



Our date  
2016-10-20

**General Terms and Conditions of Sale  
YARA ZIM Plant Technology GmbH  
effective as from 01 June 2014**

## I. Scope

The following Terms & Conditions shall apply to all deliveries, services, offers and acknowledgements of order by YARA ZIM Plant Technology GmbH ("ZPT"). No subsidiary agreement, guarantee, supplementary agreement and/or modification that has been made or given orally shall be valid unless confirmed in writing by ZPT. Buyer's deviating terms and conditions shall not be applicable unless ZPT has acknowledged them in writing. Any deviation from the written form requirement shall be agreed in writing. The Terms and Conditions of Sale only apply to companies as defined in § 310 paragraph 1 BGB (German Commercial Code). ZPT is a subsidiary of Yara GmbH & Co. KG with its seat in Dülmen, Germany, which itself is part of the worldwide Yara group of companies ("YARA").

## II. Offers and Contracts, Properties

1. All offers shall be subject to confirmation. Contracts shall only be made effective by ZPT's written confirmation, delivery or service or the issuance of an invoice. The same shall apply to any amendments, modifications and subsidiary agreements.
2. Specimens, samples, analytical and other data shall not be binding unless they have expressly been agreed to constitute the quality ("Beschaffenheit") of the products.

## III. Prices and Payment Terms, Set-Off

1. Unless expressly agreed otherwise, ZPT's prices are quoted EXW (Incoterms 2010) and are exclusive of the sales tax /VAT as applicable at the delivery date and prescribed by law. Unless fixed prices have been agreed by contract, the prices valid at the date of delivery shall be applicable. If relevant price factors, such as customs duty, government charges, freight, tariffs etc. change before the delivery date, prices shall be adjusted accordingly. If prices include carriage, they shall be subject to unimpeded transportation.
2. ZPT's invoices are payable on receipt, cash or by remittance, strictly net, unless differing terms have been agreed in writing. Carriers, other suppliers or ZPT's employees are not entitled to accept payments unless they have written authority. Payments by cheque will only be credited if they are unconditional.
3. If Buyer has not effected payment more than 14 days after receipt of the invoice and after expiry of the term of payment, Buyer shall be in default even without prior request for payment. In that case - even if such payment obligation originates from other transactions - or in the event that Buyer has stopped payments or its financial circumstances have significantly deteriorated, all other accounts receivable by ZPT under any other contract shall immediately fall due for payment. In addition, ZPT can exercise its proprietary rights to any goods that are still on hand and can return bills of exchange it has accepted, independent of their due dates, concurrently against cash payment. Buyer may no longer make use of discounts it has been granted. ZPT



can demand advance payment for open orders or any other suitable security, or can rescind the contract.

4. In the event of default, for which no a prior request for payment is necessary, ZPT shall charge interest for the period of delay at the statutory rate and shall reserve the right to claim for further damage caused by such delay. Besides, clause III.3 shall apply.

5. Buyer shall have no right of set-off unless its counterclaims are undisputed or validly established. In the event of defects to the products, the Buyer's rights remain unaffected by this clause.

#### **IV. Delivery Time, Delivery, Force Majeure and Default**

1. Delivery is made "EXW" (Incoterms 2010) the business premises of ZPT in Hennigsdorf, Germany, and this is the place of performance, unless agreed otherwise in writing.

2. All delivery dates shall be non-binding unless expressly agreed otherwise. Unless agreed otherwise, the delivery period agreed shall commence upon the receipt of ZPT's confirmation of the order, provided all the documents and information required for the execution of the order have been received, all technical and commercial details have been clarified, all the necessary approvals have been submitted and Buyer has fulfilled all other obligations. In the event of subsequent changes to the purchase order that impact delivery times, the delivery period shall be extended accordingly. The delivery dates agreed indicate the date the goods are loaded at the point of dispatch. Delivery by instalments shall be permitted, unless they are unreasonable to accept for the Buyer.

3. If execution of the order is hindered by unforeseen circumstances - whether at ZPT's location or that of its supplier – ZPT shall be entitled to defer delivery for the duration of such disturbance or to cancel, wholly or in part, any portion of the contract that has not yet been executed.

4. Force majeure of any kind, including unforeseen disturbances of operations, transport or dispatch; fire; explosions; acts of god; high or low water; unforeseen lack of labour, energy, raw materials or supplies; strikes; lock-outs; war; unrest; acts of terrorism; government orders; incorrect or late supply by ZPT's suppliers or other impediments for which ZPT is not responsible and that are beyond ZPT's control, which reduce, delay, prevent or render unreasonable contract performance, availability or dispatch of the products, shall, for the duration and extent of such disturbance, release ZPT from its duty to perform. If the events of force majeure continue for more than six (6) weeks, both Parties shall be permitted - in case of material disturbance - to withdraw from part or all of the contract; any payment already made by Buyer shall be immediately reimbursed unless it is set off against other accounts receivable. If impediments to performance are only temporary, the period of delivery or performance shall be extended and the delivery/performance dates shall be postponed by the period of the impediment plus a reasonable lead time.

5. Should ZPT lose part or all of its sources of supply, ZPT shall not be obliged to purchase from other suppliers. In that case, ZPT shall rather be entitled to distribute any available quantities, taking into account its own requirements and other internal and external supply obligations.

6. In addition to delivery of the goods, Buyer can claim compensation for any loss caused by the delay; in cases of ordinary negligence on the part of ZPT, such claim shall be limited to a maximum of 5% of the purchase price. As for the rest, part VI. shall apply.

7. Covering purchases shall be barred in any case.

## **V. Passing of Risk, Acceptance, Acceptance Delay**

1. Unless expressly agreed otherwise in writing, risk shall pass to Buyer no later than at the time of transfer. In cases where delivery is made to a place other than the place of performance, the risk of accidental loss and deterioration of goods and the risk of delay is transferred at the time of delivering the goods to the forwarder, carrier or other person or organisation assigned with shipping. If an acceptance has been agreed, this is determining for the transfer of risk. Furthermore, any agreed acceptance is subject to the legal provisions of the law on contracts for work ("Werkvertragsrecht"). If the Buyer is in default of acceptance, this is equivalent to delivery or acceptance. For call-off purchase agreements, the Buyer is in default if he fails to accept the goods within 12 months from the date of the order unless a longer acceptance period has been agreed.

2. If the Buyer is in default of acceptance or fails to cooperate or if the delivery is delayed for other reasons attributable to the Buyer, ZPT may claim compensation for the resulting damage, including additional expenses (e.g. warehousing cost). For this purpose, ZPT charges a flat compensation fee of 0.5% of the delivery value per calendar week, however not more than 10% of the delivery value starting from the delivery time or, if no delivery time has been agreed, starting from notification of readiness for dispatch of the goods. The proof of higher damage and ZPT's legal claims (in particular compensation for additional expenses, appropriate indemnification, termination) remain unaffected; however the flat amount shall be set off against any additional monetary claims. The Buyer may furnish proof that ZPT has not suffered any damage at all or a much lower level of damage than that covered by the above-mentioned flat rate.

## **VI. Requirement to Give Notice of Defects, Rights in Case of Defects, Liability, Limitation**

1. Buyer shall examine on of the goods receipt whether they conform to the specifications of the purchase order and whether there is any visible (transport) damage, and shall notify ZPT in writing of any defects no later than 7 working days after receipt of the goods (Saturdays excluded), and in the case of hidden defects as soon as Buyer becomes aware of them. If Buyer fails to give such notification, or if it uses, mixes or sells the goods, this shall be deemed unconditional acceptance. As for the rest, section 377 HGB (Commercial Code) shall apply.

2. Rejected goods shall be preserved in the condition in which they were when the deficiency was discovered for inspection and, if necessary, for examination by a sworn expert (preservation of evidence). Any costs arising shall be borne by the defeated party.

3. In the event of a claim for a defect, Buyer shall safeguard ZPT's right of recourse against any third party. Buyer shall take all necessary steps in this respect and shall inform ZPT without delay. Any culpable contravention shall cause liability for damages on the part of Buyer.

4. If the delivered goods are defective, ZPT may choose to provide supplementary performance by repairing the defect (remedy) or by delivering an item free from defects (replacement). Only in urgent cases if operational safety is jeopardised and/or in order to prevent disproportionate damage - in which case ZPT shall be notified immediately - the Buyer shall be entitled to remedy the defect itself or have it remedied by a third party and to claim compensation for the necessary expenses from ZPT. Ownership of replaced parts shall pass to ZPT. Of the immediate expenses caused by the rectification of the defect and/or replacement, ZPT shall bear, if the complaint proves to be justified, the costs of the replacement part including shipment. If the goods are at a place other than the place of performance, Buyer shall bear any



resulting additional costs. ZPT's right to refuse supplementary performance under the legal provisions remains unaffected.

5. ZPT shall assume no responsibility in the following cases: improper or inappropriate storage, rectification of the defect or modifications to the item made by Buyer or by a third party. This shall not apply where ZPT is responsible.

6. If damage has occurred not at the supplied item itself (especially consequential damage), ZPT shall not be liable - on whatever legal grounds - unless the damage was caused wilfully or by gross negligence or injury has been culpably caused to life, limb and health. If essential contractual obligations (cardinal obligations, i.e. obligations which fulfilment only allows the proper performance of the contract and in which the contractual partner trusts and in which he may trust in) have been breached, ZPT shall also be liable in cases of slight negligence, but limited to reasonably foreseeable damage typical of such contracts.

7. The limitation period for claims for defects/liability claims shall be up to one year from the statutory commencement of limitation. This shall not affect liability for deliberate acts, fraudulent concealment of a defect, culpable breach of a cardinal obligation or liability for damage resulting from culpable injury to life, limb or health. In these instances, statutory limitation shall apply. It shall also apply in case of liability for other damage resulting from wilful or grossly negligent breach of duty by ZPT, or from wilful or grossly negligent breach of duty by a legal representative or servant of ZPT.

## **VII. Reservation of Title**

1. ZPT shall retain title to all deliveries until it has received full payment of all debts resulting from the business relation, no matter on what legal basis, including future or contingent claims under contracts entered into now or at a later time.

2. Buyer can sell and/or utilise any goods that are subject to reservation of title in the ordinary course of its business, provided Buyer's claims from the resale of the goods shall pass to ZPT and provided Buyer is not in default. Buyer is not entitled to any other disposal of the goods. Buyer shall not pledge the goods or transfer ownership by way of security. In the event of default or insolvency, Buyer shall notify its creditors of the assignment and give ZPT the information and documents ZPT requires to assert its title.

3. The goods subject to reservation of title shall be stored by Buyer at no cost for ZPT. They shall be stored separately and at ZPT's request shall be marked in a way that enables any third party to identify them as ZPT's property. Buyer shall insure such goods against fire, water and theft.

4. Buyer hereby fully assigns to ZPT any receivables (including any current account balance claim) to which it is entitled from the resale of goods under reservation of title or on any other legal basis (e.g. insurance, tort). ZPT hereby accepts the assignment. ZPT shall give Buyer the revocable authorisation to collect any receivables assigned to ZPT for ZPT's account in its own name. The authorisation to collect can be revoked any time if Buyer does not duly fulfil its payment obligations. Buyer shall not be entitled to assign this claim, not even for the purpose of collecting debts by way of factoring, unless an obligation is created at the same time for the factor to effect compensation directly to ZPT in the amount of the receivables, so long as ZPT has claims against Buyer. If Buyer includes a claim resulting from the resale of goods subject to reservation of title in mutual current accounts with its customer, the claim on current account shall be fully assigned to ZPT. After the account has been balanced, it shall be replaced by the recognised balance, which will be deemed assigned to ZPT in the amount of the original current



account claim. If Buyer sells goods subject to reservation of title to together with other goods not purchased from ZPT, the assignment of the claim from the resale shall only hold in the amount of the resale value of the respective supplied items. At ZPT's request, Buyer shall inform its customers of the assignment - unless ZPT itself does not arrange for it to be done - and furnish ZPT the information and documents required for the collection.

5. If Buyer receives a bill of exchange or cheque for goods subject to reservation of title which it has resold, it shall assign its claims under such bill or cheque to ZPT and shall transfer ownership of the physical bill or cheque to ZPT while holding the document in safe custody. Buyer shall hand such documents, indorsed, to ZPT without delay. If Buyer does not obtain immediate possession of the documents, it hereby assigns to ZPT its claim against any third party for the surrender of such documents.

6. Goods subject to reservation of title shall be processed on behalf of and authorised by ZPT. In that case, ZPT's reservation of title to the goods shall continue and refer to the processed goods. To the extent that the goods are processed together with other goods to which ZPT has no title, ZPT shall acquire co-ownership in the new items in the ratio of the final invoice value of the goods supplied under reservation of title to the other processed goods, at the time of processing. The same shall apply in the event of commingling and mixing of the products. If the commingling/mixing is effected in such a way that Buyer's contribution must be considered the main constituent, it shall be deemed agreed that Buyer transfers to ZPT its share in the ownership and keeps the sole property or co-owned property so created in safe custody for ZPT.

7. Buyer shall notify ZPT immediately of any third-party enforcement measures against goods subject to reservation of title or assigned claims and shall surrender the relevant documents, and Buyer shall inform such third party of the reservation of title. If the third party is unable to compensate ZPT for expenses arising in this respect in court and out-of-court, Buyer shall be held liable for such expenses.

8. ZPT shall be entitled to inspect the goods subject to reservation of title during the usual business hours at the location of Buyer or Buyer's designee. At ZPT's request, Buyer shall be obliged to grant ZPT immediate access to these goods.

9. If a petition is filed to open insolvency proceedings or comparable proceedings on Buyer's assets, ZPT shall be entitled to rescind the contract and to demand immediate return of the goods supplied. If Buyer fails to honour its payment obligations, it shall be obliged to surrender the goods subject to reservation of title. The expenses for the return of the goods shall be borne by Buyer.

10. Reservation of title shall only be claimed for that share of goods supplied by ZPT whose invoice value covers the amount of debt still owed, including claims under any bill of exchange as well as return costs. If the security held by ZPT exceeds the debt secured by more than 10 %, ZPT agrees to return to Buyer, at Buyer's request, any security in excess of this amount. ZPT shall select the security to be released at its discretion.

11. Claiming reservation of title rights shall not imply a rescission of contract.

## **VIII. Trademarks**

1. It is prohibited to offer or supply to any third party substitute products instead of ZPT products under reference to such ZPT and/or YARA products; the same applies to the use of ZPT and/or YARA product names, protected or otherwise, in connection with the word "substitute/replacement" or terms of equivalent meaning, or to the combination or juxtaposition





of ZPT and/or YARA product names and names of substitutional products in price lists and similar business documents.

2. It is also prohibited when using ZPT and/or YARA products, in particular branded products, for purposes of production or further processing, to use ZPT and/or YARA product names, in particular its trademarks, on such goods or their packaging or associated literature and advertising materials without ZPT's prior written consent, and in particular in declarations of ingredients. The supply of products under a brand name shall not be deemed permission to use such brand name for other products manufactured from them.

### **IX. Export/Import Permits**

1. ZPT and Buyer shall cooperate to obtain from the relevant authorities any export or import permits required. Buyer shall bear the risk of failure to obtain an export or import permit.

2. If no export and/or import licence is eventually issued, ZPT shall be released from its duty to supply the contractual goods. Buyer shall be obliged to bear all the expenses that have arisen by that time. To the extent possible, Buyer shall be permitted to collect the goods from ZPT within one month from the final refusal of a permit and to utilise them in any other manner. If Buyer makes no use of this right, ZPT shall be entitled to sell, at Buyer's expense, the components installed so far and/or the goods. However, ZPT is under no obligation to sell. If excess proceeds are obtained by such utilisation, they shall be paid to Buyer after deduction of all costs, banking expenses etc.

3. If there are special requirements or formalities in Buyer's country for the transfer of ownership in items supplied or security furnished, Buyer shall be responsible for their observance at its own expense.

### **X. Place of Performance, Legal Venue, Governing Law, Data Protection**

1. The place of performance for deliveries shall be the respective point of delivery, and for payments it shall be the location of ZPT's domicile.

2. If Buyer is a "merchant" (German Commercial Code), the legal venue for litigation between the parties (except as provided in sentence 2) arising from a contract or otherwise and also at an international level, shall be the court having jurisdiction over the subject matter at the location of ZPT's domicile. ZPT shall also be entitled to bring an action or institute other legal proceedings at Buyer's domicile or any other court of justice that has jurisdiction under national or international law.

3. The parties agree that the laws of the Federal Republic of Germany shall be applicable, to the exclusion of the law on the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980, as amended from time to time.

4. ZPT shall be entitled to process and store data regarding Buyer which it has received in connection with the business relationship - even if they have been obtained from a third party - as provided by the Federal Data Protection Act, or have them processed and stored by a third party commissioned by ZPT.



## **XI. Severability**

Should all or part of any provision of these Terms and Conditions be or become invalid, the validity of the remaining provisions shall not be affected. The parties agree that they will endeavour to arrive at an agreement that comes as close as possible to the parties' original economic intention. The same shall apply to any gaps in the provisions.