

Terms & Conditions



2019

Terms & conditions of sale

1. Scope of Application of the General Terms and Conditions

1.1. These General Terms and Conditions ("General Conditions" or "GC") shall apply to any sale agreement concerning MOGU's products and materials ("Products") entered in by MOGU Srl ("MOGU", as seller) and the purchaser ("Customer") – jointly the "Parties" .

1.2. These General Conditions are intended to set forth the standard discipline to be applied to the relation between the Parties with reference to the negotiation phase, the execution and the performance of any sale agreements – while each Confirmed Purchase Order defines the quantity and type of Products required, the relevant technical specifications, the price and delivery dates and other specific conditions agreed between the Parties with relation to a single sale of Products.

1.3. These General Conditions and the applicable Confirmed Purchase Order shall supersede and prevail over any other contractual terms or conditions exchanged or referred to, within the Parties' business relation, including the Customer's standard terms and conditions, or equivalent document, if any, in whatever form conveyed.

1.4. MOGU's failure to object to any terms and conditions, other than these General Conditions, contained in any communication from the Customer shall not be deemed a waiver of these General Conditions.

1.5. Any amendments, integrations or waivers to these General Conditions and any differing terms and conditions will not be binding upon MOGU's, unless confirmed in writing (i) by a director of MOGU's and (ii) with express reference to the provisions of these Conditions to be amended, integrated or waived.

1.6. MOGU reserves the right to unilaterally change these GC – obliging to make available the most recent version of the GC on its own website www.mogu.bio.

1.7. It is expressly intended that each Confirmed Purchase Order will be governed by the GC applicable at the time of its confirmation by MOGU.

1.8. In case a conflict arises between the provisions of these GC and the provisions contained in a Confirmed Purchase Order, the provisions of the GC shall prevail, unless the provisions of the Confirmed Purchase Order in conflict with these GC are specifically approved in writing (i) by a director of MOGU's and (ii) with express reference to the provisions of these General Conditions to be amended, integrated or waived. All the above is intended with the exception of the cases for which the GC – by using the wording "unless provided otherwise in a Confirmed Purchase Order" or a similar wording – expressly provide the faculty for the Parties to introduce, by mutual consent, in the Confirmed Purchase Order specific provisions diverging from and/or specifying the standard provisions contained in the GC.

1.9. Any provision of services by MOGU, with relation to the Products, will be regulated by a separate agreement between the Parties.

2. Negotiations between the Parties – Offer – Confirmed Purchase Order

2.1. The Parties may exchange, during the preliminary phase of negotiations, documents and materials (eg. technical descriptions, quotations, etc.) as well as verbal information, which need being confirmed in writing to be considered as relevant information, for the purposes of the negotiations.

2.2. MOGU will send the Customer a formal offer, summarizing all the relevant technical specifications as well as the economic and delivery conditions ("Offer").

2.3. The Offer will be valid for thirty (30) days – after which term, MOGU may not be held responsible for any variations of technical features, prices or availability of the concerned Products.

2.4. Within thirty (30) days of the reception of the Offer, the Customer may send MOGU a Purchase Order, for acceptance by MOGU, pursuant to the standard form provided by MOGU in attachment to the Offer, duly signed by a director of the Customer's.

2.5. MOGU will confirm the Purchase Order received from the Customer, within 7 (seven) days of its reception. Only when accepted in writing by a Director of MOGU's, a Purchase Order becomes a "Confirmed Purchase Order" and, as such, binding to any effects for the Parties.

2.6. Once confirmed by MOGU, a Purchase Order cannot be cancelled by the Customer without MOGU's written consent. In such case, the Customer will acknowledge a cancellation or restocking fee (i) equal to the 40% of the overall Priced due for the Products; or (ii) pursuant to the concerned provisions contained in the Confirmed Purchase Order, if any, whichever is higher.

2.7. Any cancellation of a Confirmed Purchase Order without MOGU's written consent (or a Customer behavior de facto entailing a cancellation such as refusing the delivery of Products) will imply an obligation for the Customer to pay I full all the amounts due pursuant to the Confirmed Purchase Order.

3. Prices and Taxes

3.1. All prices are quoted as net prices, exclusive of Value Added Tax, which is to be paid additionally by the Customer in the amount specified by the applicable law.

3.2. Unless otherwise expressly agreed, the prices are quoted EXW (INCOTERMS 2010) MOGU's offices/point of shipment. The Customer shall bear all additional freight costs, packing costs in excess of standard packing, public fees (including withholding taxes) and duties.

4. Delivery

4.1. Unless otherwise specified in a Confirmed Purchase Order, all the deliveries will be carried out EXW (Incoterms 2010), MOGU's point of shipment.

4.2. Unless specific instructions are specified in the Confirmed Purchase Order, all shipments will normally be made by Parcel Post, Railway Express, Air Express or Air Freight, at MOGU's discretion.

4.3. Although MOGU will use its best efforts to meet the deadlines for the expected delivery dates as indicated in the Confirmed Purchase Order, a delay up to five (5) working days may be considered as an acceptable variation of the expected delivery date, in consideration of packaging and shipping arrangements to be carried out by MOGU.

4.4. In case of any delays, as described in the Clause above, MOGU will, as promptly as possible, inform the Customer.

4.5. Furthermore, the Customer, by signing these GC, acknowledges that (i) the Products are the result of a transformation process starting from biological materials; (ii) said transformation process is carried out by MOGU pursuant to advanced technical protocols and with the utmost care; (iii) despite MOGU's best efforts, as described under point (ii) above, in a limited number of cases, the transformation process may result in products not conforming to MOGU's standard requirements for its Products ("Defective Transformation Process"). In any case of Defective Transformation Process, MOGU will re-perform the transformation process at its own costs.

4.6. The Customer acknowledges that delays due to a Defective Transformation Process cannot be deemed as MOGU's responsibility and that, as far the overall delay in the delivery does not exceed thirty-five (35) days – from the expected delivery date–, the Customer will not be entitled to claim compensation or cancel the order.

4.7. In case of delays due to a Defective Transformation Process, MOGU undertakes to inform the Customer of such delays as soon as reasonably possible and in any case at least seven (7) days before the scheduled delivery date, providing suitable evidence of the specific cause of the delay.

4.8. It is expressly intended that MOGU will not be deemed in default, in case the Customer has not entirely carried out its obligations (including but not limited to payment obligations) pursuant to the provisions and schedule set out in these GC and in the Confirmed Purchase Order.

4. Delivery

5.1. MOGU shall provide the Customer with instructions for the Installation, Operation, Maintenance of its Products ("MOGU's Instructions") and undertakes to have an updated version of the Instructions available on its website www.mogu.bio.

5.2. It is intended that it will be the Customer's responsibility to periodically control the updating of MOGU's Instructions.

5. Shipment, Passing of Risk

6.1. Unless otherwise expressly agreed, shipment shall always be carried out at the Customer's risk. The risk shall pass to the Customer as soon as the goods have been handed over to the person executing the shipment.

6.2. If a shipment is delayed for reasons to be attributed to the Customer, the risk of accidental deterioration, loss and destruction shall pass to the Customer on notification of MOGU's readiness to ship. Required storage costs after passing of risk shall be borne by the Customer. This shall not affect any other claims.

6.3. If the Customer defaults in accepting (see Clause "Acceptance" below), MOGU shall be entitled to claim refund of any expenditure associated therewith and the risk of accidental deterioration, loss and destruction shall pass to the Customer.

7. Payment — Retention of Title

7.1. Payment shall be made according to the payment conditions and schedule, agreed in the Confirmed Purchase order. Payment shall be considered to have been made on the day the payable sum is received by MOGU.

7.2. Delivered goods shall fully remain property of MOGU (goods sold subject to retention of title) until all receivables, on whatever legal grounds, have been fully paid up.

8. Acceptance of Products — Inspection on Arrival

8.1. Upon receiving the Products at its own premises, the Customer will have an obligation (i) to verify the conformity of the Products with the Confirmed Purchase Order and, in case non-conformities are found, (ii) send MOGU a claim in writing, with relation thereto, within 3 three working days from their reception.

8.2. The verification above mentioned refers to non-conformities of the Products with respect to the Confirmed Purchase Order: (i) type, number and quality of the Products; (ii) non-correspondence of the Products to the technical specifications, detectable upon an accurate inspection according to good practice in the field; and, (iii) presence of defects as to the integrity and/or functioning of the Products, detectable according to good practice in the field.

8.3. Should the non-conformities, mentioned in the claim above, be ascertained as deriving from MOGU's responsibilities, MOGU will place its best efforts, at its own costs, to replace the concerned Products.

8.4. After the ten 3 from the reception is expired, the Products will be considered as accepted and it will be no longer possible for the Customer to file a claim under this Clause.

9. Warranty

9.1. TO THE FULLEST EXTENT PERMITTED BY THE LAW, THE WARRANTIES IN THIS CLAUSE ARE THE SOLE WARRANTIES GIVEN WITH RELATION TO THE PRODUCTS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW, OR ARISING BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9.2. The Customer acknowledges that (i) the Products are the result of a transformation process starting from biological materials; (ii) said transformation process is carried out by MOGU pursuant to advanced technical protocols and with the utmost care; (iii) despite MOGU's best efforts, as described under point (ii) above, due to the nature of biological materials, the results of the transformation process may bear slight differences from the reference standard pattern. Therefore any technical specifications of the Products features as well as their performance are to be intended as average data.

9.3. It is expressly intended that any and all warranties with relation to any Products are intended to apply exclusively to the original Customer.

9.4. No warranty shall apply with relation to any defective conditions or malfunctioning that may have derived from (a) equipment alterations not authorized in writing by MOGU; (b) damage resulting from improper use or handling, or operation in an environment or manner in which the instrument is not designed to operate or is not in accordance with MOGU's Instructions; (c) power surge, accident, neglect, improper storage; by the Customer; (d) the use of parts or accessories not provided by MOGU, such as, by way of example, the fixing system and accessories; (e) damage resulting from acts of war, terrorism or nature; (f) any repairs and maintenance work on any components of the Products carried out in a way or by personnel not authorized by MOGU. Furthermore, no warranty shall apply for defects of the Products supplied if they are caused by normal wear and tear.

9.5. Therefore any warranty shall be void if MOGU's Instructions for the installation, operation or maintenance of the Products are not observed, if changes are made to deliveries or services, if parts or accessories are replaced not in accordance with MOGU's Instructions, unless the Customer can show that the defect in question resulted from another cause.

9.6. In no event will MOGU, its directors, employees, suppliers and contractors be liable to the Customer or any third party for any indirect, incidental, or consequential damages, however caused, connected with warranty claims or the functioning of the Products, including without limitation loss of profits, revenue, loss of data and /or lost goodwill, loss of use of the Products or any associated equipment, loss of property

other than for the Products purchased hereunder; damages incurred in installation, repair or replacement; lost profits, revenue or opportunity; loss of capital; losses resulting from or related to downtime of the products or inaccurate measurements or reporting; the cost of substitute products; or claims of Customer's customers for such damages, howsoever caused, and whether based on warranty, contract, and/or tort.

9.7. MOGU shall not be liable for delay in rendering services under the limited warranty, or loss of use during the time the Product is being repaired. 9.8. The legal term for the purposes of the warranty starts from the date of acceptance of the Products as defined above.

9.8. The Products claimed to be defective shall be returned to MOGU for examination in their original or equivalent packaging. MOGU shall be liable under this Clause if the warranty claim is valid and presented within the warranty period. It is at MOGU's discretion whether MOGU remedies the defect by repair or replacement.

9.9. MOGU shall be entitled to refuse to remedy defects in accordance with MOGU's statutory rights. MOGU may refuse to remedy defects if the Customer has not complied with MOGU's request to return the Products claimed to be defective.

9.10. Any rights of the Customer to receive damages or compensation with relation to defective Products shall be governed by the provisions in section "Limitation of Liability" of these General Conditions.

10. Mogu's Limited Liability

10.1. Subject to any statutory provisions of law, in case of a breach of contractual obligations, and without prejudice to the provisions of Clauses "Delivery" and "Warranty", MOGU shall only be obliged to compensate damages or expenses, if MOGU has acted intentionally or with gross negligence or with minor negligence, if such minor negligence results in the breach of an essential contractual duty (a duty the breach of which puts the fulfilment of the purpose of the contract at risk). However, in case of minor negligence, MOGU's liability shall be limited to typical damages which are foreseeable at the time of the conclusion of the contract.

10.2. With the exception of statutory provisions of law, the overall liability of MOGU will not exceed the overall 30% of the agreed purchase price.

10.3. The Customer acknowledges that, save otherwise provided by statutory provisions of law, it has the faculty to file legal claims against MOGU, based on whatever legal ground, for a period of 12 months (24 months in case Customer is a consumer) from the date the Customer becomes aware or could have become aware of the grounds giving rise to a claim (by way of example: discovered a defect in the Products in the Course of the Warranty period).

11. Mogu's Limited Liability

11.1. Each Party acknowledges that in the course of this Agreement each on (as the "Receiving Party") may process or have knowledge of the other Party (as "Disclosing Party") confidential information.

11.2. The Receiving Party will not, except as required by law or court order, communicate or disclose the Disclosing Party's Confidential Information to any third party, without the prior written consent of the Disclosing Party.

11.3. The Receiving Party may disclose Confidential Information of the Disclosing Party only to those of its employees or contractors who need to know such information. In addition, prior to any disclosure of such Confidential Information to any such employee or contractor, such employee or contractor shall be made aware of the confidential nature of the Confidential Information and shall execute, or shall already be bound by, a non-disclosure agreement containing terms and conditions consistent with the terms and conditions of this Clause.

11.4. In any event, the Receiving Party shall be responsible for any breach of the terms and conditions of this Agreement by any of its employees or contractors.

11.5. The Receiving Party shall use the same degree of care to avoid disclosure of Confidential Information of the Disclosing Party as the Receiving Party employs with respect to its own Confidential Information of like importance, but not less than a reasonable degree of care.

11.6. Upon the removal, discard or destruction of the Products by the Customer, or upon the Disclosing Party's earlier request, the Receiving Party will deliver to the Disclosing Party all of the Disclosing Party's Confidential Information in tangible form that the Receiving Party may have in its possession or control. The Receiving Party may retain one copy of the Confidential Information in its legal files.

12. Industrial Property Rights

12.1. In the event of claims against the Customer because of breach of an industrial property right or a copyright in using MOGU's Products in accordance with the contractually defined manner, MOGU shall be responsible to obtain the right for the Customer to continue using such Products, provided that the Customer gives immediate written notice of such third-party claims and MOGU's rights to take all appropriate defensive and out-of-court actions are reserved. If, despite such actions, it proves impossible to continue using the deliveries or services supplied by MOGU under reasonable economic conditions, it shall be understood as agreed that MOGU may, at the discretion of MOGU, modify or replace the particular Products for removal of a legal deficiency, or take them back and refunding the Customer of the maximum amount possible pursuant to the Clause « Limitation of Liability ».

12.2. The Customer shall have no further claims alleging infringement of industrial property or copyrights provided MOGU has neither violated essential contractual duties nor intentionally or grossly negligently breached contractual duties. MOGU shall have no obligations in accordance with this Clause if the infringement of third Parties' IP rights are caused by exploiting the Products in any other manner than contractually defined.

12.3. The Customer acknowledges that any patents, trademarks, trade names, designs, copyright, know-how and any other intellectual or industrial property rights, whether or not registered (anywhere in the world), that may exist with relation to the Products are in the exclusive ownership of MOGU's ("MOGU's IP Rights").

12.4. The Customer acknowledges that the sale of the Products does not imply the grant of any license with relation to any of MOGU's Proprietary Rights.

12.5. The Customer shall not directly or indirectly file any application, in any country, to obtain the registration for IP rights or carry out behaviours resulting in the creation of IP rights, that may be in conflict with MOGU's IP rights-

12.6. The Customer shall not reverse engineer, disassemble, isolate part or components of the Products or carry out any other unauthorized analysis of the Products or any of their parts or components.

12.7. Without prejudice of the provisions of the Clause " Confidential Information ", the Customer acknowledges and agrees that any disclosure of information concerning MOGU's Products as far as MOGU's IP rights are concerned, may cause relevant economic damage to MOGU.

13. Disposal of Products and Materials

13.1. The Customer acknowledges that it is aware of the nature of the Products and has entirely understood the value of the certifications provided by MOGU with relation to the Products.

13.2. The Customer undertakes obliged to closely observe MOGU's Instructions as well as other the instructions and behaviour directives contained or implied by the documents and certifications accompanying the Products and to ensure the correct disposal of the Products or parts thereof in accordance with the applicable laws.

13.3. In case Customer is a merchant, Customer shall be obliged to dispose of the Products or parts thereof at its own costs. Customer shall be obliged to transfer this obligation on the purchaser of the Products or parts thereof in case of a resale of said Products. In case the Customer is a consumer the statutory provisions regarding disposal of waste shall apply.

14. Miscellanea

14.1. All of the aforementioned sales conditions will fully remain in effect even if individual provisions should be declared or become fully or partly invalid.

14.2. MOGU shall not be held responsible for any failure to perform arising from causes beyond its control. These causes shall include but not be restricted to fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, epidemic, quarantine restrictions, labour disputes, labour shortages, transportation embargoes, failure or delays in transportation, inability to secure raw materials or machinery for the manufacture of its devices, acts of God, acts of the Government in office or any agency thereof, and judicial action. In the event of any such delays the date of delivery shall, at the request of MOGU, be deferred for a period equal to the time lost by reason of the delay.

15. Governing Law and Jurisdiction

15.1. The General Conditions, as well as any contractual documentation connected to it, such as the Confirmed Purchase Orders, shall be governed by the laws of Italy, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

15.2. Any disputes, claims or proceedings related thereto shall be reserved to the exclusive jurisdiction of the Courts of Milano.

Contacts

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