

GENERAL SALE AND DELIVERY CONDITIONS OF ACCSYS TECHNOLOGIES

1. General

- 1.1. All quotations, offers and agreements (collectively, whether one or more, "Orders") concerning the sale and delivery of goods by Accsys Technologies (sometimes referred to as "we", "our" or "us") to a "buyer" (hereinafter defined) are expressly conditioned upon buyer's acceptance of all terms and conditions stated in these General Sale and Delivery Conditions of Accsys Technologies (these "Conditions") and we hereby reject any different or additional terms, conditions or counteroffers proposed by buyer. Both we and the buyer acknowledge and agree that any Orders will be deemed accepted by buyer, and the Orders shall be deemed entered into and effective between buyer and us, solely on the terms and conditions set forth in these Conditions.
- 1.2. In these Conditions a "buyer" is all natural persons or legal entities, who, while acting as a (future) buyer client or otherwise, start negotiations with us and/or agree with us upon one or more Orders involving goods to be delivered, even if several natural persons or legal entities act jointly. The term "buyer" includes its successors, assigns and authorised representative(s).
- 1.3. The terms and conditions contained in these Conditions are only binding to us if, and to the extent that, this is confirmed in writing by us. Any waiver, alteration, amendment or modification of any of the provisions of these Conditions shall not be valid or enforceable unless in writing and signed by we and the buyer, it being expressly agreed that these Conditions cannot be modified orally, by course of dealing or by implied agreement.
- 1.4. If any provision of these Conditions is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of these Conditions shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions.
- 1.5. In case of any conflicts between translations of the text of these Conditions, the English text shall prevail.
- 1.6. In case of any conflicts between the provisions of an agreement between us and a buyer and the text of these Conditions, the provisions of the agreement shall prevail.

2. Quotations

- 2.1. All quotations, in whichever form presented, are without any obligation, unless, and to the extent that, we have confirmed in writing that the quotation is binding.
- 2.2. The forwarding of a quotation and/or (other) documentation and/or samples does not oblige us to accept any Order or to perform any delivery, unless otherwise is agreed.
- 2.3. All quotations by us are valid for a period of seven days from the date of such quotation.
- 2.4. We have the right to, without giving an explanation, refuse a purchase order.

3. Agreement

- 3.1. Each purchase order or acceptance of a quotation for the purchase of goods by a buyer from us shall be deemed to be an offer by the buyer to buy goods subject to these Conditions. No purchase order placed by the buyer shall be deemed to be accepted by us until a written confirmation of order is issued by us or (if earlier) we deliver goods to the buyer. A confirmation of order issued by the authorized persons within our organisation results in a binding agreement between us.
- 3.2. Where our order confirmation is incorrect, written objections should reach us within seven days of the date of the order confirmation. Thereafter the order confirmation shall be deemed accurate.
- 3.3. Possible additional arrangements or adjustments, as well as (oral) arrangements, representations, and/or promises made by our personnel, or made on behalf of us by our salesmen, agents, representatives or other middle men, are only binding to us if, and to the extent that, these arrangements, adjustments and/or promises are confirmed in writing by the authorized persons within our organisation.
- 3.4. We shall at any time be entitled to terminate the negotiations with the buyer and to withdraw any quotations that have been made before an agreement is entered into in accordance with these Conditions, without being held liable for compensation of any costs, expenses or damages.
- 3.5. If an agreement has come into effect according to the provisions of this section, the buyer is not entitled to cancel this agreement unilaterally.
- 3.6. The buyer guarantees that the information provided to us is correct and complete. Any failures in the delivery of goods by us that are the consequence of incorrect or incomplete information originating from the buyer cannot be

- attributed to us. The buyer shall be liable for the damages, including extra costs that result from this incorrect or incomplete information.
- 3.7. The buyer shall be held at all times to provide its reasonable assistance to enable us to perform the agreement in accordance with our obligations in respect thereof.

4. Prices

- 4.1. Unless agreed otherwise in writing, our prices are Ex Works (Incoterms 2000) our company, actual production site or warehouse as the case may be, denominated in US Dollars and exclusive of VAT. Fluctuations in exchange rates shall be for the risk and account of the buyer.

5. Payment and security

- 5.1. Payment is due within thirty days after the invoice date, unless otherwise agreed in writing. The buyer does not have a right of suspension or set-off.
- 5.2. We reserve the right to offer terms which specify specific payment against documents at the point of transfer of title of the goods.
- 5.3. Payment is considered to have taken place at the moment the amount due has been received for value in our bank account. All costs in connection with payment, including the costs of providing surety, shall be for the account of the buyer.
- 5.4. Every payment made by the buyer is applied, first, to settle lawfully accrued unpaid interest, secondly, to settle the collection charges and administration costs incurred by us, and thirdly, to settle the outstanding invoices/debts, starting with the settlement of the invoice/debt longest due.
- 5.5. If the buyer has not (fully or timely) fulfilled any obligation towards us, has requested for a moratorium, has been declared bankrupt or has gone into liquidation, or if seizure is levied on his assets and/or claims, all invoices and claims shall be immediately payable.
- 5.6. In respect of any outstanding amounts the buyer has failed to pay in accordance with these Conditions, the buyer is obliged to pay, at our option, an amount of interest up to, and including, the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If we receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the unpaid obligations of the buyer or, if it exceeds such obligations, refunded to the buyer.
- 5.7. In the circumstances as mentioned in paragraph 5.6. we also have the right to immediately suspend the (further) performance of our duties (including, but not limited to, delivery of goods to buyer) and to take back unpaid goods or to declare the agreement as well as other possible agreements with the buyer partially or wholly suspended and/or terminated, without prejudice to our other rights. During any period of suspension, we have the right either to choose for (further) performance of our obligations or to choose

- for full or partial termination of the suspended agreement(s).
- 5.8. We have the right to set off any and all claims, irrespective of whether these are already due and payable, against any and all claims of the buyer.
- 5.9. If, in the exercise of our sole discretion, we determine that the creditworthiness of the buyer is open to serious doubt, we have the right to deliver C.O.D. (cash on delivery), in which case the delivery costs have to be paid by the buyer, or to demand any (further) security in order to secure the fulfilment of its payment and other obligations by the buyer, including, but not limited to, a non-possessory pledge on goods that are to be indicated by us. If the buyer is unwilling or incapable to provide the requested security, we are entitled to declare the agreement wholly or partially cancelled, without prejudice to our other rights and without being obliged to pay any damages whatsoever.
- 5.10. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided at law, or in equity. No past waiver of any breach by us, or any delay by us, in the enforcement of any provision of these Conditions or any Order shall constitute a waiver of any other prior, concurrent or subsequent breach.

6. Delivery risk and term of delivery

- 6.1. Unless otherwise agreed in writing delivery takes place Ex Works our company, production site or warehouse as the case may be at the moment the goods are given in possession of the (first) carrier. On the moment the goods leave our company, production site or warehouse, the risk of loss or damage to the goods passes on to the buyer. The buyer is obliged either to check at the moment of delivery whether the delivered goods or packaging thereof show a deficit or any visible damage, or to check the goods directly after he has been informed by us that the goods are at its disposal. Where goods are warehoused at the request of a buyer, risk of loss or damage is with the buyer.
- 6.2. Possible deficits or damages to the delivered goods and/or the packaging thereof, which have been discovered at the moment of delivery, are to be mentioned by or on behalf of the buyer on the delivery note or the invoice and/or the transport documents, in the absence whereof complaints will not be dealt with. Our administration records, and notations regarding such defects or damages to the delivered goods and/or the packaging thereof are conclusive.
- 6.3. Unless otherwise specifically agreed on our order confirmation, the buyer shall accept weights or quantities varying up and until 20% from the contract weight or quantity and shall pay pro-rata for the actual weight or quantity delivered. The weight or quantity stated on our order confirmation shall be conclusive evidence of the weight or quantity

- delivered.
- 6.4. We are entitled to perform by way of partial deliveries, which can be separately invoiced. In that case the buyer is obliged to pay in accordance with section 5 of these Conditions.
- 6.5. All sales of Accoya® wood are subject to our Grading Specifications that detail acceptable sale quality and specifications of Accoya® wood. Our Grading Specifications are available at www.accoya.com/login.asp (using "customer@accsys.com" and "accsystem1" as email and password login details respectively) or upon request.
- 6.6. Terms of delivery are given by approximation only. The terms given are never to be considered as a deadline, unless this is explicitly agreed otherwise in writing.
- 6.7. We cannot be obliged to pay any compensation if the term of delivery is exceeded. If the term of delivery is exceeded repeatedly the buyer is entitled to demand for delivery within a reasonable term. If this term is also exceeded the buyer has the right to declare the agreement dissolved, except when we cannot deliver because of force majeure.
- 6.8. Notwithstanding paragraph 6.6, we are not liable for any damages or losses caused by late delivery by our suppliers to us.
- 6.9. Calculated costs for packaging materials, as well as pallets, are to be reimbursed for the same amount, provided that these materials and pallets, at the expense and risk of the buyer, are returned in a good state and within thirty days after receipt of the buyer. Any special packaging requirements will incur a non-refundable additional charge. Tariffs and other conditions connected to the provision of packaging materials will be incorporated in our offer.
- 6.10. If delivery cannot take place due to circumstances, which can be imputed to the buyer, we are entitled to charge the buyer with the costs arising from this delay.

7. Transport and risk

- 7.1. The means of transport, packaging, insurance etc. will be, if no specific instructions from the buyer are received, determined by us acting with due care, without accepting any liability whatsoever. Possible specific instructions from the buyer as to the transport, packaging or insurance will only be carried out if the buyer has declared to meet any potential costs and risks involved.
- 7.2. The transport of the goods takes place at the expense and at the risk of the buyer, even if the carrier demands that consignment notes, road waybills, etc., contain the provision that all damages and losses related to the transport are at the expenses and risk of the sender unless otherwise agreed beforehand in writing.

8. Retention of title

- 8.1. The ownership of the delivered goods remains with us until the buyer has fully fulfilled its payment obligations pursuant to the agreement on which the delivery was based, including possible losses and damages, costs, interest and penalties, even if the buyer has procured security. Until ownership has passed to the buyer, the buyer shall:
- hold the goods on a fiduciary basis as our bailee;
 - store the goods (at no cost to us) separately from all other goods of the buyer or any third party in such a way that they remain readily identifiable as our property;
 - not destroy, deface or obscure any identifying mark or packaging on or relating to the goods;
 - maintain the goods in a satisfactory condition, ensure the goods shall at all times be stored dry, cool, frost free, in the original packaging and keep them insured on our behalf for their full price against all risks to the reasonable satisfaction of the buyer. On request the buyer shall produce the policy of insurance to us.
- 8.2. The buyer shall not process or alienate the delivered goods other than within the ordinary course of its business.
- 8.3. If the buyer defaults in paying any due sum we are entitled to take back all unpaid delivered goods. The buyer authorizes us to have the goods returned at buyer's expense. Furthermore the buyer authorizes us, as well as any representatives appointed by us, in advance to enter its premises, warehouses, land, factories, building sites, etc in order to enable us to repossess our properties.

9. Force majeure

- 9.1. Our duty to perform our obligations is suspended during the period in which we are unable to perform due to force majeure.
- 9.2. Equivalent to the inability to perform is the situation in which the performance is hampered seriously.
- 9.3. 'Force majeure' means any circumstance beyond our control, which include, but is not limited to, the following circumstances: a shortage on the market of necessary (raw) materials and/or manpower, labour conflicts, war, war risks, civil war, rioting, fire, earthquake, water damage, flooding, strikes, plant occupation, lockout, im- and export impediments, government measures, machine defects, failures in the (timely) delivery of the necessary (raw) materials, water and/or energy to our company.
- 9.4. Equivalent to force majeure are also the circumstances mentioned under paragraph 9.3. occurring in the company of third parties from whom we take up (raw) materials, services, research reports, samples, calculations etc.
- 9.5. Equivalent to force majeure is also the situation in which the circumstances mentioned under paragraph 9.3. occur in relation to the storage or transport of goods, whether or not carried out under our own management.
- 9.6. If as a result of force majeure the suspension

of our performance of (a part of) the agreement lasts longer than three months, both parties have the right to declare (the rest of) the agreement dissolved. Neither party will in that case be obliged to pay compensation. Possible advance payments will be refunded, provided that the buyer will pay for our performances until the day of dissolution or (as the case may be) these performances will be set-off in accordance with the invoice amount agreed.

10. Liability

- 10.1. We are not liable for any damages or losses caused by whatever reason, except for cases of intentional acts or gross negligence which cannot be excluded in a legally valid way. This exclusion of liability applies to direct and indirect damages or losses, trading losses and other consequential losses, and includes any such liability towards third parties. In case of an alleged intentional act or gross negligence the onus of proof is on the buyer.
- 10.2. We are not liable for direct or indirect damages or losses, trading losses and other consequential losses, as well as damages or losses resulting from any liability towards third parties, caused by our personnel or other persons employed by us within the scope of the performance of the agreement (as far as they are not in charge of this performance). This exclusion includes intentional acts as well as gross negligence.
- 10.3. Our liability is at all times limited to the net invoice amount of the delivered goods, after deducting any adjustments or credits to which the buyer is entitled. We may set off any loss, damage, liability or claim that we may have against buyer against any performance or payment to us under these Conditions are any Orders between the parties.
- 10.4. If we take up goods from third parties, our liability towards the buyer is limited to the extent the third party is liable towards us.
- 10.5. We are not liable on the grounds of infringement of patents, licenses or other third party rights as a result of the use of the information and goods provided by us or on behalf of us to the buyer.
- 10.6. The buyer indemnifies us, and hold us harmless, any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including attorneys' fees and expenses) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against us in any way relating to or arising out of or in connection any Orders (including, without limitation, the sales of goods to buyer).
- 10.7. We reserve, and do not waive, any and all rights, remedies or defences available at law or in equity that we may invoke to fend off our own liability towards the buyer, also for our personnel or other persons employed by us within the scope of the performance of the agreement for whose actions we could be liable under the applicable laws.
- 10.8. We are not liable for any defects, damages or losses

where our written instructions and/or guidelines for installation or use of our product are not adhered to.

11. Complaints

- 11.1. Without prejudice to the other provisions of these Conditions all complaints related to any defects have to be submitted in writing to us within 30 days after discovery of the defect and otherwise in accordance with Certificate of Guarantee or Warranty under which the goods are sold.
- 11.2. Complaints related to invoices have to be submitted within seven days after the date of the invoice.
- 11.3. After the expiry of the terms mentioned in the paragraphs 11.1. and 11.2. complaints will no longer be accepted.
- 11.4. Acceptance of complaints related to defects in delivered goods will only take place if defects have emerged as a result of material and/or production faults.
- 11.5. Under no circumstances does the submission of a complaint by the buyer discharge the buyer from fulfilling its payment obligations towards us.
- 11.6. Delivered goods can only be returned after our previous written approval. Transport and all thereto connected costs are in that case at the expense of the buyer, unless otherwise agreed in writing.

12. Severalty

If the buyer consists of more than one natural person or legal entity, all natural persons and legal entities are jointly and severally liable for the performance of the obligations of the buyer towards us.

13. Shorter limitation period

Any and all claims or causes of action, for alleged liabilities, obligations, losses, damages, penalties, costs, expenses and disbursements (including attorneys' fees and expenses; collectively, such claims or actions) shall be time-barred if the buyer commences such claims or causes of action later than one (1) year after any alleged claim or cause of action shall have accrued under the applicable Texas statutory rules. After expiry of the one year-period any legal action is barred.

14. Confidentiality and Non-Competition

- 14.1. The buyer shall be held to keep secret and confidential any and all information that it has obtained from us.
- 14.2. The buyer shall in the use of the information that has come to its knowledge observe the greatest possible care. The buyer shall without our prior written permission not have the right to multiply the relevant information and documentation.
- 14.3. The buyer shall oblige its employees to observe

secrecy with respect to all information with a confidential nature as referred to hereinbefore in paragraph 14.1. and to our activities. This obligation shall apply both during the term of the agreement and after the duration thereof.

- 14.4. The buyer and/or its employees shall at the end of the agreement return to us any and all information, received from us within the framework of the instruction, forthwith.
- 14.5. The buyer shall during the term of the agreement as well as during a period of two years after the end of the agreement refrain from (having others) entering into any direct or indirect contractual relationship, howsoever called, with our employees, unless we agree otherwise in writing. The buyer guarantees that the aforementioned obligation will also be complied with by its affiliates.

15. Intellectual property

- 15.1. We retain full ownership of all information and all intellectual and industrial property rights with regard to all that has been or is being delivered and/or developed by us or by third parties during or prior to the agreement between us, including, but without limitation price lists, reports, recommendations, samples, calculations, brochures, designs, sketches and drawings, production processes, remain our property. The buyer is obliged to return or destroy such data on our first request, carriage paid.
- 15.2. The buyer shall never contest or dispute any of our intellectual and/or industrial property rights nor attempt to register one or more of these rights or otherwise try to obtain protection of these rights in its favour.

16. Applicable law: DTPA waiver

- 16.1 THESE CONDITIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICT OF LAWS.
- 16.2 Buyer acknowledges and agrees, on its own behalf and on behalf of any permitted assigns and successors hereafter, that the Texas Deceptive Trade Practices-Consumer Protection Act, Subchapter E of Chapter 17 of the Texas Business And Commerce Code (the "DTPA") is not applicable to this transaction. Accordingly, buyer's rights and remedies with respect to the transaction contemplated under these Conditions, and with respect to all of our acts or practices, past, present or future, in connection with such transaction, shall be governed by legal principles other than the DTPA. In furtherance thereof, buyer agrees as follows:

BUYER WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., TEXAS BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF BUYER'S OWN SELECTION, BUYER VOLUNTARILY

CONSENTS TO THIS WAIVER.

17. Jurisdiction

- 17.1. WE AND THE BUYER CONSENT TO SUBMIT TO THE EXCLUSIVE PERSONAL JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF TEXAS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, AGREE THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND AGREES NOT TO BRING ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT IN ANY OTHER COURT.
- 17.2. The contents of paragraph 17.1. leaves unaffected our right to submit the dispute to arbitration proceedings in accordance with the provisions of paragraph 17.3. The buyer agrees to these rights.
- 17.3. Any dispute, controversy or claim arising out of or relating to this agreement or the performance by the parties of its or their terms may be settled by binding arbitration held in Dallas, Texas. The Commercial Arbitration Rules of the American Arbitration Association are hereby incorporated by reference; provided, however, that the parties do not intend any arbitration hereunder to be administered by the American Arbitration Association. The interpretation and enforceability of this section shall be governed exclusively by the Federal Arbitration Act, 9 U.S.C. § 1-16.