

# General Terms and Conditions of Business for the Commodity Trade

## I. Generally

1. Our quotations, supplies and services are given exclusively on the basis of these General Terms and Conditions of Business.
2. They also apply exclusively to all future business transactions with businessmen.
3. Purchase orders or orders are binding on the customer; the contract will materialize at our discretion by means of our acknowledgement of order, or by carrying out the purchase order or the order.
4. We expressly refuse diverging terms and conditions of business or counter-confirmations. Our silence about such diverging conditions does not apply as recognition or consent in particular, even not in the case of future contracts.

## II. Quality of the goods

1. The right is reserved to make alterations to the construction or shape of the delivery item, or both, insofar as the delivery item will not be considerably altered because of that and the alterations are reasonable for the customer's intended purpose or use according to the contract.
2. Samples, test samples, analytical data and other qualitative information that we provide are only indications within the framework of what is customary commercially and they lie within the actually relevant range of the appropriate values concerning dimensions (size), colour, quality, chemical composition and the operating mode of the goods that we supply. Except for the purchase of mineral-oil products, the permissible quantitative tolerance for all types of transport concerning the contractually agreed quantity amounts to + 5 %. Quantitative information that is given in the quotation or in the contract of sale with the prefix of 'ca.' (approx.) entitles us to deliver up to 10 % more or less. The contract also applies as fulfilled in the case of delivering an increased quantity or a reduced quantity. The purchase price is then orientated to Clause III, Paragraph 2 of these General Terms and Conditions of Business.
3. We only undertake a guarantee for the quality, durability or yield (coverage) of the delivery item, or for a risk of procurement, by means of an express declaration but not on account of the content of descriptions about the products, technical data, other printed papers and information.

## III. Prices and payments

1. The prices apply from our warehouse or ex-works in the case of despatch from the factory whenever a special agreement is lacking; they exclude packaging and packing. Prices that are quoted and agreed vis-à-vis businessmen are understood to be net but they are subject to the statutory rate of value-added tax which applies during the period when our services are being carrying out.
2. Our purchase-money claim will be increased or reduced according to the quantity that is delivered in compliance with Clause II, Paragraph 2.
3. If special agreements are lacking, then the payment must be made immediately after the delivery or provision and the receipt of the invoice by the paying office, without any reduction and free of charge. Promised discounts only apply to the case that the customer is not in arrears with paying for earlier deliveries.
4. Payments are only allowed to be made to our employees (office staff), if they show a valid empowerment for collection (i.e., if they are authorized to receive them).
5. We will only accept bills of exchange or cheques in the case of a corresponding agreement and only for the sake of payment. Credit notes for bills of exchange and cheques will be issued subject to the receipt and at the presented invoice's value, less the outlays on the day when we can dispose of the equivalent value.
6. Our debt claims will also be due for payment immediately in the case of granting time limits for payment, irrespective of the term – for instance, received and credited bills of exchange – if the customer does not culpably comply with the terms and conditions of payment, or if circumstances occur which allow to have justified doubt about the customer's credit-worthiness. The regulations of the Consumer Credit Law remain unaffected hereof.
7. The customer is not allowed to set off our claims unless the claim that is made for the set-off is undisputed or it has been legally established. Businessmen are only allowed to assert a right to refuse payment or a right of retention vis-à-vis our claims, if the claim on which the right is based is undisputed or it has been legally established. That rule also applies to the entrepreneurial right of retention arising from Articles 369 to 372 of the German Commercial Code.
8. If there is a continuing business relationship between us and the customer, then all of the arising reciprocal debt claims will – insofar as nothing else has been specified – be paid into a current account, to which the German Commercial Code's provisions apply. The individual debt balances in the current account will attract an interest rate that is at least 5 % above the basic interest rate (of the German Central Bank) in the case of customers and 9 % in the case of businessmen respectively. Our bank statements from the current account apply as statements of account. The balance applies as recognized if the customer has not made objections within six weeks since receiving the statement of account. We will advise the customer especially about this matter when the time limit begins at the latest.
9. In the case that a payment is made on the basis of SEPA or by means of the firm's direct debit procedure, we will notify the customer about this matter one working day at the latest before the direct debit takes place, in the case of a non-recurring SEPA direct debit and in the case of every SEPA direct debit by standing order with changing amounts. In the case that the SEPA direct debit with unchanging amounts is made by standing order for the first time, we will notify the customer about drawing the first direct-debit and the following drawings one working day at the latest before the first direct debit takes place.

## IV. Times of delivery and delay; self-delivery and force majeure

1. Times of delivery and dates of delivery only apply as approximately agreed unless we have given a written consent expressly as binding. Insofar as nothing else is agreed, the time of delivery will begin on the day when a written contract of sale is signed or when the acknowledgement of order (by the seller) or the confirmation of order (by the customer) is sent but not before providing the documents, consents and approvals that must be obtained by the customer, as well as not before the receipt of an agreed advance payment.
2. The period of delivery is complied with whenever the delivery item has been handed over before this period expires to the person who is intended to transport it in the case of an owed despatch, or when it has left our warehouse in the case of own transport or it has left the manufacturer ex-works in the case of despatch, or when the readiness for despatch has been notified to the customer in the case of owed carriage or conveyance.
3. If we do not receive supplies or services from our upstream suppliers for providing our contractually owed supply or service, because of reasons for which we are not responsible, despite proper and adequate precautionary buying (congruent precautionary buying), or if we do not receive the, correctly or not in good time, or if events of force majeure occur for a considerable duration (i.e., lasting for longer than 14 calendar days), then we will inform the customer in writing immediately or in textual form. In this case, we are entitled to postpone the delivery by the hindrance's duration, or to withdraw from the contract entirely or partially because part of the contract has not been fulfilled yet, insofar as we have complied with our aforementioned duty of information and we have not assumed the risk of procurement. The force majeure is equivalent to a strike, lockout, official intrusions, shortage of energy (electricity) and raw materials, non-culpable bottlenecks in transport, non-culpable operational hindrance – e.g., caused by fire, water or mechanical damage – and all other hindrances which have been brought about but for which we are non-culpable according to an objective point of view. If a date of delivery or a date of service, or a time of delivery or a time of service, has been agreed bindingly and it or they will be exceeded on account of the aforementioned events that are described, then the customer will be entitled to withdraw from the contract after a reasonable of grace (that we granted to him) has expired fruitlessly because part of the contract has not been fulfilled yet, whenever it is objectively unreasonable for him to continue adhering to the contract. The aforementioned regulation applies accordingly if a customary time of delivery and a customary time of service has been exceeded by more than 7 calendar days because of the aforementioned reasons, even without a contractual agreement about a fixed time of delivery or a fixed time of service or both. If the contract for the supplies and services that we have to provide is entirely or partially dissolved by us or by the customer on account of the aforementioned reasons, then we will immediately reimburse the customer with the part of the *quid pro quo* (payment) that is inapplicable for the dissolved part of the contract, in the case that he should have paid it in advance.
4. The fulfilment of the customer's contractual duty that exists until the delivery has been made is a prerequisite for complying with the time of delivery.

## V. Passage of risk and transport

1. We have the discretion to choose the way and means of despatch in the absence of a special agreement. The goods will be insured at the customer's cost on request.
2. If the customer is a businessman, then the risk will pass to the customer in the case of an owed despatch when the goods are handed over to the carrier or freight-forwarder, or at the latest when they leave the warehouse or when they leave the factory in the case of a direct despatch ex-works: that also applies if partial deliveries are made, or if the customer has accepted the cost of despatch.
3. If the customer is a businessman and he delays the despatch as a result of circumstances for which the customer is responsible, then the risk will pass to the customer on the day of readiness for despatch.
4. Delivered items (goods) must also be accepted or received by the customer – irrespective of his rights that exist according to the law and the contract – whenever they have insignificant defects.
5. Partial deliveries are permissible.

## VI. Warranty and customer's complaints

1. We warrant the delivery item according to the legal provisions, insofar as nothing else is specified in the following text and in Clauses VII. or VIII.
2. The following conditions apply to consumers:
  - 2.1. The customer's claims and rights in the case of defects in a used, movable delivery item are time-barred after one year following the passage of risk, subject to the regulations in Clause VI, No. 4.
  - 2.2. The customers have to notify us about apparent defects within a time limit of one month from receipt of the goods. If no notice of defects is given within this period, then the warranty rights for apparent defects will expire: this does not apply in the case of deliberate or deceitful action on our part, nor in the case of injury to life, limb or health, nor to undertaking a guarantee of freedom for defects, nor to liability according to the Product Liability Law.
  3. The following conditions apply to businessmen.
    - 3.1. The sale of used, movable delivery items takes place subject to excluding any warranty insofar as nothing else is agreed. If the customer has warranty claims in the event of a used, movable, sold article in the individual case – such as because of a special agreement – then the customer's claims and rights due to defects will be time-barred after one year has passed following the passage of risk: that does not apply in the cases that are mentioned in Clause 4 of this section.

- 3.2. The customer's claims and rights in the event of defects in movable, newly manufactured delivery items will be time-barred after one year has passed following the passage of risk, subject to the regulations in Clause VI, No. 4.
- 3.3. We will make a replacement delivery or a repair first of all for defects that considerably reduce the value of the goods or their suitability for the contractually assumed usage. We can grant a reduction of the purchase price instead of providing the supplementary fulfillment in the case of insignificant defects.
- 3.4. If the subsequent fulfillment fails, then the customer only has the right to a reduction of the purchase price, a right of withdrawal or a right to compensatory damages or both instead of the performance if he has set us a period of grace of at least 14 calendar days in writing for the supplementary performance before exercising these rights. Furthermore, these rights require as a prerequisite that the customer threatens us unmistakably with not accepting the supplementary performance any more after this time limit has expired. The aforementioned regulation (Clause VI, 3.4) does not apply if it is superfluous to set a time limit according to the law.

4. The aforementioned regulations about excluding the customer's claims against defects and the periods of statutory limitation do not apply in cases of intent or gross negligence on our part, nor in the case of injury to life, limb or health, nor to undertaking a guarantee of freedom from defects, nor to liability according to the German Product Liability Law (Produkt-haftungsgesetz), nor to undertaking a risk of procurement, nor whenever a longer time limit is stipulated in the cases of Article 438, Paragraph 1, No. 2 (structures and articles for structures) and Article 634a, Paragraph 1, No. 2 (building defects of the German Civil Code).

## VII. General limitation of liability

The customer's claims to compensatory damages, irrespective of whatever legal reasons and especially because of infringing the duties arising from the obligatory relationship and arising from impermissible actions, are excluded: that does not apply insofar as there is a compulsory legal liability and especially in the cases of deceitfulness, intent or gross negligence, nor in the case of injuring life, limb or health, nor in the case of delay or default, insofar as a fixed date of delivery was agreed because of undertaking a guarantee for the quality of the delivery item according to the German Product Liability Law (Produkt-haftungsgesetz) or in the case of another infringement of important contractual obligations; the claim to compensatory damages in this case is limited to the typically arising damages. "Important contractual duties" are those obligations that protect the customer's contractually important legal position, which have to be granted to him directly from the contract according to its content and purpose. Furthermore, those contractual duties which only make it possible to implement the contract at all by fulfilling them are important, whenever the customer has regularly trusted in compliance with them and when he should trust in them. No alteration of the burden of proof to the customer's disadvantage is connected with the aforementioned regulations.

## VIII. Special agreements about individual types of goods

- The following conditions apply to contracts of sale about the individual types of goods, if the customer is not the consumer.
1. Fertilizers: information about the contents as a percentage or the mixing ratios of our products must only be regarded as referring to approximate average values. The right remains expressly reserved to make differences or divergences, such as those which are unavoidable despite taking meticulous care, when manufacturing the goods and regulating the contents of them. We give the technical advice about use and application according to the best of our knowledge on account of our experience and research work. However, all of the information and details about the suitability and use of our goods are non-binding and they do not release or exempt the customer from carrying out his own checks and tests. The customer is responsible for complying with the legal and official regulations about our goods.
  2. Pesticides and insecticides are only allowed to be resold in the intact original containers. We point out that it is prohibited to export some of these agents outside Germany without the manufacturer's consent. We give information about the possible properties, processing and use (application) to the best of our knowledge but non-bindingly and subject to excluding any liability.
  3. The goods that are supplied by us in the areas of seeds, fertilizers or pesticides can lead to altering the soil's quality: this does not apply as a defect of the supplied goods, even if the change is caused by an interaction of various circumstances. Our liability is excluded in both cases.
  4. Special regulations about individual products.
    - a) Sowing grain and seeds: the latest edition of the General Terms and Conditions of Sale and Delivery for recognized, agricultural seed except for potato potatoes and sugar beet. We are not liable for mistakes, nor insufficiently developed or diseased plants.
    - b) Potatoes: German Terms and Conditions for Potatoes, Berlin Agreement of 1956, latest edition.
    - c) Corn (cereals): standard conditions in the German corn trade, insofar as nothing else has been agreed.
    - d) Feedstuffs: standard conditions in the German corn trade. Slight differences or alterations in the mixing ratio are no reason for making complaints.

## IX. Reservation of ownership

1. The following conditions apply to businessmen.
  - 1.1. We reserve the right of ownership over the delivery item until all payments arising from the business relationship with the customer have been received. The reservation of ownership also covers the recognized balance, insofar as we book the debt claims against the customer on the current account (current account's reservation).
  - 1.2. The customer is entitled to resell the delivery item during the ordinary course of business.
  - 1.3. Processing and manufacturing the conditional commodity take place on our behalf for the purposes of Article 950 of the German Civil Code but without obligating us. If the conditional commodity is manufactured or inseparably connected with articles that do not belong to it, then we will acquire the co-ownership over the new article in the ratio of the invoiced value of our goods to the invoiced values of the other manufactured or connected articles. If our goods are connected with other movable articles in order to form a unified article, then the customer herewith assigns the co-ownership to us in the same ratio. The customer will safeguard the ownership or co-ownership for us free of charge. The rights of co-ownership that arise from that apply to the conditional commodity. The customer is always obligated in response to our demands to give us the information which is required for pursuing our rights of ownership or co-ownership.
  - 1.4. If we acquire a new ownership in the cases of Clause 1.3, then we transfer this ownership to the customer herewith, subject to the condition of full payment of our debt claims which are mentioned in Clause 1.1 of this section.
  - 1.5. The customer assigns to us herewith a preferential part of the debt claim arising from reselling the delivery item, or the goods that are produced from this delivery item by means of processing or manufacture, amounting to the purchase price that is calculated by us for the delivery item.
  - 1.6. The customer is empowered for collect the assigned debt claims arising from the resale, subject to revocation at any time. He has to mention the debtors of the assigned debt claims to us on demand, to notify the assignment to them and to enable us to deliver the notification of assignment or to enable us to notify them directly. We will not disclose the assignment, provided that the customer complies with his payment obligations. If the estimated value of the securities that are pledged for us exceeds our debt claims against the customer by more than 30 %, then we will be obligated in this respect to release securities at our discretion, in response to the customer's request.
2. The following conditions apply to customers who are not businessmen.
  - 2.1. We reserve the right to ownership over the delivery item, as well as to any of the invoiced amounts that have arisen up to that time for delivering individual parts for the corresponding purchased article and to the repairs that are carried out on it together with interest and similar expenses, until the purchase price has been paid in full.
  - 2.2. The customer is not entitled to sell, manufacture (process) or mix the delivery item with other articles without our consent, provided that he has not paid our debt claims according to Clause 2.1 of this section.
  3. The following conditions apply to all customers.
    - 3.1. If the customer does not intend to resell the delivery item immediately as he is entitled to do, or if we demand an insurance, then the customer has to insure the goods that belong to us to a reasonable extent against the customary risks at his cost and to assign the insurance claims to us. We are also entitled to pay the insurance premiums at the customer's expense.
    - 3.2. If we withdraw from the contract because the customer is responsible for conduct that is in breach of the contract, then the customer is obligated – among other things – to bear the costs of recovering and utilizing the delivery item as well as the administrative costs that are incurred because of that. These costs amount to 10 % of the proceeds from utilization including the turnover tax, without proof: they must be assessed as higher or lower if we prove higher costs or if the customer proves lower costs. The proceeds will be credited to the customer after deducting the costs and other debt claims on our side, which are connected with the contract of sale.
    - 3.3. In the case of distraints or seizures, or other third-party encroachments, the customer has to notify us in writing immediately so that we can bring a lawsuit according to Article 771 of the German Code of Civil Procedure. Insofar as the third party is unable to reimburse the judicial and extra-judicial costs of a lawsuit that is brought according to Article 771 of the German Code of Civil Procedure, the customer is liable for the loss that we incur.
    - 3.4. In the case that a credit contract exists or has been concluded subject to pledging or mortgaging the operational inventory, the customer undertakes to protect our rights of ownership vis-à-vis the relevant credit institute (bank), which arise from the reservation of ownership over the delivery items that have not been completely paid for yet.

## X. Credit assessment

To check the credit rating of the customer (e.g. a score-rating) we can consult external service companies or credit agencies. These informations contain the address of the customer and from natural persons the date of birth.

## XI. Alternative consumer dispute resolution proceedings (Art. 14 section 1 ODR-VO and § 36 VSBG)

The European Commission provides for an online dispute resolution platform, which you can access here: <http://ec.europa.eu/consumers/odr/>. We are not obliged to participate in alternative consumer dispute resolution proceedings and do not provide this alternative.

## XII. Place of jurisdiction and applicable law

1. If the customer is a businessman, a legal entity under public law or a special fund under public law, then the place of jurisdiction for settling all disputes is our headquarters: this rule also applies to claims that will be asserted in the legal dunning procedure. In addition, we are also entitled to bring a lawsuit in the customer's place of jurisdiction. The regulations that are made in Clause VIII (e.g., arbitration court) remain unaffected hereof.
2. The legal relationships between the contracting parties are orientated exclusively to the law that applies in the Federal Republic of Germany, subject to excluding the UN Purchase Law (CSIG). The legal precedence of the standards that protect the consumer in the state or country where the customer has his usual residence remains unaffected hereof.