

General conditions of sale and delivery of hypor

(Pig Breeding Division of Hendrix Genetics)

April 2014

Article 1: Definitions

1. The Seller:

- a. Hypor B.V. (reg.nr. 16054923), registered at Spoorstraat 69, 5831 CK Boxmeer, The Netherlands;
- b. Hypor Belgium BVBA (reg.nr. 0860 057 032RPR Leuven), registered at Theo de Beckerstraat 24, Bus 5, 3200 Aarschot, Belgium;
- c. Hypor Inc. (reg.nr. 396996-7), registered at 1500-1874 Scarth Street, Regina, Saskatchewan, S4P 4E9, Canada;
- d. Shandong Hypor Liuhe Breeding Co. Ltd (reg.nr. 370600400025300), registered at Tiancun, Xingcun, County, Haiyang, Shandong, PRC Zip Code: 265100, P.R. China;
- e. Hypor Deutschland GmbH (reg.nr. B 110750), registered at Hansestrasse 24, 27419 Sittensen, Germany;
- f. Hypor Italia Srl (reg.nr. Brescia 02322800984), registered at Via Enrico Fermi, 2, 25025 Manerbio (Brescia), Italy;
- g. Hendrix Genetics S.A.U. (reg.nr. A- 28/313211), registered at J.L. Bugallal Marchesi, 7 Bajo Derecha, 15008 A Coruña, Spain;
- h. Hypor México, S. de R.L. de C.V. (reg.nr. HME080723UBA), registered at Xochitl 4646-7, Col. Prados Tepeyac, Zapopan, Jalisco, PC 45050, Mexico
- i. Hypor France S.A.S. (reg.nr. 775 718 794 RCS St. Briec), registered at 1 Rue Jean Rostand, Zoopôle, 22440 Ploufragan, France;
- j. Hypor USA Inc (reg.nr. 3708163 Delaware St.), registered at 34236 Timbercrest Road, Red Wood Falls, MN 56283, USA.
- k. Greleger KFT (reg.nr. 10-09-025062), registered at Eger 3300, Szövetkezet u. 2., Hungary;

2. Goods: moveable goods including livestock and/or derivatives therefrom and, where applicable, services provided by the Seller;

3. The Buyer: the party to whom the quotation or tender is offered, and/or the party with whom the Seller has concluded an agreement or to whom services have been provided.

Article 2: Applicability

1. These general conditions shall apply to all agreements concluded with the Seller, to all its quotations, tenders and to all deliveries and services provided by the Seller.
2. Agreements need not be concluded or confirmed in writing. If the agreement has been concluded or confirmed in writing, for example by means of an order confirmation, this written document shall be regarded as a legally binding proof of contract between the parties, subject to evidence to the contrary.
The Seller shall at no time be bound by actions and/or verbal agreements between unauthorised representatives, unless these agreements are confirmed on behalf of the Seller in writing by authorised persons.

Article 3: Conclusion of the agreement

1. A verbal or written quotation from the Seller is always free of obligation, even if it specifies a fixed term for acceptance, unless in addition to this fixed term for acceptance the Seller has also specified that the quotation is irrevocable. If such a term is not specified by a written quotation, the Seller can withdraw the said quotation within five working days following receipt of the Buyer's notice of acceptance, or, if this acceptance has not yet been given, the Seller can regard the quotation as having become void after four weeks following the date on which the offer was made, without the Seller being obliged to issue any notification to this effect.
2. Notifications of acceptance, which may or may not take the form of an order confirmation by the Buyer, which contain substantial additions, restrictions or other amendments shall be deemed to constitute a new offer and shall be regarded as superseding the previous offer. For the purposes of this Article, substantial additions, restrictions or other amendments are taken to include supplementary or divergent conditions relating to price, method of payment, the place and time of the delivery, inspection, the extent of liability of one of both parties vis-à-vis a third party and the settlement of disputes.

General conditions of sale and delivery of hypor

(Pig Breeding Division of Hendrix Genetics)

April 2014

3. An acceptance, which may or may not take the form of an order confirmation, which does not contain substantial additions or deviations from the offer shall be deemed to constitute an agreement unless the Seller objects to the additions with immediate effect.
4. If the Buyer accepts the offer with reference to other general conditions, these other general conditions shall be invalid and only the Seller's general conditions shall be applicable. If the Buyer accepts the offer with reference to other general conditions, stating that the applicability of the general conditions of the Seller are explicitly rejected, then Article 3 paragraph 2 shall be applicable and the acceptance shall be regarded as a rejection of the offer and simultaneously as a counteroffer.
4. If the Buyer issues a complaint and this complaint is found to relate to a deficiency attributable to the Seller, the Seller shall at his sole discretion replace the said goods, subject to the conditions contained in the agreements concluded between the parties and in these general conditions, or else in the form of a pro rata discount on the price if the inadequacy or deficiency is only of a minor nature or only affects a small part of the delivery. The Buyer must give the Seller a reasonable period of time in which to complete this rectification and if so requested by Seller, the Buyer will return to Seller the replaced goods.
5. The delivery periods quoted shall at no time be regarded as absolute unless otherwise expressly agreed in writing. In the event of a delay, the Seller must be sent a written notification declaring that he is in default. If the Seller fails to comply with his delivery obligations due to force majeure the Buyer shall only be entitled to cancel the agreement when the Seller has been notified in writing that the Buyer wishes to exercise his right to cancel the agreement if the said agreement has not been fulfilled within 6 (six) weeks of the aforesaid written notification.

Article 4: Delivery, risk and inspection

1. Unless explicitly agreed otherwise in writing, delivery will be 'ex works' by the Seller in accordance with the latest version of the Incoterms (issued by the International Chamber of Commerce).
2. A 4% death/loss rate in the delivered Goods shall be accepted by the Buyer and shall not influence the price or payment due to the Seller, unless specifically contracted otherwise.
3. Complaints will only be considered if they are notified immediately to the Seller in writing, but ultimately within twenty four hours (24) following delivery by the Seller, of the onset of disease or clinical signs of disease or losses stating accurately the nature and grounds for complaint and
 - a. the Buyer consigns dead livestock, under the supervision of the Seller if he so requires, to a state recognized veterinary surgeon and
 - b. such veterinary surgeon after conducting a post-mortem certifies in writing that the death of the livestock was caused by a condition present at the date of delivery.
6. The Seller shall be deemed to have met his delivery obligation if and as soon as within the agreed delivery period the Buyer has been informed that the goods to be delivered are ready for dispatch, unless otherwise explicitly agreed in writing.
7. If the goods delivered by the Seller cannot be accepted for reasons that are not (and cannot be) attributable to the Seller, the Seller shall be entitled to store and/or sell the said goods at his sole discretion. All the associated costs and losses sustained by the Seller shall be for the account of the Buyer. This does not affect the Seller's other rights in respect of the Buyer.
8. Unless explicitly agreed otherwise in writing, the risk of damage, loss, theft and destruction of the goods shall be borne by the Buyer from the moment of delivery.
9. The Seller reserves the right to deliver the goods in batches, in which case each consignment shall be deemed to constitute an independent agreement to which these general conditions shall apply.

General conditions of sale and delivery of hypor

(Pig Breeding Division of Hendrix Genetics)

April 2014

10. Unless specifically agreed otherwise in writing, the Seller shall determine the method of transport, shipping, packaging, etc.

11. The Seller retains the right to charge the Buyer for payment for any durable packaging materials used which shall be duly listed on the invoice.

Article 5: Price

1. The price that the Buyer shall be deemed to pay is the price as agreed with the Seller.
2. All the prices shall be applicable without discount or surcharge and are exclusive of tax and duties as applicable at the time of the delivery, unless explicitly agreed otherwise in writing.
3. The Seller is entitled to amend the agreed price and to charge this fully to the Buyer, if after the said agreement has been concluded one or more cost price factors have changed.
4. If, due to any act or failure on the part of the Buyer, VAT is incorrectly charged or omitted, the Buyer shall be fully liable. The Buyer shall indemnify the Seller against all related claims made by third parties.

Article 6: Payment

1. Payment shall be effected by means of an irrevocable letter of credit, unless expressly agreed otherwise in writing. The said letter of credit must be confirmed by a reputable bank acceptable to the Seller within the period agreed between the parties, in default of which the agreement shall be deemed to have been cancelled, without prejudice to the obligation by the Buyer to compensate the Seller for any damages sustained, at that time and in the future.
2. In other cases, if expressly agreed in writing, payment shall be effected within 14 (fourteen) days following delivery, by means of a deposit into a bank account specified by the Seller. If the Buyer fails to meet all or part of his payment obligation, the Seller shall be entitled to suspend his (delivery) obligations towards the Buyer.

3. The Buyer shall at no time have any right of set-off or be entitled to suspend the agreement.

4. Without prejudice to the other conditions of payment, all payments shall at all times be exclusively destined for and used to settle the oldest uncleared invoices. If an invoice is not paid within 14 (fourteen) days following delivery, or such other agreed term, the Buyer shall be liable to pay 1.5% interest on the outstanding amount for each month or part of a month during which the payment deadline is exceeded. Moreover, any discount scheme in force shall no longer apply following the expiry of this 14 (fourteen) days, or such other agreed term.

5. In the event of failure to effect payment on due date, the Buyer shall be deemed to be in default without the need for any summons or notice of default being required. All the outstanding payments which the Buyer owes to the Seller on that date shall be immediately and fully due and payable.

6. If the Buyer requests or obtains a moratorium on payments, is declared bankrupt or otherwise loses or is at risk of losing control or access to all or part of his assets; sells, suspends or ends his business activities, and in all other cases in which he is no longer able (or likely to be able) reasonably to fulfil his obligations in their entirety, the full amount that the Buyer owes to the Seller on that date will be immediately and fully due and payable and the Seller shall be entitled to cancel the agreement with the Buyer, without prejudice to any other remedies the Seller may have. These conditions shall be applicable accordingly if the Buyer's company changes its legal status and/or (in so far as the Buyer is a legal person) there is a change in the management and/or the ownership of the Buyer.

7. The Seller is entitled to claim all costs and losses from the Buyer that arise from (an attributable or non-attributable) failure by the Buyer to fulfil his obligations, whether these costs are made in or out of Court.

General conditions of sale and delivery of hypor

(Pig Breeding Division of Hendrix Genetics)

April 2014

8. If the Buyer fails to fulfil his payment obligations (in an attributable or non attributable way), the Seller shall be entitled to call in third parties to help collect the outstanding amount. These non-judicial collection costs shall be borne by the Buyer.
These costs shall amount to 20% of the amount due, and shall be a minimum of €5,000 plus VAT. This does not affect the Buyer's obligation to pay the Seller the full amount of any additional or any other non-judicial collection costs.
9. The Seller expressly reserves the right to demand advance payments, partial payment or payment on delivery from the Buyer.

Article 7: Default of the Buyer

1. The Buyer shall be deemed to be legally in default without any notification being required from the Seller:
 - if and as soon as the Buyer fails to take receipt of the goods within the agreed delivery period and the Seller for his part is not in default as regards the delivery;
 - if the Buyer fails to adequately comply with these general conditions;
 - if the Buyer fails to effect payment within the period and in the manner specified in Article 6 of these general conditions.
2. If the Buyer is in default as regards receipt of the goods, the Seller shall be entitled to move the goods to a suitable location at the risk and cost of the Buyer. The Buyer shall at all times meet the costs of the movement and any damage sustained, both at the time and in the future.
3. The Seller is also entitled to cancel the agreement unilaterally without legal intervention, provided he notifies the Buyer in advance, and is also entitled to claim full compensation from the Buyer. The Buyer can prevent the cancellation of the agreement through immediate payment of the purchase price plus an amount that is equal to the damage sustained by the Seller.

Article 8: Liability

1. The liability of the Seller in respect of the Buyer for damage that is directly or indirectly the result of his failure to comply with the agreement in full or in part, or within the period specified, or in an adequate manner, or due to the infringement of any other contractual or non-contractual obligation in respect of the Buyer or third parties, shall be expressly limited to the obligations imposed on the Seller in Article 4.3, such liability, however, being limited to the amount equal to the invoice value of the goods or services in question.
2. Any further liability, either for direct or indirect damages – including consequential losses – shall be excluded from this liability unless there is evidence of wilful default or gross negligence on the part of the Seller's senior and/or middle management, such that it causes this damage.
3. The Buyer shall indemnify the Seller from all third party claims arising from damage sustained by them due to the goods supplied by the Seller, unless there is evidence of wilful default or gross negligence on the part of the Seller's senior and/or middle management.

Article 9: Force majeure

1. The Seller shall at no time be held liable for costs, damage, interest or similar payments should the Seller be unable to meet his obligations in respect of the Buyer through circumstances beyond his control, in which case the Seller shall notify the Buyer at the earliest opportunity.
2. For the purposes of these general conditions, circumstances beyond the Seller's control shall be taken to mean all facts and circumstances outside the control of the Seller, regardless of whether they could or could not have been foreseen at the time when the agreement was concluded, which hamper the normal implementation of the agreement or complicate it to such an extent that implementation cannot reasonably be expected of the Seller, including (but not limited to)

General conditions of sale and delivery of hypor

(Pig Breeding Division of Hendrix Genetics)

April 2014

- lack of raw materials and a cessation or suspension of the supply of raw materials or semi-manufactures due to weather conditions, transport restrictions and (danger of) contamination; also operational breakdowns, flaws in or damage to means of production, strikes or similar actions; (attributable or non-attributable) deficiencies on the part of third parties sub-contracted by the Seller; transport breakdowns and failure to obtain the necessary licenses; also government measures including restrictions or bans on imports, exports, transit, production or supply.
3. If the Seller has concluded an agreement with more than one Buyer concerning the same or similar goods and the Seller is unable to fully uphold all the agreements due to circumstances beyond his control, he is entitled to specify which agreements he will uphold and to what degree.
 4. Without prejudice to any other remedies the Seller may have, in the event of circumstances beyond his control, the Seller retains the exclusive right to cancel the agreement in respect of the component that has not yet been implemented, once the situation of force majeure has continued beyond a period of 4 (four) weeks, or else to adapt the agreement, including the prices and/or conditions of supply, to the prevailing circumstances, without the Seller being in any way liable.
 2. Until full payment has been made to the Seller in accordance with these conditions and title in the goods has passed to the Buyer, the Buyer shall be in possession of the goods as bailee for the Seller and the Buyer shall store the goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by the Seller and shall insure the goods against all reasonable risks.

Article 11: Sanctions

Article 10: Retention of title

1. The Seller shall retain ownership of all the goods delivered by him to the Buyer until the purchase price of these goods has been settled in full. If, in the context of such agreements, the Seller performs work for the Buyer for which the Buyer is liable, the aforesaid retention of title shall continue to apply until the Buyer has also settled these claims in full. The retention of title shall also apply to claims which the Seller may acquire over the Buyer in respect of deficiencies on the part of the Buyer relating to one or more of his obligations vis-à-vis the Seller. The Buyer is not entitled to pledge the delivered goods that are still retained in title by the Seller or to afford third parties any other rights over them.
1. In the event of an infringement of one of the provisions contained in these general conditions by the Buyer, the Buyer shall be deemed to be legally and automatically in default, without any written notice required. In this case, the Buyer shall be liable to pay the Seller a fine of €10,000 for each infringement, without prejudice to the Seller's right to compensation for the actual damage sustained.
2. The fine for an infringement by the Buyer which results in goods other than those of the Seller being traded under the Seller's name, or which results in the Seller's goods being used for another purpose or in another way than that specified by the Seller, will be increased to €15,000 for each infringement, without prejudice to the right of the Seller to compensation for the actual damage sustained.
3. In the event of an infringement of one of the provisions contained in these general conditions, the Seller is also entitled to immediately remove (or arrange for the removal of) the delivered goods or the remainder of the goods from the Buyer at the risk and at the cost of the Buyer.

General conditions of sale and delivery of hypor

(Pig Breeding Division of Hendrix Genetics)

April 2014

Article 12: Miscellaneous

1. All the agreements and any legal interaction between the Seller and the Buyer shall be governed exclusively as follows:

- i) For goods invoiced by Hypor BV; by Dutch law
- ii) For goods invoiced by Hypor Belgium BVBA; by Belgian law
- iii) For goods invoiced by Hypor Inc; by the laws of the Province of Saskatchewan, Canada
- iv) For goods invoiced by Shandong Hypor Liuhe Breeding Co. Ltd; by the laws of the Peoples Republic of China
- v) For goods invoiced by Hypor Deutschland GmbH; by German law
- vi) For goods invoiced by Hypor Italia Srl; by Italian Law
- vii) For goods invoiced by Hendrix Genetics S.A.U.; by Spanish law
- viii) For goods invoiced by Hypor México, S. de R.L. de C.V; by Mexican law
- ix) For goods invoiced by Hypor France S.A.S; by French law
- x) For goods invoiced by Hypor USA Inc; by the laws of the U.S.A.
- xi) For goods invoiced by Greleger KFT; by Hungarian law

Should there be any discrepancy between nonmandatory law and these general conditions then the latter shall prevail.

- 2. The United Nations Convention on contracts for the International Sale of Goods (CISG), signed in Vienna on 11 April 1980 is not applicable to this agreement.
- 3. All disputes arising out of the interpretation or execution of these General Conditions shall be settled under arbitration, in accordance with the rules of the International Chamber of Commerce, by 3 arbitrators, appointed pursuant the contents of the above mentioned rules. The arbitration shall take place in the city of Amsterdam and will be held in the English language.

4. If one or more provisions contained in these general conditions should be found to be wholly or partially legally invalid, the other provisions shall be fully upheld. Provisions stipulated by the Seller will then replace such invalid provisions should the original provision be rejected on the grounds of invalidity.

5. No waiver by the Seller of any breach of these Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

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