



Terms and Conditions of Sale and Delivery

I. General

These General Terms and Conditions of Sale and Delivery shall apply to all our offers and all contracts of sale and contracts for work and materials with us, including any consulting services. We shall not be bound by the buyer's general terms and conditions of purchase, even if we do not explicitly object to them. Our offers shall always be subject to change without notice unless we have explicitly designated them as binding.

Verbal agreements and promises shall require our written confirmation in order to be effective.

II. Delivery, delivery times, force majeure, punitive duties, delivery delays on the part of our suppliers

1. We shall be entitled to deliver 3% more or less than the volumes agreed in the contract. When the goods are shipped only the weight determined at our factory/warehouse shall be authoritative. This shall also apply in relation to any natural weight loss.
2. If the goods are not accepted within the envisaged period, we shall have the right to charge for the goods and to demand payment after setting a deadline of 3 working days. Before this time the goods shall be stored on the buyer's account and at the buyer's risk.
3. The delivery period shall commence when the acknowledgement of the order is sent out, but not before all questions concerning the order have been clarified. Any changes in the order will alter the delivery date, which will then have to be recalculated. Timely part-shipments in suitable volumes shall be permitted and can be settled separately.
4. If we are unable to comply with our delivery obligations due to force majeure, strikes or lock-outs, the effects of industrial disputes or because of other events beyond our control – regardless of whether these take place at our sites or at the sites of our supplier – we shall have the right to postpone the delivery date for the duration of the impediment and a suitable rundown time. If delivery subsequently becomes impossible or unreasonable for either of the Parties due to such events, then, in the event that delivery is impossible, both Parties shall have the right to rescind the contract, and in the event that delivery cannot be reasonably expected of a Party, the Party in question shall have the right to rescind the contract. We reserve the right to withdraw from the contract if punitive duties are imposed on primary products which we require to manufacture goods for the customer (e.g. almonds, peanuts etc.), and if these primary products cannot be obtained from alternative sources not affected by punitive duties or can only be obtained at conditions that we cannot be reasonably expected to accept.
5. Deliveries are subject to correct and punctual delivery by our own suppliers.

III. Liability for defects

1. Complaints due to obvious defects can only be considered if they are made immediately and no later than 7 days following the receipt of the goods. In this case notice of the defects must be given in writing (via post, fax or email). Hidden defects must also be notified without delay and no later than 5 days after they have been discovered. No complaints will be accepted if the buyer has processed the goods or transported them away from an agreed place of destination, unless the buyer proves that it did not notice the defect at the agreed place of destination or before processing and no negligence was involved.
2. Details concerning the composition of the purchased goods merely have a descriptive purpose. All recommendations made for the use of our products in processing are given to the best of our knowledge. However, due to the different requirements and individual conditions in use, we can give no guarantee that our goods will be suitable for a certain purpose if we have not explicitly confirmed that this is the case. At all events the buyer must first check that the goods are suitable for the buyer's intended purpose.
3. All claims by the Buyer in respect of defects become time-barred within twelve months as calculated from the transfer of risk. The reduced limitation period specified above does not apply to claims for damages that are based on a defect in the item sold or a breach of a subsequent performance duty. This shall not affect the limitation period for recourse from the supplier provided for in sections 445b and/or 478 BGB.

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IV. General liability

1. All claims for damages of any kind are excluded, whether due to defects or on other grounds as a result of delay or impossibility of performance, incorrect advice, culpa in contrahendo, the breach of other contractual obligations, on grounds of tort or on other legal grounds, particularly damage that is not damage to the delivery item, unless wilful intent, gross negligence, or breach of a fundamental contractual obligation is given.

Fundamental contractual obligations are obligations that are essential to the performance of the contract and on whose fulfilment the buyer can regularly rely.

2. Unless we acted on intent our liability is limited to foreseeable damages typical to the contract.
3. Reimbursements of expenses in lieu of performance are excluded as far as according to the provisions above liability for damages is excluded.
4. The provisions above do not apply to any liability due to damage of life, limb or health or in case of liability according to the German Product Liability Act for damage or foreign ratifications of the EU Directive of Product Liability.
5. The statutory regulations on the burden of proof are not affected by the provisions specified above.

V. Reservation of title

1. Unless it has been agreed with the Buyer that delivery is subject to payment in advance, we retain ownership of the delivered goods in accordance with the following provisions.
2. The delivered goods shall remain our property until all outstanding claims under the business relationship have been paid, including incidental expenses and interest. This also applies until the encashment of cheques and bills of exchange in relation to such claims. In the case current accounts the reservation of title shall also serve to secure our claim to the balance outstanding.
3. The processing and working of the goods under reservation of title shall be carried out on our behalf, without this giving rise to any obligations on our part. In the case of the processing, combination or mixing of our goods with other goods that do not belong to us, we shall be entitled to co-ownership of the new item in the same ratio as that between the invoice value of the goods under reservation of title and the value at the time of processing, combination or mixing of the other goods that have been processed, combined or mixed. If the buyer acquires sole ownership of the new item, the buyer hereby transfers co-ownership of this item to us in the same ratio as that between the invoice value of the goods under reservation of title and the value at the time of processing, combination or mixing of the other goods that have been processed, combined or mixed and shall store such goods on our behalf with professional care and diligence.
4. The resale of the delivered goods, regardless of whether they have been processed, combined or mixed, is only permitted for resellers in the normal course of business and under reservation of title and only if the claim from the resale is assigned to ourselves. The buyer may not pledge the goods or transfer title to the goods by way of security nor agree on a prohibition of assignment. The buyer must first obtain our approval before assigning a claim under a factoring agreement. The buyer must notify us immediately of any seizure of the goods or any other interference with our rights by third parties.
5. The buyer hereby assigns its claims from the resale of our goods, regardless of whether they are sold without or after any processing, combination or mixing with other goods. We accept this assignment. The value of the goods under reservation of title shall be the amount shown in our invoice plus an additional covering charge of 10%, which shall not be applicable if it comes into conflict with the rights of third parties. In the event of the resale of our goods after processing, combination or mixing or the resale of the new item after processing, combination or mixing or the mixed or combined part, the buyer shall assign its claim against its own customer to the sum of the invoice value of our processed, combined or mixed goods or only the amount equivalent to our share of the jointly owned item, if this amount should be lower. This shall also apply in the case of a sale after our goods have become an important part of another item through combination, mixing or processing with other goods that do not belong to us.



6. On request the buyer must provide all requested information concerning the assigned claims, particularly the name and address of its own customers. We shall have the right to give the buyer's customers notice of the assignment in the event of late payment.
7. The buyer shall be entitled to collect the assigned claims as long as it properly complies with its obligations towards ourselves. The buyer shall insure the goods under reservation of title at its own expense, if and so far as it is customary. The buyer hereby assigns any claims against the insurance in the case of the loss of or damage to the goods under reservation of title.
8. If the value of the collateral provided for our claims exceeds the value of these claims by more than 10%, we undertake to release the corresponding collateral on the buyer's request and may choose which items of collateral to release. Ownership of the goods under reservation of title and the assigned claims shall pass to the buyer on the settlement of all our claims arising from the business relationship.
9. If the goods are exported and the law in the buyer's country does not permit reservation of title, we may exercise all rights that the foreign law grants us in respect of the delivery item. The buyer must take all measures and make all statements that are necessary in order to effectively agree a reservation of title or a comparable security right to the delivery item under the law in the buyer's country.

VI. Price, payment

1. Statutory interest shall be charged in the case of late payment. If it becomes apparent after the contract has been concluded that our claim to payment is at risk because the buyer is unable to make payment, we shall have the right to demand the immediate payment of all claims still outstanding and to perform all existing supply agreements only on the provision of first-ranking collateral or prepayments. This shall not affect any other statutory claims that we may have.
2. We reserve the right to adjust the prices payable for the order as we see fit in order to account for developments in the costs that form the basis of our price calculations. A price increase will be considered and a price reduction made if, for example, production costs, wage costs, raw materials costs, other costs charged by our suppliers, exchange rates, duties (particularly punitive duties) and/or other cost factors outside our sphere of influence rise or fall. Increases in one type of cost may only be used as grounds for a price increase insofar as they are not offset by any reduction in costs in other areas. If costs are reduced, prices shall be reduced accordingly insofar as the cost reductions are not partly or wholly offset by cost increases in other areas. When exercising our discretion to increase or reduce prices, we will make price adjustments at a point in time when cost reductions are not accounted for using criteria less favourable to the customer than those applied to cost increases, i.e. when cost reductions affect prices to at least the same extent as cost increases.
3. The buyer has a right to offset a claim or a right of retention only if and to the extent that there is reciprocity (Section 320 of the German Civil Code [BGB]) between its counterclaims and the claims asserted by us or if its counterclaims have become final and absolute, are undisputed, or have been accepted by us. The Buyer may moreover only assert a right of retention to the extent that its counterclaim is based on the same contractual relationship.
4. The Buyer has the right to withhold payments, or to offset counterclaims against them, only in so far as the Buyer's counterclaims are not in dispute or have become final and absolute. This does not apply to counterclaims of the Buyer which directly seek rectification or to reverse a transaction - owing to a defect we have not corrected, or are unable to correct, by means of remedial performance - and which are based on the same contractual relationship as our claim to payment.

VII. Export control

1. The formation of the contract and its performance shall be subject to all applicable export control regulations, national, European and US, including all European or US sanction lists and other personal embargos (collectively referred to as "export control regulations").

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2. The observance of and compliance with the relevant export control regulations and other laws in the buyer's country and in the country to which deliveries are made shall be the responsibility of the buyer. On the formation of the contract the buyer must notify us in writing of all particularities resulting from these provisions.
3. The buyer hereby undertakes not to use the goods for military or nuclear purposes of any kind nor to sell the goods to third parties who would use the goods for such purposes nor to provide such parties with the goods in any other way, be it directly or indirectly. On the seller's request, the buyer shall provide the seller with the original copy of the corresponding documents regarding the final destination of the goods in the format prescribed by the German Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle) and shall do so without delay, after no longer than 10 working days.
4. If after the formation of the contract we become aware of any circumstances that would justify the assumption of a possible or actual infringement of the export control regulations or the buyer's obligations under this clause and its sub-clauses we will notify the buyer in writing.
5. In all cases in which circumstances become known that justify the assumption of a possible or actual infringement of the export control regulations or of the buyer's obligations under this clause and its sub-clauses we shall be given a reasonable amount of time before we are considered to be in default so that we have the opportunity to examine the matter.
6. If actual infringements of the export control regulations or breaches of the buyer's obligations under this clause and its sub-clauses should be ascertained which cannot be rectified or excluded, we shall have the right to rescind the contract.
7. The buyer undertakes to indemnify us against all claims due to the buyer's poor performance of or failure to perform its obligations under this clause or its sub-clauses. The damages shall also include compensation for all necessary and reasonable expenses that we incur or have incurred, particularly the costs and disbursements for any legal defence and any official penalties or fines.

VIII. Miscellaneous

1. The place of performance is Hamburg.

If the buyer is domiciled in the EU or in the European Economic Area, then the following applies:

If the buyer is a merchant, a legal person under public law or a special fund under public law, or if it has no general place of jurisdiction in Germany, then the sole place of jurisdiction is Hamburg. We may also choose to bring an action against the buyer before the competent court in the place where the buyer has its principal place of business.

If the buyer is domiciled outside the EU and European Economic Area, then the arbitral court of the Deutsche Institution der Schiedsgerichtsbarkeit e.V. (DIS) (German Institution of Arbitration) shall have sole jurisdiction over all and any disputes arising from and in connection with contracts concluded based on these Terms and Conditions, and shall decide definitely on such disputes to the exclusion of ordinary legal recourse. The place of arbitration shall be Hamburg. The language of the case shall be German. If one of the parties is obliged to reimburse the other party with legal fees in connection with arbitral proceedings, then such fees are limited to the invoiceable costs as per the German Lawyers' Remuneration Act (Rechtsanwaltsvergütungsgesetz [RVG]).

2. German law shall apply. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply. The Incoterms 2010 shall apply.
3. If one or several provisions of this contract should be invalid, this shall have no bearing on the validity of the remaining provisions or the contract as a whole.

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