



BCH

General Terms and Conditions 24.05.2018

Preamble

We supply to contractors as defined in § 14 BGB (German Law), juristic persons, under public law and separate estate of public law according to the following terms and conditions. The exceptional validity of other conditions - in particular purchasing conditions of the contractor - requires an expressly written confirmation from our side.

§ 1 Offer and Acceptance

- a) Our offers are subject to final confirmation. Orders are only binding if confirmed in written form or we began their execution. Written confirmations are also required for changes, additions and verbal side-agreements. The acceptance of orders takes place subject to correct supply to us.
- b) Supplementing clauses for product identification as "(round-) about", "as already supplied", "as before" or similar additions in our offers refer exclusively to the quality or quantity of goods but not to the price. Such supplements in our contracts are understood accordingly and might represent a confirmation.
- c) Quantity specifications are always considered approximate. Safety and filling related deviations up to 10%, downwards or upwards are considered as contractual. Such quantity variance is fully taken into account for the invoice sum. For further information see § 4 f.

§ 2 Price and Payment

- a) Our prices are principally excluding the legal value added tax. The calculation is based on the quantities and/or weights determined by us or our supplier. However, the calculation can be corrected due to the quantities and/or weights determined by the receiver, if the weighing took place by means of a calibrated scale and the goods were transported on our risk. In case of supply in free delivered tank truck, the material is not pumped into the storage container of the customer free of charge. Here the outlet weight is decisive and/or the net weight of the product in the truck. Within the CMR tolerances up to 2% are permitted.
- b) The invoice amount is net cash payable on supply of the goods, as far as nothing else is agreed upon.
- c) We reserve the right to charge interest from the due date on of 10% above the current base interest rate. The base interest rate is announced by the European Central Bank.
- d) In case of payment delay we can plead a further damage for delay.
- e) Changes and cheques are accepted, but they are only considered as payment once successfully redeemed. Additional banking expenses are to be carried by the Buyer.
- f) The Buyer may not subtract his or other financial claims from our receivables. Only with written exception, accumulation of debts and receivables is permitted. Traders may hold back the payment due to defects until the rightness of the claim is decided. Foregoing only applies, if the Buyer places sufficient securities. Non-traders may not retain the payment because of default of another contract than the one of concern, from which the outstanding payment originates.
- g) When a Buyer is in default of payment, all other outstanding payments of that same customer become due immediately. Subsequently, we are entitled to request prepayment or bank security for all further relations. When a delay of payment is not eliminated within an appropriate respite, we are entitled to withdraw from the contract or to claim compensation due to non-performance of the contract. It especially applies to contracts not executed yet. For prepayments the value date of the bank applies as date of receipt. Should facts arise which lead to the assumption that the Buyer is no longer worthy of credit, we are entitled to demand prepayment before delivery of the goods, even if differently agreed upon, as well as antedate all other outstanding payments.
- h) The costs of payment reminders and their prosecution including all necessary measures (e.g. obtaining information, involving a debt collection agency) are to be carried by the Buyer.

§ 3 Delivery

- a) The delivery times and dates are always to be considered approximate.
- b) For deliveries which do not get in contact with our establishments (third-party deal), delivery date and time are considered fulfilled, when the goods leave the supplier at a time which is usually required for a timely supply of the receiver.
- c) Force Majeure - which also includes publically legal restrictions like strikes and lockouts - entitles us to withdraw from a contract. Payment of compensations because of default or delay is excluded in such cases. It also applies to non-punctual self-supply by our supplier and his pre-supplier. We are obligated to report such events immediately to the Buyer.
- d) In case of delay in delivery, the Buyer is entitled to state an appropriate respite. If the respite proofs unsuccessful, the Buyer is entitled to withdraw from the contract. Compensation due to non-performance after the appropriate respite can only be claimed, when the default of supply was caused by deliberate or roughly negligent behaviour of our legal representative or auxiliary agents.
- e) The regulations of INCOTERMS 2010 are to be applied.

§ 4 Dispatch and Acceptance of Goods

- a) During collection of goods at named place the Buyer or respectively his Service Provider is assigned to load the vehicle with additional attention to the legal regulations.
- b) Unloading and inbound of the goods is the Buyers' responsibility, unless differently agreed upon in written form.
- c) In case of supply in tank trucks and demountable-tank trailers the receiver has to ensure the perfect condition of his silos, tanks or other storage vessel as well as to arrange the connection between the outgoing pipes and his receiving system on own responsibility. Our responsibility is limited to the operation of the vehicle-own mechanisms.
- d) Insofar as our employees are assisting for unloading or discharging beyond their responsibilities, the damage caused to goods or other damages is solely on risk of the Buyer as they do not act as our legal representatives.
- e) The above applies accordingly by delivery through Service Providers, as far as from their performance a liability of the selling party can be deduced. The liability of third parties remains unaffected.

§ 5 Packing

- a) In case of supply in reusable packaging, the packaging has to be returned to the sender within four weeks after receipt in a clean, flawless condition on own expense and risk or eventually collected by our vehicle against acknowledgment of receipt, unless differently agreed upon in written form.
- b) If the Buyer does not fulfil his obligation under a) in time, we are entitled to charge an adequate fee for the time above four weeks. When the respite is overdue the return of the packaging can be demanded including replacement costs under consideration of the previous fees.
- c) The mounted signs are not to be removed. Reusable packaging may not be exchanged and filled with other material. For value reduction, exchanging and loss, the Buyer is fully liable without regard to responsibility. The condition when arriving at our premises or warehouse or premises of the pre-supplier is the only one of concern. Usage as storage vessels or passing on to third parties is inadmissible, as far as not differently agreed upon in written form.
- d) In the case of supply in tank wagons the Buyer has to ensure fastest dispatch and free return to us or a given address. In the case of a delay for emptying caused by the Buyer, the additional charges for rent are to be carried by the Buyer.



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§ 6 Reservation of Proprietary Rights

- a) The property of the goods only transfers to the buyer after the invoice amount is settled including additional claims arising from the business relationship. It also applies when payments are made on particularly designated claims. On open account the reserved property applies as security. The property of goods transfers latest to the Buyer when all claims have been indisputably settled.
- b) As long as the Buyer fulfils his commitments to us duly, he is authorized to the further use of the property reserved goods in the usual way of business.
- c) In case the Buyer does not fulfil his payment obligation even after respite, we are entitled to reclaim the property-reserved goods without another respite and rescission notice. In retraction of the goods, a rescission from the contract is only valid with our written declaration.
- d) Altering or using property-reserved goods results in no commitment for us. We are considered according to § 950 BGB as manufacturer and acquire property of intermediate and final products in relationship between the invoice amount of our property-reserved goods and the invoice amounts of third-party goods. The Buyer stores the goods in trustee relationship and free of charge. The same applies to mixing or blending property-reserved goods with third-party goods (§ 947 BGB, § 948 BGB).
- e) The Buyer cedes the right for claims against third parties through resale of the property-reserved goods to us, to secure our receivables. If the Buyer resales goods from which we have partly the property rights according to letter d), he cedes the claims to us in the according share. Does the Buyer use the property-reserved goods in the context of a production (or similar) contract, then he cedes the receivables/production-costs receivables at the height of goods used according to the invoice value.
- f) The Buyer is authorized, within normal course of business, to collect receivables from usage of property-reserved goods. When concrete concern arises that the Buyer does not or will not fulfil his obligations accordingly, the Buyer has to forward our claim to his customers, abstain from any provision of receivables, hand out all necessary information about the goods still in our property and balance all receivables of ours. Access of third parties to the goods in property right has to be reported immediately.
- g) When the value of the securities, which is entitled to us, exceeds the amount of total claims, we are obligated to release securities of our choice.

§ 7 Warranty Rights, Audit and Reprimand Obligations of the Buyer

- a) For material defects, to which also the absence of assured characteristics count, we are liable against traders and legal entities of the public law in accordance with the legal regulations on transformation, reduction or replacement, if the legal as well as the following regulations are fulfilled:
 - 1) The Buyer has to examine the goods and packing immediately upon arrival according to commercial customs. When the goods are supplied in parcels, the Buyer has to examine labelling on each individual parcel for accordance with the order. In case the product is supplied in tank trucks or tank trailers, which do not remain at the Buyer, he has to examine the accompanying official transportation documents for accordance with the order. In addition, the Buyer is obligated to test a sample of the tanks' contents for accordance before emptying the tank.
 - 2) During inspection as in number 1), the Buyer has to report damage immediately in a written claim.
 - 3) When the Buyer omits the investigation or fails to report immediately in a written claim, he loses the warranty on defects. The same applies in case of wrong delivery, also in case of such a substantial deviation, that an acceptance of the goods had to be regarded by the Buyer as impossible.
 - 4) When a hidden damage is found, the Buyer has to file a written reprimand immediately. Otherwise goods are regarded as accepted. Anyhow, the time to report a hidden lack expires after 8 weeks counting from the date of receipt. A right on replacement due to wrong delivery remains unaffected.
 - 5) With each written claim for defects we are entitled to view and examine the goods of concern.
- b) For material defects, to which also the absence of assured characteristics count, we are liable against Non-Traders in accordance with the legal regulations on transformation, reduction or replacement, if the legal as well as the following regulations are fulfilled:
 - 1) The not-commercial Buyer has the same inspection and examination obligations as the Buyer as in letter a), number 1). Still, for the correct inspection and examination, knowledge customary in trade is not expected, but the proficiency to be awaited from his commercial positioning.
 - 2) During inspection as in letter a), the Non-Trader has to report damage immediately. All other defaults are to be reported within six months.
 - 3) When the Buyer does not fulfil reasonable expectations for investigation or if he fails to serve the respite, he loses the warranty regarding the defects.

§ 8 Liability for Consequential Damages and Other Defaults

- a) For damage, which occurs through defects of the purchased good, false delivery or defects of the packing at legal assets of the Buyer, including his financial assets, we are liable as following:
 - 1) As long as damages could have been prevented through the obligations of examination of the Buyer, we exclude our liability against Traders and Legal Entities of the public law, unless the damage was intentional by one of our Legal Entities. Under the same conditions any liability is excluded against non-trader, unless the damage is caused deliberately or through rough negligent behaviour on our side.
 - 2) When damages still occur after fulfilment of the Buyers' obligations, we are only liable against Traders and Non-Traders for intentional or rough negligence.
- b)
 - 1) We are liable for damages other than those regulated above (except in the event of breach of material contractual obligations) only if we, our legal representatives or vicarious agents are guilty of an intentional or grossly negligent conduct can be laid.
 - 2) In the case of a slightly negligent breach of duty of a cardinal obligation, our liability shall be limited to that damage which, according to the nature of the transaction in question is predictable and typical.
 - 3) The aforementioned limitations of liability also apply to any competing claims arising from a tort. The basis for claims under data protection law is not covered by this liability regulation. They shall also not apply to claims for damages from injury to life, body or health, for such under the Product Liability Act or under mandatory provisions of national law and European chemicals legislation and the German Commercial Code (HGB).
- c) We are not liable for the suitability of the product for the purposes intended by the Buyer.
- d) All claims according to § 8 lapse half a year after the damage occurred, excluding tortious claims.

§ 9 Closing Conditions

- e) Place of jurisdiction for all disputes is Brühl. This also applies to lawsuits referring to cheques. The contractual relations and everything in relation applies to German law under exclusion of the UN purchase regulations.
- f) In case one of the above clauses is or becomes invalid, it shall be replaced with comparable clauses serving the mutual interest and economic purpose of the contract.

§ 9 Data protection

For all information in connection with the handling of user data, we refer to our separate data protection declaration.

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