

Terms and Conditions of Sale and Delivery of Floragard Vertriebs-GmbH, 26135 Oldenburg, Germany

1. The following Terms and Conditions apply for all sales and deliveries of Floragard Vertriebs-GmbH (Floragard). Any Terms and Conditions of Business or Purchase of the buyer conflicting with or deviating from our Terms and Conditions shall only apply if expressly approved in writing by Floragard.
Unless provided otherwise subsequently, the Incoterms in the version valid at the time a respective contract is concluded shall apply both for domestic orders and for orders from abroad.
2. Any offers from Floragard are subject to change.
Any agreements made with sales outlets, representatives and agents of Floragard prior to the conclusion of a contract shall require written confirmation from Floragard to become subject of the contract.
Should there be changes to our costs for goods to be delivered under a contract that has been concluded at a fixed price and constitutes a continuous obligation or extends to more than 4 months due to agreed delivery periods, then we reserve the right to increase our prices commensurate with these changes as of the 4th month. If the buyer objects to the new prices, he shall be entitled to extraordinary termination of the contract.
3. Except where the buyer collects the goods, all prices for goods delivered by rail are carriage paid to the agreed station, delivered by lorry carriage paid to the depot of the recipient and delivered by ship carriage paid to the designated port of destination.
The buyer shall send the original bills of carriage to Floragard on request.
In the case of collection, the risk passes to the buyer as soon as the consignment is handed over to the person carrying out the transport.
4. The goods are invoiced at the list prices applicable on the day the order is received. Unforeseeable additional costs incurred by Floragard, for example due to weather conditions or statutory measures (e.g. Green Dot, road tolls, taxes), are paid by the buyer separately.
All prices are net unit prices in Euro. The statutory VAT applicable on the day of performance or delivery is added to this. Any pallets used for transportation are invoiced separately at the current market price plus statutory VAT and included on the invoice for the respective consignment. This separate charge for pallets does not apply in countries subscribing to the Euro-pallet exchange pool, provided the pallets are exchanged immediately after unloading.
Road tolls are accounted for separately and must be paid by the buyer in addition to the list prices.
5. In the case of shipments abroad, Floragard shall only pay customs charges, taxes and other duties, as well as costs for customs clearance and processing at the borders of transit countries or of the destination country, if Floragard has expressly agreed to do so in writing.
6. Any increases of transport costs between the conclusion of the contract and delivery shall be borne by the buyer; the same shall apply in the case of changes to statutory fees, costs, charges and conditions.
7. As the manufacture of our products is weather-dependent, delivery is made only roughly on specified delivery dates within the scope of availability unless specific delivery deadlines or dates have been agreed as fixed. Partial deliveries are permitted.

The commencement of an agreed delivery period presupposes that the buyer duly meets his obligations on time.

Should the buyer be in default of acceptance or culpably violate other duties of cooperation, then Floragard shall be entitled to demand compensation for any accrued damages, including additional costs. Floragard reserves the right to assert further claims. Should the aforementioned conditions exist, the risk of accidental loss or deterioration of the goods shall pass to the buyer at the time the buyer is deemed in default of acceptance or payment.
8. Floragard delivers standard commercial goods suitable for ordinary use. They are delivered in (packaging) units and/or volumes in compliance with the DIN EN 12 580 standard.
The structure of the raw peat (raised-bog peat) and other organic raw materials for peat and peat products may be subject to natural variations. The weight of peat and peat products may also vary depending on structure and moisture. Any deviation of the goods from sales samples or previous consignments shall therefore not constitute a defect of quality, unless the buyer cannot be reasonably expected to accept such deviation.
9. With respect to the obligation to inspect and notify of defects, § 377 of the German commercial code applies if the buyer is a trader for the purpose of the German commercial code as long as notification of defects is issued in writing and the special conditions of the buyer and the fault of the same are disregarded in the calculation of the defect notification period. Floragard must be notified of obvious defects particularly with respect to the identity and quantity of the goods

by no later than 2 days after delivery and notified of such defects as can be found only in the course of the immediate due inspection by no later than 8 days after delivery. Notification of hidden defects must be given immediately on discovery. Prompt dispatch of the notification is adequate in order to comply with the term. Floragard must be informed immediately of transport damage regardless of the aforementioned deadlines.

10. In the event of defects, the buyer must give Floragard opportunity to deliver a defect free item within a reasonable period (subsequent fulfilment). The defective product must be returned. If the subsequent fulfilment has failed or if a reasonable period set by the buyer for the subsequent fulfilment has expired without success or is unnecessary in accordance with the statutory provisions then the buyer may reduce the purchase price or (in the case of significant defects) withdraw from the purchase agreement.
11. The culture substrates and soil additives we supply are natural products of which the properties (e.g. colour, structure, composition) can naturally differ from one delivery to the next. In order to avoid culture risks arising in the products due to microbial and chemical reaction processes as a result of improper handling and storage, our products are to be used only for the culture purposes for which they are intended. Products supplied loose and packaged products should be stored dry and cool, i.e. protected from sun and precipitation as well as contamination by foreign matter, on a concrete/paved floor in roofed storage facilities. They must be used soon, as long-term storage can impair the quality. In particular, culture substrates with slow release fertilisers and propagation substrates for vegetable and decorative plants must be used within a few days.

Our culture substrates and soil additives are not sterile but rather naturally microbially activated. Micro-organisms may be autochthonous or colonise substrates during storage or plant cultivation depending on the time of year and the culture conditions. The large majority of products contain high levels of organic matter, which is inevitably subject to microbial decomposition by fungi, bacteria and other organisms. Saprophytic nematodes may be present in the culture substrates and soil additives in small numbers. Manuring of the culture substrates for plant growth moreover promotes the growth of saprophytic organisms. The presence of saprophytic organisms and the consequences of such, e.g. appearance of fungi, therefore do not constitute product defects.

Colonisation by ubiquitous micro-organisms and the ubiquitous appearance of saprophytic organisms therefore constitute a product defect at most if the products are anthropogenously contaminated with an unnaturally/atypically high quantity of saprophytic organisms or micro-organisms on transfer of risk.

12. Limitation

- (1) By derogation from § 438 par. 1 no. 3 of the German civil code, the general period of limitation for claims arising from material defects and defects of title is 1 year.
This does not apply for claims:
 - a) In the case of liability due to intent.
 - b) For damage to life, body or health that are due to negligent breach of duty by the user or to deliberate or negligent breach of duty by a legal representative or agent of the user and for other damages due to grossly negligent breach of duty by the legal representative or agent of the user.
 - c) If the seller has maliciously concealed the defect.
- (2) In the case of claims due to other contractual breaches of duty as a result of unauthorised action and in the case of internal recourse under German product liability law (§ 5 p. 2 ProdHaftG), by derogation from § 195 of the German civil code, the regular period of limitation is 1 year. This does not apply in the cases specified in par. 1 letters a) and b).
- (3) Claims by the injured party under product liability law and claims by the company in supplier recourse are not affected by the provisions according to par. 1 and 2.
- (4) The start and end of the periods of limitation are determined by the statutory requirements.

13. Culpability

We are liable for damages – regardless of legal basis – only in cases of intent or gross negligence. In the case of ordinary negligence, we are liable for damages only:

- a) For damage to life, body or health.
- b) For damages due to the breach of a major contractual duty (so-called cardinal duty, the fulfilment of which makes the proper execution of the contract possible at all and upon the adherence to which the contracting partner regularly depends and may regularly depend); in this case, however, our liability is limited to compensation for the foreseeable damage typically occurring.
- c) For claims for defects if we have maliciously concealed a defect or provided a guarantee for the quality of the goods. Reference to standards in business transactions implies no guarantee of quality in accordance with § 443 of the German civil code.
- d) For claims by the buyer as the injured party in accordance with product liability law. It is not determined thereby that product liability law is applicable between the contracting parties.

14. If we accept bills of exchange, the buyer shall be required to bear the incidental costs.

Cheques and bills of exchange shall only be considered on account of payment and shall not constitute payment as such. These provisions shall also apply if the buyer has been granted a credit line or a letter of credit for the payment. Floragard may at any time demand provision of security irrespective of the provisions under § 321 of the German civil code.

15. Invoice totals are due and payable within 10 days after invoice receipt and delivery without specific request. If the buyer fails to pay by the due date then the buyer defaults on the payment – including with no requirement for a reminder in consideration of the service performed in advance by Floragard.

Within the context of a SEPA direct debit mandate, Floragard shall send the pre-notification at least 5 calendar days before the direct debit due date.

The place of performance for payments is the head office of Floragard.

If the buyer fails to pay or fails to pay in full by the due date then Floragard may plead uncertainty (§ 321 of the German civil code) due to this breach of duty as well as exercising the right of withdrawal in accordance with § 323 of the German civil code, including with respect to otherwise existing alternative – further – delivery obligations, and declare other outstanding claims against the buyer to be due immediately.

The buyer may offset only against claims that are undisputed or have been determined without further legal recourse or exercise rights of retention only on the basis of such claims. Moreover, rights of retention are permitted only if they are based on the same contractual relationship.

16. Floragard retains title to the goods the buyer purchases from Floragard in the course of his commercial activities until all claims against the buyer under the business relationship, including any future claims under contracts signed simultaneously or later, have been settled by the buyer. This shall also apply if individual claims for payment or all of Floragard's claims for payment have been included in a current account and the balance has been struck and accepted.

In the case of default of payment (with respect to payment of the purchase price or due bills of exchange) or in the case of other violations of duty for which the buyer is responsible, Floragard is entitled to take back the goods and the buyer is obligated to surrender them after having been warned unsuccessfully.

Taking back the delivered goods shall only constitute a withdrawal from the contract upon Floragard's express written declaration to that effect.

The buyer shall be entitled to resell the goods in the ordinary course of business, provided that all claims arising from the resale are assigned to Floragard as follows:

The buyer hereby assigns all future claims, including all ancillary rights, accruing to him against customers or third parties through resale or other legal grounds, no matter whether the reserved goods are resold unprocessed or after processing. The buyer is authorised to collect such claims even after assignment. This shall not prejudice Floragard's right to assert and/or collect the claims themselves, but Floragard undertakes not to collect such claims themselves as long as the buyer duly meets his payment obligations.

Floragard may demand that the buyer inform them of the assigned claims and the parties by whom they are owed, provide them with all particulars necessary for collection, furnish the corresponding documents to them and notify the owing parties of the assignment. If the reserved goods are resold in combination with other goods not belonging to Floragard, then the buyer's claims against the customer shall be deemed assigned to Floragard in the amount of the delivery price agreed between the buyer and Floragard.

Any treatment, processing and mixing of reserved goods shall be done on behalf of Floragard as manufacturer as defined under § 950 of the German civil code without giving rise to any obligations on the part of Floragard. The processed goods shall be considered reserved goods under these conditions. If the reserved goods are processed or inseparably mixed with other goods not belonging to Floragard, then Floragard acquires co-title to the new item in the same proportion as that between the value of the reserved goods and the other goods involved at the time of processing or mixing. The co-title thus generated shall be considered reserved goods under these conditions.

Floragard undertakes to release the securities, to which they are entitled, to the extent that their value is exceeded by more than 20% of the claims to be secured, provided these have not been settled yet.

The buyer shall only be entitled or authorised to resell or use the reserved goods provided that the claims are actually assigned to Floragard in accordance with the above provisions.

The buyer shall not be entitled to dispose of the reserved goods in any other way than by using or reselling them in the ordinary course of business; he shall in particular not be entitled to pledge them or transfer ownership by way of security.

The buyer shall notify Floragard immediately of any enforcement proceedings or other interventions of third parties concerning the reserved goods or assigned claims and hand over all documents necessary for objection (in particular returns of execution or attachment orders and transfers of garnished claims). At the same time, the buyer shall enclose an affidavit with his notification regarding the identity of the attached items.

Upon stoppage of payment or filing and institution of insolvency proceedings, the right to resell and use the reserved goods, as well as the direct debit mandate for assigned claims, shall expire; the direct debit mandate shall also expire in the event of a protest of a cheque or bill of exchange.

Title to the reserved goods and the assigned claims shall pass to the buyer upon settlement of all claims of Floragard arising from the business relationship.

17. Any circumstances making the production or delivery of sold goods impossible or impediments that can only be eliminated with unreasonable effort, such as force majeure, pandemics/epidemics, war, riots, strikes, lock-outs, measures by authorities or statutory measures beyond the control of Floragard, breakdown of machinery and other business disruptions, even if due to the weather or traffic, whether originating with the person of Floragard or with the contracting plant and other suppliers, shall release Floragard from the duty to deliver for the duration of the impediments or their after-effects without giving rise to any obligation to subsequent performance on the part of Floragard.

If, in these cases, delivery in full or part has not taken place within 2 months after conclusion of the contract or requisition, both the buyer and Floragard shall be entitled to withdraw from that part of the contract related to the goods affected by the impediment or disruption. A declaration to that effect must be received by the other contracting party within a further two weeks.

18. These Terms and Conditions and the entire legal relationship between Floragard and the buyer are subject to the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

The German version of these Terms and Conditions shall be decisive, even if they are translated into another language.

19. Should one of the provisions of these Terms and Conditions be or become invalid, this shall not affect the validity of all other provisions.

The registered place of business of Floragard shall be exclusive place of jurisdiction for all disputes directly or indirectly arising from this contractual relationship.

Effective: 01.11.2021