

# GENERAL CONDITIONS OF SALE

the specific value of the products, PHLOX will, under the name and on behalf of Buyer, contract an insurance policy for the transportation.

## RESERVATION OF OWNERSHIP

**Legal and beneficial title to the goods shall be retained by PHLOX, until it has received payment in full of all sums due for all products delivered to the Buyer.** In this respect payment shall not be deemed made through mere transmittal of letters of credit.

The failure by Buyer to pay the full price of the products entitles us, upon simple notice, to take back all such unpaid products.

If the Client enters into any compromise or arrangement with its creditors or give notice of voluntary winding up or a petition for its compulsory winding is filed, we may require delivery of said products to the Client or to any liquidator, receiver or administration or any third parties.

Until title of any products has passed to the Buyer, the products shall be stored separately from any goods belonging to the Buyer, shall be identified as PHLOX products, and shall not be pledged or subject to any encumbrance.

Products in the possession of the Buyer but remaining the property of the Company shall at all times be preserved in good condition by the Buyer in their original point of sale packaging and with any identification marks and shall not be exposed to risk or loss or pilfering or damage and we reserve the right to control compliance with this obligation. In case of seizure or third party's claim on the products or voluntary or compulsory winding up, the Buyer must immediately inform us.

Buyer may resell the products in the normal course of its activity provided that said products, shall not be made the subject of any charge, lien or other encumbrance, that Buyer shall inform its own buyer of this reservation of ownership clause and that all sums remaining due are paid as these sums are by express agreement pledged to PHLOX.

## FORCE MAJEURE

PHLOX reserve the right to suspend all orders or immediately and without prior notice terminate all sales made pursuant to these conditions and shall not be subject to any liability for delay in performance or non performance, as result of any cause or causes beyond its reasonable control, including but not limited to: fire, floods, explosions, pollution, accidents, breakdown; riots or strikes or others concerted acts of workmen, acts of war, rebellion or sabotage or damage resulting therefrom, shortage or delay in the supply of the products or raw materials used in connection herewith.

## DATA PROTECTION-INTELLECTUAL PROPERTY-CONFIDENTIALITY

PHLOX collect, hold and process all personal data concerning the Buyer under the terms of the n° 78-17 French Data Protection Act of January 6<sup>th</sup> 1978, as amended, and may be used solely for the purpose of facilitating the supply of the products. The Buyer can access to his own personal information at any time, ask for its modification or its removal by sending a request to the following address: PHLOX SA, Administrative Department, Eiffel Park A, 415, rue Claude Nicolas Ledoux, 13854 Aix les Milles. Said data may be transferred to any partner or supplier of PHLOX, provided the Buyer is able to exercise the rights described here above.

Buyer is not entitled to use any intellectual property or know-how owned by PHLOX or incorporated in its products of any type of kind whatsoever (including patents, trademarks, copyrights). All usages whatsoever is strictly prohibited.

Buyer shall keep strictly confidential any information, data and know-how, whether of commercial, technical or other nature and any document (all hereinafter referred to as the "Confidential Information") received hereunder. Buyer shall use such information only for the purpose of the use of the products and shall make it available only to its employees who need it for the execution of their assignments and who are subject to a secrecy obligation.

The here above obligations pertaining to protection of PHLOX intellectual properties or to confidentiality shall survive termination of business relationship with the Buyer, for any cause whatsoever.

## JURISDICTION-APPLICABLE LAW

The present General Conditions of Sales and its corresponding obligations shall be exclusively governed by French law, excluding all international treaties, such as the Vienna Convention of 11<sup>th</sup> April 1980.

All disputes shall be submitted to the exclusive jurisdiction of the Tribunal de commerce of Aix en Provence, even in case of interim injunction, multiple defendants or appeal on warranty.

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## GENERAL POINTS

These conditions apply to and shall be incorporated into all contracts of sale entered into by the company PHLOX SA to all professional buyers of PHLOX's products delivered in France and Worldwide (hereinafter "the Buyer").

Our General Conditions of Sales are applicable as of January 1<sup>st</sup>, 2007 and cancel and prevail over all previous terms and conditions or purchase conditions or standard terms of business of Buyer. By placing a purchase order, the Buyer hereby agrees and fully accepts, without reserve, the present General Conditions of Sale, and our Tariffs.

## ORDERS

All orders will be by purchase orders, transmitted in writing by all means (including fax and email), specifying the price, type of products, quantity, destination and requested delivery date. Orders will be binding upon receipt of our confirmation order, which will be notified within five business (5) days following receipt of orders of Buyer.

Any variation or cancellation of order by Buyer will not be effective unless received by us at the latest two business days following receipt by Buyer of our confirmation order. Any variation or cancellation after this time limit may incur Buyer's liability and payment of damages to compensate all expenses or losses suffered by us.

We reserve the right to suspend further deliveries or to cancel any confirmed order, among other remedies, in the event the Buyer fails to perform any of its obligations pursuant to the Conditions.

## PRICES-CONDITIONS OF PAYMENT-PENALTIES

### **Prices:**

Our prices are as stated in our Tariffs valid for our standard products during the current year. For products manufactured in accordance with a specification submitted by the Buyer, the applicable prices shall be as stated in our quotation and shall be valid for thirty (30) days following its issuing date.

Prices are quoted in euros for one delivery, in one place and one invoice and are exclusive of taxes, duties, freight, insurance or other similar handling costs to be paid by the Buyer. All applicable duties, sales, use or excise taxes or other charges assessed or levied will be added to the purchase price and itemized and/or invoiced separately.

From time to time, PHLOX may, upon prior written notice to Buyer, change the price, the payment conditions or other terms provided in these Conditions. Such new prices and terms shall apply to all subsequent orders and be effective on the date set forth in the notice. Failure of Buyer to raise objections to such change shall be deemed acceptance thereof.

### **Conditions of payment:**

Buyer will pay PHLOX immediately upon receipt of invoice for the first order and, for the following orders and subject to the approval of our Credit Department, within thirty (30) days following date of invoices, issued after each delivery.

No rebate for early payment will be granted, unless otherwise agreed in writing.

Payment will be made by check, bank-wire transfer or credit letter.

### **Late payment-Penalties:**

In case of modification in the financial or legal capacity of Buyer or more generally if we reasonably believes that the security of the indebtedness of the Buyer to PHLOX is in jeopardy or if the Buyer makes default in the payment, then we may, without prior notice, suspend all deliveries to Buyer until full payment is made, or immediately and subject to written notification, terminate all pending orders or all future contracts or request for payment guarantees. Failure to pay any installment whatsoever shall automatically result in the full amount of any balance due, or not yet due.

According to articles n° L441-3 and L441-6 of French Commercial Law, a late payment penalty of ten points over the legal B.C.E. rate, as well as a flat rate of 40 euros ( forty ) is due on any amount not paid by the due date, without prior notice.

Buyer will reimburse to PHLOX all costs and expenses incurred to recover said payment.

## DELIVERY

### **Delivery dates:**

Our delivery dates are 48 hours for our standard products and six weeks for products manufactured according to Buyer's specifications. Any delays will not give Buyer the right to cancel the order or to claim damages.

### **Transportation:**

The supply and delivery terms are "Ex Works" in our warehouse, as defined under the ICC INCOTERMS 2000. Delivery will be made when the products are placed at the disposal of the Buyer or its authorized courier or agent, not cleared for export and not loaded on any collecting vehicle. Except when expressly objected by the Buyer, and due to

### **Risks transfer:**

Title and risks of loss or damages shall pass on to Buyer upon delivery of the products as defined here above, subject to the clause "reservation of ownership" hereunder, and Buyer shall procure licenses authorizations and export formalities.

## CLAIMS-RETURN PROCEDURE

### **Claims:**

Within 48 hours following delivery, claims regarding alleged damage, defects or shortage, excluding any transport related disputes under Buyer's responsibility and defects covered by our warranty, must be notified to us with all sufficient justification, failing which products will be deemed accepted.

### **Return procedure:**

Return of products shall be subject to our prior approval. The Buyer must send us by fax the "Return Authorization Request" form (included in the last page of our operational manual or sent upon request) duly filled in (including the description of the default) and we will send back this form with a return number.

The products must then be returned, at Buyer's costs, within ten (10) days following receipt of our authorization, with their original packaging and not disassembled, together with the form returned by us and the carrier's receipt or the corresponding invoice.

PHLOX shall replace or repair such products at its own costs (including transportation expenses) or in case replacement is not possible, a credit note will be issued, without liability to the Buyer.

Should a return be made not caused by a defect or a non conformity, or not covered by our warranty or not complying with the here above deadlines for claim or return procedure, we will forward to the Buyer the results of our examination and a quotation for our repairing or replacing the product.

## WARRANTY

### **Conditions:**

Our products shall be free from manufacturing or design defects in materials or workmanship for a period of 24 months from the purchase date. In order to benefit from this warranty, the return procedure must be fully complied with and the defect must be justified by Buyer. We shall, at our option, either refund the purchase price or repair or replace at our own cost said products. The defective parts or products will become our ownership. This warranty covers the costs of workmanship, consumables, and transportation costs. The replacement of defective parts shall not extend the duration of the warranty as defined here above.

### **Exclusion of warranty:**

It is expressly agreed that PHLOX disclaims any and all responsibility whatsoever in any of the following events:

- excess voltage applied to the product (max. 24V – continuous mode)
- excess current applied to the product (strobe mode)
- the use of a power supply with non-regulated output
- voltage reverse polarity applied to the product (Pin 2= ground/Pin 4 = +24 VDC)
- use of the product other than its normal use
- use of non-recommended clearing agent
- modification or disassembly of the product by anyone who is not part of our staff
- failure to observe the maximum storage temperature: 60° C – 140 ° F
- failure to observe the maximum operating temperature: 50° C – 122 ° F
- failure to observe the maximum operating humidity: 95 % non-condensing
- external events (fire, flood, infiltration, lighting) and impacts suffered by the product and their consequences.

### **Limitation of warranty:**

We makes no other warranty, express or implied, to the fullest extent permitted by law, including without limitation, warranty as to merchantability, capacity or fitness for a particular purpose with respect to the products. The Buyer represents that he has been fully informed of the characteristics and operating mode of the products (including our operating manual) and that he has made his own findings on the conformity of the products to his own needs.

Our liability for any and all losses or damages resulting from any cause whatsoever, shall in no event exceed the purchase price of the products, or at PHLOX's election, the replacement of the products.

In no event, shall we be liable for incidental, special or consequential damages, including loss of profits, arising out of or in any way related to the sales made under these Conditions.