has 7 days to submit claims once the expert's investigation is completed.

7.6 Payments made by or on behalf of the Buyer shall serve successively to pay the extrajudicial collection costs, the legal costs, the payable interest, and then, in order of age, the outstanding principal sums, regardless of any indication to the contrary by the Buyer.

7.7 The Buyer can only object to the invoice in writing within 14 days of the invoice date.

## **ARTICLE 8 - RETENTION OF TITLE**

8.1 Goods delivered by the Substrate Manufacturer remain the property of the Substrate Manufacturer until the Buyer has fulfilled all the following obligations under all purchase agreements concluded with the Substrate Manufacturer:

- the consideration(s) in respect of item(s) delivered or to be delivered;
- the consideration(s) in respect of services performed or to be performed by the Substrate Manufacturer under the purchase agreement(s);

- any claims for non-performance of these agreements by the Buyer(s).

8.2. Unless the Substrate Manufacturer stipulates otherwise, the implications under property law of an item destined for export are governed by the law of the country of destination of the item in question if the retention of title under the law of the destination country does not lose its effect until the full price has been paid.

8.3. Goods delivered by the Substrate Manufacturer, subject to retention of title pursuant to paragraph 8.1 may only be resold in the normal course of business. Furthermore, the Buyer is not authorized to pledge the goods or to establish any other right on them.

8.4. If the Buyer fails to fulfil its obligations or if there is good cause to presume that will be the case, the Substrate Manufacturer is entitled to repossess or have repossessed the delivered goods to which the retention of title referred to in paragraph 8.1 applies from the Buyer or from third parties holding the goods for the Buyer. The Buyer is obliged to cooperate in full with this on penalty of a 10% penalty of the daily payable amount.

8.5. The Buyer undertakes at the Substrate Manufacturer's first request to

- insure and keep insured the goods delivered under retention of title against fire, explosion and water damage and theft and to make the insurance policy available for inspection;

- to mark the goods delivered under retention of title as the property of the Substrate Manufacturer;

- to otherwise cooperate with all reasonable measures the Substrate Manufacturer wishes to take to protect its property rights in respect of the goods and which do not unreasonably hinder the Buyer in the normal conduct of its business.

## **ARTICLE 9 - SECURITY**

9.1 The Buyer undertakes to the Substrate Manufacturer to provide (additional) security for all existing and all future claims of the Substrate Manufacturer against the Buyer, on whatever grounds, at the Substrate Manufacturer's first request, to the satisfaction of the Substrate Manufacturer. This must always be designed, and if necessary replaced or supplemented by the Buyer to the satisfaction of the Substrate Manufacturer, that the Substrate Manufacturer has satisfactory and sufficient security on an ongoing basis. The substrate manufacturer is entitled to suspend compliance with its obligations for as long as the Buyer has not complied with the above.

9.2 If the Buyer has not complied with a request as referred to in paragraph 9.1 within 14 days of a written demand to that effect, all its obligations shall become immediately due and payable.

## **ARTICLE 10 - COMPLAINTS, DUTY TO INVESTIGATE, PRESCRIPTION TERM AND PERFORMANCE**

10.1 The Buyer is obliged to examine upon delivery and within 24 hours at the latest after delivery (if not possible otherwise by random sampling) to ascertain what has been delivered complies with the agreement i.e.:

- whether the right articles have been delivered;
- whether the delivered goods comply with the agreement in terms of quantity (e.g. number and quantity);
- whether the delivered goods meet the agreed quality requirements or - if these are lacking - the requirements that may be set for normal use or commercial purposes;

If this is not the case and the Buyer does not inform the Substrate Manufacturer of this in writing within eight days, the Buyer shall forfeit all rights in respect of non-compliance relating to the non-compliance of what has been delivered with the agreement. If the Substrate Manufacturer does not receive written notification within eight days that what has been delivered does not comply with the agreement, it shall be deemed between the parties as proof that what has been delivered complies with the agreement.

10.2 Claims and defenses based on facts or assertions to the effect that what has been delivered does not comply with the agreement shall lapse one year after delivery.

10.3 If the delivered goods do not comply with the agreement, the Substrate Manufacturer shall, at its discretion, only be obliged to deliver the missing goods, repair the delivered goods or replace the delivered goods.

10.4 The provisions of this article apply mutatis mutandis to the provision of services, with the proviso that both the period of one day after delivery referred to in paragraph 1 and the period of eight days referred to in paragraph 1 in the case of services shall relate to one month after completion of the provision of services.

## **ARTICLE 11 - FIGURES, MEASUREMENTS, WEIGHTS AND OTHER DATA**

11.1 Minor deviations concerning stated dimensions, weights, numbers, colours and other such data are not deemed to be deficiencies.

11.2 A minor deviation is defined as a margin of up to 10% more or less than the stated specification. Samples shown or provided are indicative only.

## **ARTICLE 12 - PACKAGING**

1. The Buyer is obliged to return loaned packaging within the period stipulated in the agreement or, if there is no such period, at the Substrate Manufacturer's request within a reasonable period of time, empty and in undamaged condition. If the Buyer fails to fulfil its obligations concerning the loaned packaging, all costs resulting from this shall be for its account. Such costs include those arising from late returns and replacement, repair or cleaning costs.

2. If the Buyer does not return loaned packaging after a reminder within the period specified in the first paragraph, the Substrate Manufacturer shall be entitled to proceed to replace the loaned packaging in question and charge the costs thereof, provided that the Substrate Manufacturer has referred to these steps in its reminder.

## **ARTICLE 13 - NON-PERFORMANCE**

13.1 The claims of Substrate Manufacturer against the Buyer shall be immediately due and payable if:

- after the conclusion of the agreement, circumstances come to Substrate Manufacturer's knowledge that give good cause to presume that the Buyer will not fulfil its obligations
- the Substrate Manufacturer has requested the Buyer to provide security for fulfilment, and such security is not forthcoming within the specified period or is insufficient.
- the Buyer is declared bankrupt, applies for a suspension of payments, requests the application of the debt restructuring for natural persons or is subjected to an attachment of all or part of its property.

In those cases, the Substrate Manufacturer shall be entitled to suspend further performance of the agreement or to dissolve the agreement, without prejudice to the right to claim damages.

13.2 The Substrate Manufacturer shall be entitled to dissolve the agreement if circumstances arise concerning persons or equipment the Substrate Manufacturer uses in the performance of the agreement of such a nature that the performance of the agreement becomes impossible or so onerous or disproportionate that fulfilment of the obligation under the agreement can no longer reasonably be required.

13.3 Force majeure means circumstances which prevent the fulfilment of the obligation and which cannot be attributed to the Substrate Manufacturer.

This includes (if and to the extent such circumstances make performance impossible or unreasonably onerous): fire, strikes in companies other than those of the Substrate Manufacturer,

political strikes in the Substrate Manufacturer's company; a general lack of necessary raw materials and other items or services required for the realization of the agreed performance; epidemics or pandemics possible quality problems affecting the Substrate Manufacturer or Substrate Manufacturer's supplier, unforeseeable stagnation among suppliers or other third parties on which the Substrate Manufacturer depends and general transport problems.

13.4 The Substrate Manufacturer shall also be entitled to invoke force majeure if the circumstance preventing (further) fulfilment occurs after the Substrate Manufacturer should have fulfilled its obligations.

13.5 During force majeure, the Substrate Manufacturer's delivery and other obligations shall be suspended. If the period in which fulfilment of the obligations by the Substrate Manufacturer is not possible due to force majeure lasts longer than 48 hours, both parties are authorized to dissolve the agreement without any obligation to pay compensation in that case.

13.6 If the Substrate Manufacturer has already partially fulfilled its obligations when the force majeure occurs, or can only partially fulfil its obligations, it shall be entitled to invoice the part already delivered or the deliverable part separately, and the Buyer shall be obliged to pay this invoice as if it were a separate contract. However, this does not apply if the part already delivered or deliverable has no independent value.

## **ARTICLE 14 - LIABILITY AND DAMAGES**

14.1 The Substrate Manufacturer shall make every effort to deliver substrate that is free of quantities of organisms harmful to humans, animals or plants. Growth media, especially organic growth media and their components, contain a wide range of beneficial microorganisms essential for their functionality. Therefore, they are not sterile and the occurrence of common human pathogens cannot be ruled out. Microorganisms may be indigenous or colonize growing media during storage or cultivation, depending on the season and growing conditions. By far the largest percentage of all growing media contains high percentages of organic matter that is naturally exposed to microbial degradation by fungi, bacteria, actinomycetes and other organisms. Saprophytic organisms may be present in small numbers in growth media. The addition of nutrients and lime can promote the growth of saprophytic organisms. Therefore, the presence of saprophytic organisms and their effects, such as fungi, does not constitute a non-conformity in the substrate.

The Substrate Manufacturer's liability is excluded if the damage occurs:

(a) due to incompetent use or use contrary to the intended purpose of the delivered goods or the instructions, (cultivation) advice, directions for use and so on provided by or on behalf of the Substrate Manufacturer;

- (b) due to the substrate becoming unusable due to fungi or any microbiological activity or organic action otherwise;
- (c) due to the common colonization of micro-organisms, as well as by the common presence of saprophytic organisms;
- (d) due to improper preservation (storage) of the delivered substrate;
- (e) due to errors or omissions in the data, documents or materials provided or prescribed to the Substrate Manufacturer by or on behalf of the Buyer;
- (f) due to directions or instruction from or on behalf of the Buyer;
- (g) because the Buyer has requested the Substrate Manufacturer, outside the standard range of the Substrate Manufacturer, to add components (whether or not processed by the Substrate Manufacturer) to or mix them into the substrate;
- (h) due to other work, processing, treatment or adjustments being performed by or on behalf of the Buyer on the delivered goods (including drying of the growing media) without the express prior consent of the Substrate Manufacturer.

14.2 Any form of oral or written advice by the Substrate Manufacturer is given from the best available knowledge and based on the Substrate Manufacturer's experience.

14.3 If the Substrate Manufacturer has failed imputably in the fulfilment of any of its obligations or has committed a wrongful act towards the Buyer, the Substrate Manufacturer shall only be liable to the Buyer for damages it has suffered in that connection if the Buyer proves that this damage is due to the intentional act or gross negligence of the Substrate Manufacturer or its managerial subordinates.

14.4 If the liability of the Substrate Manufacturer is to be assumed under Article 14.3, liability shall be limited to a maximum of the amount of the purchase price. If the agreement consists of partial deliveries, the obligation to pay compensation is limited to a maximum of the purchase price of the respective partial delivery. The liability of The Substrate Manufacturer for indirect damage, such as, but explicitly not limited to; (growth) damage to crops, trading losses, stagnation damage, personal or bodily injury, lost profit and lost turnover, is excluded.

14.5 Notwithstanding the above, the total liability of the Substrate Manufacturer shall be limited to the amount of the payment made by the insurer plus the Substrate Manufacturer's deductible. The Substrate Manufacturer will provide a copy of its business liability insurance at the Buyer's request.

14.6 The Buyer shall indemnify the Substrate Manufacturer and the (auxiliary) persons engaged by it in the performance of its obligations against all claims of third parties on account of

damage suffered by these third parties arising from or related to the Substrate Manufacturer's performance of the agreement or delivery of the substrate unless there is intent or gross negligence on the part of the Substrate Manufacturer or the (auxiliary) persons it has engaged in the performance of the agreement. In case of intent or gross negligence on the part of the Substrate Manufacturer or the (auxiliary) persons engaged by it in the performance of the agreement, the Buyer shall indemnify the Substrate Manufacturer or the (auxiliary) persons engaged against such claims for the part that exceeds the amount of the payment made by the Substrate Manufacturer's liability insurer, increased by the Substrate Manufacturer's deductible.

14.7 The right of the Buyer to dissolve all or part of the agreement with the Substrate Manufacturer in the event of an attributable breach by the Substrate Manufacturer is excluded.

## **ARTICLE 15 APPLICABLE LAW AND COMPETENT COURT**

15.1 All national and international legal relationships between the Substrate Manufacturer and the Buyer shall be governed by Indian Law. Alternatively the Substrate Manufacturer reserves its right to initiate action in the Buyer's jurisdiction if deemed necessary.

15.2 Notwithstanding any non-mandatory law applicable to the legal relationship between the Substrate Manufacturer and the Buyer, all disputes between the Substrate Manufacturer and the Buyer shall be attempted to be resolved amicably at the first instance through mediation. In the event mediation/conciliation fails, the Parties shall refer the dispute to a sole arbitrator and the dispute will be adjudicated in terms of the provisions of the Arbitration and Conciliation Act of 1996 as amended from time to time. The venue for such arbitration will be New Delhi, India.

## **ARTICLE 16 - AMENDMENT OF THE TERMS AND CONDITIONS**

16.1 The Substrate Manufacturer is entitled to unilaterally amend the terms of this Agreement with due regard to the requirements of reasonableness and fairness. Amendments shall also apply in respect of agreements already concluded as far as it concerns obligation(s) under the agreement to which the Substrate Manufacturer has committed itself and which have not yet been fulfilled in full or in part.

16.2 The Substrate Manufacturer will inform the Buyer of the amendments by e-mail. The amended agreement will take effect 30 days after the Buyer has been informed of the amendments.

16.3 If the Buyer disagrees with the announced changes, the Buyer has the right to dissolve the agreement.