

**Terms and Conditions of Sale**  
(only for the use towards commercial/professional customers)  
valid from 01.02.2020

**1. Governing Terms:**

All sales, deliveries, services and offers of the product(s) of Cheminova Deutschland GmbH & Co. KG FMC Agricultural Solutions (hereinafter "Seller") are governed by these Terms and Conditions of Sale. Such Terms and Conditions of Sale are part of all contracts which are concluded by Seller and its contract partners (hereinafter "Buyer") about deliveries and services offered by Seller. They also apply to all future deliveries, services or offers. Any and all terms and conditions (including any which may be delivered by Buyer with any purchase order or any other document, to which Seller refers to) which are deviant or inconsistent with these Terms and Conditions are rejected also if Seller does not expressly object. The contractual relationship between Seller and Buyer shall be exclusively governed by the written sales agreement (including orders and acceptance of orders exchanged via e-mail) including these Terms and Conditions of Sale. The sales contract and the Terms and Conditions of Sale exhaustively reflect all understanding between Seller and Buyer with respect to the sale of the product(s). Oral promises made by Seller prior to conclusion of the sales contract are not legally binding, and all undertakings of the parties are replaced by the written sales contract, unless the above promises and undertakings expressly indicate that they shall continue to apply. No modification to the Agreement including these Terms and Conditions of Sale are legally binding and enforceable unless expressly agreed to by Seller in writing. With the exclusion of managing directors or authorized representatives of the company with statutory power if representation, the employees of Seller are not entitled to enter into oral undertakings that deviate from the written sales contract including the present Terms and Conditions of Sale.

**2. Offer and conclusion of contract:**

All offers of Seller for sales of the product(s) shall be subject to change and non-binding, unless they have been specifically marked as binding, or include a specific acceptance period. Seller reserves the right to accept or reject during a period of 8 days after he has received an order any and/or all portions of a purchase order for the product(s) for any reason. Unless a specific number of days' notice is agreed to by Seller in writing, Seller shall provide Buyer in advance with a reasonable written notice regarding delivery of the product(s) to Buyer.

**3. Prices, Cost, Taxes:**

The prices are in Euro plus cost of transport (see under 4 below), cost of packaging, statutory value-added tax and other excise taxes, duties, fees and other public charges.

**4. Deliveries, Delivery Dates, Means of Transportation, Delays, Impossibility to deliver:**

Delivery dates indicated by Seller are approximate dates, unless a specific term or a specific deadline has been promised or agreed. If a dispatch of the product(s), such delivery terms and deadlines refer to delivery of the goods to the forwarding agent/carrier or any other third party commissioned to dispatch the product(s).

Seller shall determine in its reasonable discretion the mode of dispatch and packaging. Unless the product(s) are sold on a delivered basis, transportation and other shipment charges do not constitute a portion of the purchase price of the product(s) and Buyer shall pay all such charges. If Buyer desires a means of transportation other than that selected by Seller but which is satisfactory to Seller, any extra costs and expenses incurred by reason of using such other means shall also be paid by Buyer.

Seller is entitled to partial deliveries, if a partial delivery is suitable for use by Buyer within the scope of the contractual purpose, the delivery of the remaining product(s) ordered by Buyer is ensured and Buyer does not incur any significant additional work or additional cost.

If Seller is in default of delivery or if a delivery becomes impossible, for whatever reason, Seller's liability for damages is limited in accordance with § 9 of these Terms and Conditions of Sale.

**5. Payment Terms:**

Payment of the purchase price for the product(s) shall be made within thirty (30) days after the date of invoice. If Buyer does not pay by the due date, any outstanding amounts shall bear interest as of the due date to the amount of 5 % p.a.

Buyer may not make any offsets or deductions from the invoice amount for the product(s) unless agreed to by Seller in writing, the claims raised by Buyer are not disputed or have been established by court in a binding manner or result or a rise under the same contract as the respective delivery invoiced to Buyer.

In the event that Seller becomes aware after conclusion of the contract of incidents which raise doubt as to Buyer's ability to meet its financial obligations pursuant to the respective contractual relationship (including other individual orders under the same frame contract), Seller may decline to make further deliveries of the product(s) unless Buyer pays the purchase price for the product(s) in advance or provides adequate security of payment.

**6. Transfer of Risk of Loss:**

Risk of loss for the product(s) shall pass to Buyer Ex-Works (per INCOTERMS® 2020) Seller's location unless agreed expressly otherwise or in the event of a dispatch upon transfer of the product(s) to the forwarding agent/carrier or other third party commissioned to dispatch the product(s). If the transfer of product(s) or the dispatch is delayed for reasons caused by Buyer, the risk of loss shall transfer on the day on which the product(s) are ready for transfer or dispatch, and the Seller has notified Buyer thereof. Any cost of storage after transfer of risk of loss shall be borne by the Buyer. Such cost amount to 0, 25 % of the invoiced amount of the stored product(s) per finished week; each of Seller and Buyer has the right to show that additional cost or lower cost have accrued, in which case the cost of storage shall be adjusted accordingly.

**6a. Title**

Seller retains title to the goods until receipt of all payments in full. In case of breach of contract by Buyer including, without limitation, default in payment, Seller is entitled to take possession of the goods. Buyer shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods. As long as the purchase price has not been completely paid, Buyer shall immediately inform Seller in writing if the goods become subject to rights of third persons or other encumbrances. Buyer may resell goods subject to the above retention of title only in the course of its regular business. For this case, Buyer hereby assigns all claims arising out of such resale, whether the goods have been processed or not, to Seller. Notwithstanding Seller's right to claim direct payment, Buyer shall be entitled to receive the payment on the assigned claims. To this end, Seller agrees not to demand payment on the assigned claims to the extent Buyer complies with all its obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any suspension of payments. Insofar as the above securities exceed the secured claim by more than 10 %, Seller is obligated, to release such securities as shall be selected by Seller upon Buyer's request.

The Seller will release the reserved goods as well as the goods or receivables that replace them if their value exceeds the amount of the secured claims by more than 50%. The selection of the items to be released thereafter lies with the seller.

If Seller withdraws from the contract in case of breach of contract by Buyer - especially default of payment (case of liquidation of securities) - it is entitled to demand the return of the reserved goods.

**7. Product Specifications:**

Any statements made by Seller with respect to the product specifications, including statements that are part of the label, do not constitute any warranty of certain characteristics, but represent a description or labelling of the products. Unless otherwise agreed, including in the present Terms and Conditions of Sale, the product(s) shall be deemed free of any defects, if they have the characteristics indicated on the product labels. Unless otherwise agreed, including in the present terms and conditions of sale, seller makes no warranty, expressed or implied, covering the product(s), and specifically disclaims any warranty of merchantability or fitness for any particular purpose, whether or not the intended purpose of the product(s) by buyer is known to seller.

Any advice or assistance provided by Seller to Buyer is provided only as a courtesy and Seller makes no warranty, express or implied, as to its accuracy or completeness, or the results to be obtained from such advice or assistance. Buyer is solely responsible for determining whether the product(s) are suitable for Buyer's intended use, and for obtaining any necessary governmental registrations and approvals for Buyer's production, marketing, sale, use and/or transportation of finished goods using or incorporating the product(s).

Any claims due to defects of the product(s) are time barred after 12 months since the transfer of risk of loss.

This defects liability period does not apply in the event of

- (I) willful misconduct or gross negligence of Seller or its representatives or its performance agents,
- (II) willful or negligent breach of fundamental contractual obligations,
- (III) willful or negligent damage to life, body or health, or
- (IV) as well as any liability pursuant to the Product Liability Act.

The above claims (I), (II) and (III) shall be time-barred in accordance with statutory provisions.

If Buyer submits a notification of a defect to Seller that is justified as prescribed in § 8 below, Buyer shall be entitled to request alternative performance in the form of removing the defect in question or delivery of product(s) without defect. Upon the request of Seller, the defective product(s) shall be returned, free of shipping costs, to the Seller. If the notification of defects is justified, Seller shall compensate Buyer for the cost of the most economical manner of transport; this does not apply, if the product(s) are no longer located at the place of their intended use and the cost of transport have therefore increased. If alternative performance has failed, Buyer is entitled to reduce the purchase price or withdraw from the contract.

If a defect notified pursuant to § 8 below has been caused by willful misconduct or negligence of Seller, Buyer is entitled to claim damages under the conditions established in § 9 below.

#### **8. Inspection of Product(s):**

Upon delivery of the product(s) to Buyer and, in any event, prior to Buyer's use and/or resale of the product(s), Buyer shall immediately inspect each shipment of the product(s) to determine whether the product(s) meet the agreed product specifications. The products shall be deemed approved by Buyer in respect of any defects which could have been discovered upon a diligent inspection unless Seller receives a written notice of defects within thirty (30) days of delivery. For other defects, the products shall be deemed to have been approved by Buyer if the complaint is not received by Seller within thirty (30) days after the defect was discovered; if the defect was already apparent at an earlier stage in normal use, that earlier date shall prevail.

#### **9. Liability for damages and limitation of liability**

In the event of willful misconduct or gross negligence of Seller or its representatives or its performance agents, Seller shall be liable according to the statutory laws; the same applies in the event of willful or negligent breach of fundamental contractual obligations. If there is no willful breach of contract, Seller's liability for damages is limited to the predictable damage that may typically occur. Any liability due to willful or negligent damage to life, body or health, as well as any liability pursuant to the Product Liability Act remain unaffected. Except as stipulated above, any liability of Seller is excluded.

#### **10. Intellectual Property Infringement:**

To Seller's knowledge, the sale of the product(s) by Seller to Buyer does not infringe any third party right, including, but not limited to, patent and trademark (hereinafter "IP"). Seller makes no other warranty, express or implied, with respect to non-infringement of any IP and specifically disclaims any other such warranty. In the event that it is alleged that the sale and/or use of the product(s) (provided that such use complies with the use specified in the authorization of the product(s)) constitutes infringement of any third-party IP, the following shall apply:

Each contract party shall inform the respective other contract party without undue delay, if claims related to a breach of IP are asserted against it. If Buyer is involved in an infringement situation, it shall afford Seller the opportunity to involve itself in any discussions or proceedings with the third party in question. If such claims are valid, Seller shall in its free discretion and at its cost modify the products or replace the products so that no third-party IP is breached, provided that the products still meet the contractual purpose, or obtain a right to use the respective third-party IP through conclusion of a license agreement with the third party in question. Seller reserves the right to suspend deliveries of the product(s) (without liability to Seller other than as otherwise provided in this paragraph) in the event that Seller believes the production, marketing, sale, and/or use of any of the product(s) infringes any third party IP. Potential damage claims of the Buyer are subject to the limitations pursuant to § 9 of these Terms and Conditions of Sale.

If Seller cannot fulfil the above obligations, Buyer shall be entitled to withdraw from the contract or reduce the purchase price appropriately. Potential damage claims of the Buyer are subject to the limitations pursuant to § 9 of these Terms and Conditions of Sale.

Seller will reasonably be involved in any infringement situation where Seller has sold a product for a use specified in the authorization of the product(s), but where it later turns out that such sale or use infringes third-party IP rights.

In no event shall Seller be liable for any infringement claim arising from: (i) the sale and/or use of the product(s) for any use other than the use specified as part of the respective product authorization, or the sale and/or use of the product(s) in combination with other materials, (ii) the use of the product(s) in the operation of any process (other than the production of the product(s) per se), (iii) any product(s) manufactured to Buyer's designs or specifications, or (iv) any product(s) manufactured by any process requested by Buyer.

#### **11. Excuses for Non-Performance:**

To the maximum extent permitted by law, no liability for Seller or Buyer (except Buyer's liability to pay for product(s)) shall result from any delay in performance or nonperformance due to impossibility of performance to the extent caused by: any acts of God and circumstances beyond such party's reasonable control and which were not foreseeable at the time of the conclusion of the agreement, (e.g. war, terrorism, insurrection, sabotage, embargo, fire, explosion, flood, accident, government actions, strikes, legitimate labor disputes or shortages, interruption or delay in transportation, equipment breakdown, involuntary shutdown and business interruption, shortage of or inability to obtain any raw material, equipment, or energy source, which have been caused by the failing, incorrect or late delivery for which the Seller is not responsible), or suspension or cancellation of the necessary regulatory approvals that are required to sell the product(s) and existed upon conclusion of the respective contract, for any reason whatsoever.

An affected party shall promptly provide written notice to the other party of any delay in performance or non-performance and shall use its commercially reasonable efforts to remedy such delay or nonperformance, except that the affected party shall have no obligation to settle or otherwise resolve any labor dispute. In the event that Buyer fails to fully comply with any of these Terms and Conditions for any reason other than any of the foregoing circumstances, Seller may decline to make further deliveries of the product(s) until Buyer cures such failure. If due to any of the above events any supply or acceptance of the product(s) is substantially hindered or made impossible, and if any hindrance is not only temporarily, the affected party shall be entitled to withdraw from the contract. If any hindrance is temporary, any delivery terms and delivery dates shall be extended considering the term of the delay plus an appropriate start-up period. If it cannot be reasonably expected that Buyer takes any delivery due to the delay, Buyer is entitled to withdraw from the contract by written notice to Seller to be sent without undue delay. The same applies, if it cannot be reasonably expected that Seller delivers the product(s) due to the delay.

#### **12. Non-Waiver:**

Neither Seller's waiver of any breach, violation or default by Buyer, nor Seller's forbearance, failure, or delay in exercising, nor Seller's single or partial exercise of, any right or remedy available to Seller under these Terms and Conditions (any agreement, offer of sale, order confirmation, invoice, or other document to which these Terms and Conditions are attached, or in which they are referenced) or at law or in equity, shall constitute a waiver of any other breach, violation or default by Buyer, or any other right or remedy available to Seller.

#### **13. Non-Disclosure:**

No pricing or other terms or conditions of sale disclosed by Seller to Buyer with respect to the sale and/or purchase of the product(s) and which are not publicly available shall be disclosed by Buyer to any third party, unless, expressly agreed to by Seller in writing or otherwise required to do so by law.

#### **14. Assignment and Beneficiaries:**

All obligations, rights and remedies of Buyer arising with respect to the purchase of the product(s) and under these Terms and Conditions (and any agreement, offer of sale, order confirmation, invoice, or other document to which these Terms and Conditions are attached, or in which they are referenced), may not be assigned or otherwise transferred by Buyer unless expressly agreed to by Seller in writing. Nothing in these Terms and Conditions shall be construed as creating any direct or beneficial right in or on behalf of any third party.

#### **15. Change of control**

All obligations, rights and remedies of Buyer arising with respect to the purchase of the product(s) and under these Terms and Conditions (and any agreement, offer of sale, order confirmation, invoice, or other document to which these Terms and Conditions are attached, or in which they are referenced), may not be delegated to a third party by way of change of control, operation of law, or otherwise, if (i) Seller or a related company of Seller, is prohibited by law to sell the products or assign the agreement including these Terms and Conditions of Sale to the acquiring third party, or if (ii) Seller reasonably determines that a sale of the products to the acquiring third party may negatively affect the commercial success and/or reputation of the product(s), or if the acquiring third party has violated any business ethics related matters. Instead, Seller shall be entitled to request the Buyer to assume after the change of control the transfer of all obligations, rights and remedies of Buyer arising with respect to the purchase of the product(s) under these Terms and Conditions (and any agreement, offer of sale, order confirmation, invoice, or other document to which these Terms and Conditions are attached, or in which they are referenced), or, if the products have not yet been delivered, to terminate the relevant obligations, rights and remedies of Buyer.

#### **16. Severability:**

The provisions of these Terms and Conditions (and any agreement, offer of sale, order confirmation, invoice, or other document to which these Terms and Conditions are attached, or in which they are referenced) are to be deemed severable and the invalidity, illegality or unenforceability of one or more of such provisions shall not affect the validity, legality or enforceability of the remaining provisions.

#### **17. Governing Law:**

All sales of the product(s), and these Terms and Conditions (and any agreement, offer of sale, order confirmation, invoice, or other document to which these Terms and Conditions are attached, or in which they are referenced) shall be governed by, and construed and enforced in accordance with the German law, without regard to its otherwise applicable conflicts of laws rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

#### **18. Venue:**

If the Buyer is a merchant or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between Seller and Buyer is Frankfurt/ Main, Germany. Mandatory statutory provisions on exclusive jurisdictions remain unaffected.