TERMS OF DELIVERY

1. PREAMBLE

1.1. These Terms of Delivery complemented by the law on sales apply to all orders and agreements from and with Wintex Agro (hereinafter the "Seller") to the extent that there are no deviations in the Seller's order confirmation or in these Terms of Delivery. Deviations from these Terms of Delivery shall apply only if the parties agree in writing.

2. PRODUCT INFORMATION

2.1. Data in product information and price lists are binding only to the extent that they are by reference expressly included in the contract.

3. DRAWINGS AND DOCUMENTS

3.1. All drawings and other technical documents regarding the goods or their manufacture submitted by one party to the other, prior or subsequent to the formation of the contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were submitted. They may not, without the consent of the submitting party, be copied, reproduced, transmitted or otherwise communicated to a third party.

3.2. The Seller shall, not later than by delivery of the goods, free of charge provide the Buyer with one copy, or the larger number of copies that may have been agreed, of drawings and other technical documents, which are sufficiently detailed to permit the Buyer to carry out installation, commissioning, operation, and maintenance (including running repairs) of all the goods. The Seller shall not, however, be obliged to supply manufacturing drawings of the goods or spare parts.

4. DELIVERY

4.1. Where a trade term has been agreed, it shall be interpreted in accordance with the Incoterms in force at the formation of the contract. If no trade term is specifically agreed, the delivery shall be considered DAP.

5. TIME FOR DELIVERY AND DELAY

5.1. Wintex Agro's delivery times are approximate.

5.2. If the Seller finds that he will not be able to deliver the goods at the agreed time for delivery or if delay on his part seems likely, he shall forthwith notify the Buyer thereof, stating the reason for the delay and if possible, the time when delivery can be expected.

5.3. If delay in delivery is caused by a circumstance which under clause 10.1. shall be considered a case of relief or by an act or omission on the part of the Buyer, the time for delivery shall be extended by a period which is reasonable having regard to the circumstances in the case. The time for delivery shall be extended even if the reason for delay occurs after the originally agreed time for delivery.

5.4. If the Seller does not deliver the goods on time, the Buyer is entitled to liquidated damages from the date on which delivery should have taken place. The liquidated damages shall be payable at a rate of 0.5 per cent for each complete week of delay of that part of the agreed price which is properly attributable to that part of the goods which, due to the delay, cannot be put to its intended use. The liquidated damages shall not exceed 7.5 per cent of such part of the agreed price. The liquidated damages become due at the Buyer's written demand but not before all goods have been delivered or the contract is terminated under clause 5.5. The Buyer loses his right to liquidated damages if he has not logged a claim in writing for such damages within six months after the time when delivery should have taken place.

5.5. If the buyer is entitled to maximum liquidated damages under clause 5.4 and if the goods are still not delivered, the Buyer may in writing demand delivery within a final reasonable period which shall not be less than one week. If the Seller does not deliver within such final period and this is not due to any circumstance for which the Buyer is responsible, then the Buyer may, by notice in writing to the Seller, terminated the contract in respect of that part of the goods which cannot be put to its intended use. In case of such termination the Buyer shall also be entitled to compensation for the loss he suffers because of the Seller's delay to the extent that exceeds the maximum of liquidated damages to which the Buyer has become entitled under clause 5.4. The compensation shall not exceed 7.5 per cent of that part of the price which is attributable to the pan of the goods in respect of which the contract is terminated. The Buyer shall also have the right to terminate the contract by written notice to the Seller if it is clear that there will be a delay which under clause 5.4. would entitle the Buyer to maximum liquidated damages and compensation under the third paragraph of this clause. Liquidated damages under clause 5.4. and termination of the contract and limited compensation under this clause 5.5. are the only remedies available to the Buyer in case of delay on the part of the Seller. All other claims against the Seller based on such delay shall be excluded. This limitation of the Seller's liability shall, however, not apply where the Seller has been guilty of gross negligence.

5.6. If the Buyer finds that he will be unable to accept delivery of the goods on the agreed date or if delay on his part seems likely, he shall forthwith notify the Seller thereof in writing stating the reason for the delay and if possible, the time when he will be able to accept delivery. If the buyer fails to accept delivery on the agreed date, he shall nevertheless make any payment which is dependent on delivery as if the goods in question had been delivered. The Seller shall arrange storage of the goods at the Buyer's risk and expense. The Seller shall also, if the Buyer so requires, insure the goods at the Buyer's expense.

5.7. Unless the Buyer's failure to accept delivery is due to any such circumstances as mentioned in clause 10.1., the Seller may by notice in writing require the Buyer to accept delivery within a reasonable period. If, for any reason for which the Seller is not responsible, the Buyer fails to accept delivery within such period, the Seller may by notice in writing terminate the contract in respect of that part of the goods which is ready for delivery but has not been delivered due to the Buyer's default. The Seller shall then be entitled to compensation for the loss he has suffered by reason of the Buyer's default. The compensation shall not exceed that part of the price which is attributable to the pan of the goods in respect of which the contract is terminated.

6. PAYMENT

6.1. Unless otherwise agreed, the purchase price shall be paid with one third at the formation of the contract and one third when the bulk of the goods are notified as ready for delivery. Final payment shall be made at the delivery of the goods.

6.2. If the Buyer fails to pay by the agreed date, the Seller shall be entitled to interest from the day on which payment became due at the rate of interest determined by the law on late payments in the Seller's country. If the Seller's country is Denmark, the rate of interest shall be nine percentage points above the official Danish discount rate.

6.3. If the buyer has not paid the amount due within three months, the Seller shall be entitled to terminate the contract by written notice to the buyer and to claim compensation for the loss he has suffered. The compensation shall not exceed the agreed price.

7. RESERVATION OF TITLE

7.1. The goods shall remain the property of the Seller until paid for in full to the extent that such retention of property is permitted by the applicable law.

8. LIABILITY FOR DEFECTS

8.1. The Seller shall, pursuant to the provisions of clauses 8.2.-8.13. below, by repair or replacement, remedy any defect in the goods resulting from faulty design, materials or workmanship.

8.2. The Seller's liability is limited to defects which appear within a period of twelve months from the date of delivery of the goods. If the goods are used more intensely than agreed or could be foreseen at the formation of the contract, this period shall be reduced proportionally.

8.3. The Seller shall be liable for defects in parts of the goods which have been repaired or replaced under clause 8.1. for a period of twelve months under the terms and conditions which apply to the original goods. The liability period defined in clause 8.2. shall be extended for other parts of the goods only by a period equal to the period during which the goods could not be used because of the defect.

8.4. The Buyer shall notify the Seller in writing of a defect without delay after the defect has become apparent, and in no case later than two weeks after the expiry of the period defined in clause 8.2. as supplemented by clauses 8.2. and 8.13. The notice shall contain a description of how the defect manifests itself. Notice of a defect shall be given immediately if there is reason to believe that the defect may cause damage. If the Buyer fails to notify the Seller of a defect, in writing within the time limits set forth in this clause, he shall forfeit his right to make any claim in respect of the defect.

8.5. On receipt of the written notice according to clause 8.4. the Seller shall remedy the defect without undue delay and at his own cost as stipulated in clauses 8.1.-8.13. Remedy of the defect shall take place at the buyer's premises unless the Seller finds it appropriate to have the defective part or the goods returned to him for repair or replacement at his own premises. The Seller shall carry out dismantling and re-installation of the part if this requires special knowledge. If such special knowledge is not required, the Seller has fulfilled his obligations in respect of the defect when he delivers a duly repaired or replaced part to the Buyer.

8.6. If the Buyer gives such notice as described in clause 8.4., and no defect is found for which the Seller is liable, the Seller shall be entitled to compensation for the work and costs which he has incurred because of the notice.

8.7. If dismantling or re-installation necessitates intervention in other equipment that the goods, the labor, and costs resulting therefrom shall be the Buyer's responsibility.

8.8. All transport in connection with repair or replacement shall be at the Seller's risk and expense. The Buyer shall follow the Seller's instructions as to how the transport shall be carried out.

8.9. The buyer shall bear the increase in costs for remedying a defect which the seller incurs when the goods are situated elsewhere than the destination stated in the contract or – if no destination has been stated – the place of delivery.

8.10. Defective parts which are replaced in accordance with clause 8.1. shall be placed at the Seller's disposal and shall become his property.

8.11. Notwithstanding the provisions of clause 8.1.-8.10. the Seller shall have no liability for defects in any part of the goods for more than twelve months from the start of the liability period defined in clause 8.2.

8.12. The Seller's liability shall be limited so that the buyer's compensation under no circumstances exceeds the value of the goods, yet max. 15.000 EUR.

8.13. Save as stipulated in clause 8.1.-8.12. the Seller shall have no liability for defects. This applies to any loss the defect may cause, including but not limited to loss of production, loss of profit and any other consequential economic loss.

9. LIABILITY FOR DAMAGE TO PROPERTY CAUSED BY THE GOODS

9.1. The Buyer shall indemnify and hold the Seller harmless to the extent that the Seller incurs liability towards any third party in respect of any damage for which the Seller is not liable towards the buyer according to the second and third paragraphs of this clause. The Seller shall not be liable for loss or damage caused by the goods:

a) to any (movable or immovable) property where the damage occurs while the goods are in the Buyer's possession, or
b) to products manufactured by the Buyer or to products of which the buyer's products form a part or for loss or damage to any property, where the damage is caused by these products because of properties in the goods.

9.2. The Seller shall under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss. The above limitations in the Sellers's liability shall not apply where the Seller has been guilty of gross negligence. If a claim for loss or damage as described in this clause is raised by a third party to the contract, the latter shall forthwith notify the other party thereof. The Seller and the Buyer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal which examines claims against cither of them, where the claim is based on damage alleged to have been caused by the goods. The liability as between the Seller and the Buyer shall, however, always be settled by arbitration in accordance with clause 11.1.

10. GOUNDS FOR RELIEF - FORCE MAJEURE

10.1. The following circumstances shall be considered as grounds for relief if the impede the performance of the contract or makes performance unreasonably onerous: industrial disputes and any other circumstances beyond the control of the parties such as fire, war, mobilization or military call up of a comparable scope, requisition, seizure, currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstances as referred to in this clause. The above-described circumstances shall constitute grounds for relief only if their effect on the performance of the contract could not be foreseen at the time of formation of the contract.

10.2. The party wishing to claim relief shall notify the other party in writing without delay on the interventions and on the cessation of such circumstance. If grounds for relief prevent the Buyer from fulfilling his obligations, he shall compensate the Seller for expenses incurred in securing and protecting the goods.

10.3. Notwithstanding other provisions of these Terms of Delivery, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is delayed more than six months by reason of any grounds for relief as described in clause 10.1.

11. DISPUTES AND APPLICABLE LAW

11.1. Disputes arising out of or in connection with the contract shall not be brought before the court but shall be finally settled by arbitration in accordance with the law on arbitration applicable in the Seller's country.

11.2. All disputes arising out of the contract shall be judged according to the law of the Seller's country.