

Terms and Conditions of Sale and Delivery

(Status: 15. March 2018)

1. General provisions – Scope of application

- a) These General Terms and Conditions of Sale and Delivery (“GTC”) of the Seller apply exclusively; the Seller does not accept terms or conditions of the Buyer that are contrary or different to these GTC unless it has expressly acknowledged their applicability in writing. The Seller’s GTC apply also if the Seller effects delivery to the Buyer without reservation in the knowledge of terms or conditions of the Buyer that are contrary or different to these GTC.
- b) These GTC apply only to companies within the meaning of § 14 BGB (German Civil Code), legal entity under public law, and special funds under public law.
- c) These GTC apply to all present and future business relations with the Buyer.

2. Contracts

- a) Offers by the Seller are not binding. If the Buyer’s purchase order can be categorised as an offer for purposes of § 145 BGB, then the Seller may accept it within one week after receiving it.
- b) Unless otherwise provided in these GTC or in the Seller’s order confirmation, INCOTERMS apply to the current version of 2010.
- c) The Seller is entitled to rescind the contract if the Buyer has filed a petition for the opening of insolvency proceedings against its assets, the Buyer has made a declaration pursuant to § 807 ZPO (German Code of Civil Procedure), such insolvency proceedings have been opened, or the opening of the insolvency proceedings has been denied for lack of sufficient assets.

3. Prices – Payment terms

- a) Unless the order confirmation states otherwise, prices are quoted “ex works, Bremerhaven”. The statutory value added tax is not included in the prices; it is charged in the legal amount on the billing date and invoiced as a separate item.
- b) Unforeseen changes in foreign exchange rates, freight or insurance charges, customs tariffs, taxes or countervailing charges that affect prices are charged to the Buyer if the change occurs between closing of the purchase contract and delivery and the period between closing and delivery is no more than 12 weeks. The Seller’s right to a price adjustment expires four weeks after delivery if, within that time, the Seller fails to demand from the Buyer the increase in price resulting from such a change.
- c) The Buyer is entitled to set-off and retention rights only if and in so far as the Buyer’s counterclaims and the claims asserted by the Seller arise from reciprocal obligations (§ 320 BGB), or if the Buyer’s counterclaims have been declared final and absolute, are not in dispute, or have been acknowledged by the Seller. Furthermore, the Buyer is entitled to exercise its right of retention only in so far as its counterclaim is based on the same contractual relationship.
- d) Should facts become known that give rise to the fear that the Buyer’s financial circumstances have materially deteriorated since the closing of the contract, then all claims arising from the business relationship, including those for which bills of exchange or cheques have been deposited, are immediately due and payable. The Buyer’s defences — with the exception of the defence that a later due date was agreed upon — otherwise remain unaffected. The Seller is entitled to make performance that remains outstanding conditional upon payment in advance or security. The details are set forth in § 321 BGB.

4. Delivery time, force majeure, delivery subject to availability

- a) Agreed delivery deadlines are binding only if the Buyer satisfies its contractual obligations, its payment obligations in particular, punctually and in due form. The defence of failure of contractual performance (§ 320 BGB) and the defence of uncertainty (§ 321 BGB) are reserved.
- b) Unforeseen impediments, particularly events of force majeure that the Seller is unable to prevent despite such care as may be reasonably expected under the circumstances — irrespective of whether they occur at the Seller’s business establishment, at the supplier’s end, or elsewhere — such as strikes, lock-outs, traffic obstructions for which the Seller is not at fault, fire, frost, accidents, damage to machinery, lack of transport capacity, import restrictions, import bans, war, political turmoil, unrest, or energy shortages, release the Seller from performance of the contractual obligations it has assumed for as long as such events continue. The Seller is obliged to promptly inform the Buyer thereof if such events occur; at the same time, the Seller is obliged to tell the Buyer how long such an event is expected to continue. Either party may rescind the contract if such an event continues for more than three months. The Seller is obliged to promptly refund any consideration given by the Buyer.
- c) Delivery subject to availability:
Sales are subject to the Seller’s own receipt of correct, complete, and timely deliveries; this applies in particular when the Seller has made a purchase subject to the same or a similar reservation, particularly where a fish catch is concerned. In the case of fish deliveries, the Seller is entitled, in the event of insufficient catches, to deliver less than the full order, or to postpone the delivery date, in proportion to the extent to which the inadequacy of the catch affects the Seller’s ability to make delivery. The Seller is obliged to notify the Buyer promptly of the non-availability of goods to be delivered and to promptly refund any consideration given by the Buyer.
- d) If the Seller is late in making delivery and the Buyer suffers harm as a result, the Seller is liable for the damage caused by delay in an amount not exceeding 5% of the delivery value of the delayed performance. Other legal claims or rights (particularly to rescission and damages in lieu of performance) are reserved to the Buyer — within the limits of Item 7 — if the statutory conditions are present.

5. Obligation to inspect goods and give notice of defects

- a) The Buyer’s rights in respect of defects are predicated on the assumption that the Buyer has duly satisfied its obligations to inspect goods and to give notice of defects pursuant to § 377 HGB (German Commercial Code).
 - aa) Highly perishable foods, particularly fresh fish and any kind of fresh fish product, must be inspected by the Buyer, pursuant to § 377(1) HGB, within three hours after delivery and, if a defect is discovered, reported to the Seller within five hours after delivery.
 - bb) Deep-frozen fish or parts thereof must be inspected pursuant to § 377(1) HGB immediately upon delivery; this includes defrosting a sufficient number of random samples. Defects that are noticeable before defrosting must be reported within 24 hours after delivery; notice must be given promptly of defects that are noticeable on inspection only after defrosting, but no later than 48 hours after delivery.
- b) Goods are considered approved if:
 - aa) the Buyer fails to promptly substantiate quality discrepancies at the Seller’s request with attestations of sworn experts or public analysts — weight deficiencies with attestations of the German Federal Railways (Bundesbahn), trade inspectorate, or a sworn expert;
 - bb) the Buyer does not treat the faulty goods with due care until an instruction is received from the Seller;
 - cc) the Buyer improperly returns the faulty goods or sends them elsewhere without the Seller’s consent.
- c) Notifications of defects must be given by fax or e-mail.

6. Liability for defects

- a) In the event of a defect, the Seller reserves the right to choose the manner of subsequent performance (remedial measures or replacement delivery).
- b) The limitation period for claims arising from material defects is twelve months calculated from the time at which the goods are delivered. The Seller’s liability for damages according to Item 7 remains unaffected thereby, however. The statutory limitation period for recovery from a supplier of the Seller according to §§ 478, 479 BGB also remains unaffected.

7. Liability for damages

- a) The Seller is liable according to the provisions of law if the Buyer asserts claims for damages based on intentional misconduct or gross negligence, including intentional misconduct or gross negligence on the part of the Seller’s representatives or performing agents. If no wilfully intentional breach of contract is imputed to the Seller, liability for damages is limited to the foreseeable damage that typically occurs.
- b) The Seller is liable according to the provisions of law if it is in material breach of an essential contractual duty; in this case, liability for damages is limited to the foreseeable damage that typically occurs. An essential contractual duty in this sense is defined as any duty the performance of which alone makes proper performance of the contract possible and on compliance with which the Buyer may normally rely.
- c) Statutory liability for blameworthy injury to life, body, or health remains altogether unaffected; this applies also to mandatory liability under the German Product Liability Act (Produkthaftungsgesetz) or other national implementations of the European Product Liability Directive.
- d) Except as otherwise provided above, liability for damages beyond that provided for in this Item 7 — irrespective of the legal nature of the asserted claim — is excluded. This applies in particular to claims for damages for breach of other duties or for tortious claims for compensation for material damage according to § 823 BGB.
- e) The limitation according to letters a) to d) applies also if, instead of a claim for damages in lieu of performance, the Buyer demands compensation for futile expenses.
- f) In so far as the Seller’s liability for damages is excluded or limited, such exclusion or limitation applies also to the personal liability for damages of its staff, employees, representatives, and performing agents.

8. Retention of title, prolonged or expanded retention of title

- a) The Seller retains title to the delivered products until all claims arising from the business relationship with the Buyer have been paid in full.
- b) All processing or treatment of the reserved goods by the Buyer is performed on behalf of the Seller but imposes no liabilities on the Seller. The Seller retains title to the resulting new goods in their treated or processed state. Processing, treating, mingling, mixing, or combining the Seller’s reserved goods with other products that do not belong to the Seller gives the Seller co-ownership of the resulting new product proportionate to the ratio between the invoice price of the reserved goods and the invoice price of the other products.
- c) The Buyer may in the ordinary course of business sell the reserved goods of which the Seller has sole or joint ownership; the Buyer is not permitted to pledge the goods, transfer them by way of security, or assign them for security purposes. The Buyer hereby assigns to the Seller in advance all claim entitlements arising from the resale of the reserved goods or of the products created through processing, treatment, mingling, mixing, or combining. This applies also when the products are sold for one total price along with other products that do not belong to the Seller. If a provision of law gives a third party ownership or joint ownership rights to the products as a consequence of processing, treatment, mingling, mixing, or combining, the Buyer hereby likewise assigns to the Seller in advance the claims accruing to the Buyer against such third party. Assignments for purposes of this section must never be made for more than the amount of the invoice price of the reserved goods. The Buyer is authorised to collect the assigned debts until revocation, which is permitted at any time. The Seller hereby accepts the assignments of the Buyer provided for in this section.
- d) The Seller agrees to release, at its option upon request by the Buyer, the security to which it is entitled under the foregoing provisions to the extent that the value of the security exceeds the claims to be secured by more than 10%.
- e) If the Buyer’s assistance is needed to make the retention of title valid, for example with registrations required under the law of the Buyer’s country, then the Buyer must take such action.
- f) If the Buyer is in default of a payment, the Seller may prohibit the Buyer entirely or, at its option, partially — allowing, for example, only alienation or further processing — from disposition over the reserved goods.
- g) If, according to objective criteria, the Buyer is subject to a duty to file a petition for the opening of insolvency proceedings, the Buyer must — of its own accord — refrain from any disposition, in whatever manner, of the reserved goods. The Buyer is obliged to promptly report its inventory of reserved goods to the Seller. In a case such as this, the Seller is further entitled to rescind the contract and to demand the return of the reserved goods. If the reserved goods have been processed, treated, mingled, mixed, or combined with other products, the Seller is entitled to demand their surrender to a trustee; the Buyer is obliged to report all joint owners of the reserved goods along with their company or personal names, addresses, and joint ownership ratios. The same applies mutatis mutandis to claims that have been assigned to the Seller according to the foregoing sections; in addition, the Buyer must of its own accord provide the Seller with the names and addresses of all debtors along with copy of the documents substantiating the claims against them.

9. Venue, place of performance, applicable law

- a) If the Buyer is a businessman, a legal entity under public law, or a special fund under public law or has no general venue in Germany, it is agreed that Bremerhaven is the exclusive venue for all disputes arising from or in connection with this Agreement. Alternatively, the suing party is entitled to have recourse instead to the Court of Arbitration of the Hamburg Chamber of Commerce. If this occurs, the Court of Arbitration is competent only to decide on the claims asserted in the complaint. The defending party is entitled to bring an arbitral counterclaim. The place of arbitration is Hamburg; the language of the proceedings is German.
- b) If the order confirmation does not state otherwise and the Buyer is a businessman, the place of performance is the Seller’s registered place of business.
- c) The law of the Federal Republic of Germany applies; the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded from application. The application of the Vienna UNCITRAL Convention on International Sale of Goods is excluded.