

General Terms and Conditions of Delivery and Payment of Bauck GmbH

1. Applicability of the Terms and Conditions

1. These Terms and Conditions shall apply to all of our deliveries, services, and offers regarding contractors (Section 14 paragraph 1 of the German civil code - 'BGB') as well as corporate bodies under public law and special funds under public law [öffentlich rechtliche Sondervermögen]. These General Terms and Conditions shall not apply to consumers in the sense of Section 13 'BGB'.
2. Any agreements deviating from our General Terms and Conditions of Delivery and Payment shall only be effective in case we have explicitly confirmed them in writing.
3. The 'Einheitsbedingungen im Deutschen Getreidehandel' [unified conditions of the German grain trade] including the 'Zusatzbestimmungen für den Handel von Biogetreide und verwandte Produkte' [supplemental conditions for trade with organic grain and related products] as currently amended shall apply supplemental and be subordinate to these General Terms and Conditions of Delivery and Payment.

2. Contract Formation

1. Our offers are non-binding. The order submitted by the customer shall represent a binding offer. We shall be entitled to accept this order within three weeks by sending either an order confirmation or the ordered goods.
2. Oral agreements shall only be valid if confirmed in writing.
3. We reserve the right to make alterations or to allow deviations in our deliveries or services insofar as reasonable for the customer.

3. Delivery Period, Transfer of Risk

1. The agreed delivery period shall not begin before we receive the results of credit check, if such credit check is necessary according in our discretion. If the goods must be produced according to customer specifications or following the resolution of technical production issues, then the agreed delivery period shall not begin before production is completed.
2. Adherence to our delivery obligations requires the punctual and correct fulfilment of the customer's own obligations.
3. Deliveries shall be carried out at the risk of the customer from the warehouse in Rosche to the delivery address provided by the customer. This shall also apply in case the delivery is made from a different location than our warehouse. We shall not be obligated to make deliveries abroad; if no domestic delivery address is provided, then we also shall be entitled to prepare the goods ordered for collection.

4. Prices, Conditions of Payment

1. Our invoices must be paid in full within 14 days of the invoice date, provided our order confirmation does not specify otherwise.
2. The customer shall only have offsetting rights if his counter-claims are recognised by us, undisputed, or established by final judgement. Furthermore the customer shall be entitled to exercise right of retention, provided the customer's counter-claim is based on the same contractual relationship.
3. Our prices are considered net, i.e. excluding statutory VAT, freight and packaging, and shall apply from the warehouse in Rosche or from another loading point specified by us.
4. We reserve the right to increase our prices accordingly if costs increase after conclusion of the Agreement, especially in case labour agreements or material prices cause increases, and if over four months have passed since conclusion of the Agreement and the agreed delivery. Upon request, we shall provide evidence of the price increases to the customer.

5. Right of Withdrawal

1. In the event of payment suspension, bill protests, or impaired creditworthiness and trustworthiness or other events which endanger or may endanger the regular completion of the transaction, then we shall be entitled to free ourselves from our obligation to perform and may withdraw from the Agreement, provided that the customer, despite being requested, is not prepared to provide a security or service on the principle of performance upon counter-performance [Zug um Zug].
2. In case the goods ordered are not available and we are not responsible for this unavailability, then we shall also be entitled to withdraw. We shall undertake to inform the customer of the unavailability immediately and to reimburse any service in turn immediately.

6. Advertising

1. All images in our advertising (catalogue, Internet, flyers etc.) represent the depicted goods at the time of printing and initial publication of the adverts; we reserve the right to make changes later. The indicated prices are non-binding and subject to change.

2. Furthermore, the images contained in our adverts may represent special models of individual products that are not included in the base price of the standard model.

7. Notices of Defects

The customer may only submit claims for defects if the customer has correctly adhered to his obligation to inspect and submit notice of defects under Section 377 of the German commercial code ('HGB'). Section 377 'HGB' shall apply to our commercial and other corporate customers.

8. Claims for Material Defects

Customer claims involving material defects shall be restricted to the delivery of replacement goods free of defects. If delivery of a replacement is not possible for us within a reasonable period or if it is otherwise considered a failure, then the customer may either choose to demand a reasonable discount or withdraw from the Agreement due to the defective delivery.

9. Claims for Defects of Title

1. We shall defend the customer against all claims resulting within the limitation period from the violation of industrial property rights or copyright by the goods used in accordance with this Agreement. We shall only be liable for damages due to defects of title, in particular costs and damages imposed on the customer by a court, provided the customer has immediately informed us in writing regarding such claims and reserved all defensive measures and arbitration proceedings for us.
2. If claims are submitted against the customer according to clause 1, or if claims are expected to be submitted, then we may exchange the delivered goods at our own expense to an extent reasonable for the customer. If this or the attainment of a right of use is found to be impossible at reasonable costs, then the rights of the customer shall be based on the accordingly applicable provision under article 8.

10. Damages

1. We shall only be liable for damages for which we are responsible, regardless of legal basis, if the damage
 - a) was caused as the result of a culpable breach of a major contractual duty or in a manner endangering the fulfilment of the contractual purpose, or
 - b) is based on gross negligence or intent.
2. If we are found liable according to clause 1 a) above for the violation of a major contractual duty, without this being a case of gross negligence or intent, then our liability shall be restricted to the extent of the damages that we would typically have taken into account upon conclusion of the Agreement based on the circumstances known to us at that point.
3. This restriction of liability according to clause 2 above shall also apply to damages caused by gross negligence or intent by our employees or representatives, who are not our managing directors or executives.
4. In the cases of clauses 2 and 3 above, we shall not be liable for indirect damages, consequential damages, or lost profit.
5. The liability restrictions under clauses 1-4 above shall apply analogously to the benefit of our employees and representatives.
6. We shall be liable without restriction for damages resulting from injury to life, limb, or health based on a negligent breach of duty by us or an intentional or negligent breach of duty by one of our legal representatives or vicarious agents.
7. Our liability under Sections 1 and 4 of the German product liability act ('ProdHaftG') remains unaffected.

11. Transport Packaging

Transport packaging delivered by us may only be returned at our warehouse in Rosche or another loading point specified by us cleanly bundled and with delivery paid; the customer must bear any costs incurred.

12. Retention of Title

1. We retain ownership of the delivery item until receipt of all due payments resulting from the business relationship with the customer.
2. In the event of attachments or other third-party intervention, the customer must immediately inform us accordingly in writing so that we may initiate third-party counter-claim proceedings according to Section 771 of the German code of civil procedure ('ZPO'). In case the third party is unable to reimburse us for judicial and extrajudicial costs resulting from a lawsuit according to Section 771 'ZPO', then the customer shall be liable for our losses.
3. Upon conclusion of the Agreement, the customer hereby assigns all claims to us, in the amount of the final invoice amount (including VAT), that the customer is

entitled to against its customers or third parties resulting from a resale. This is regardless of whether the resale was permitted in each respective case. Even after assignment, the customer remains entitled to collect this claim. Our right to collect the claim ourselves remains unaffected. However, we shall undertake not to collect the claim, provided that the customer meets his payment obligations resulting from the collected proceeds, is not in default in payment and, in particular, is not bankrupt and has not filed an application to initiate insolvency proceedings. If this is the case, however, we may demand that the customer disclose to us the assigned claims and the debtors thereof, provide all information necessary for collection, submit related documentation to us and inform the debtors (third parties) of the assignment.

4. Processing or reshaping the delivered goods by the customer must always be performed for us. If the goods are processed with other objects not belonging to us, then we shall acquire joint ownership of the new item at a ratio of the value of the object of the sale to the other processed objects at the time of processing. Besides, the same shall apply to the object created through processing as to goods delivered primarily under retention of title.
5. We shall undertake to release the securities we are entitled to at the request of the customer, provided the value of our securities exceeds the claims to be secured by over 10%; we reserve the right to choose the securities to be released.

13. Applicable Law, Place of Jurisdiction

1. The laws of the Federal Republic of Germany shall apply exclusively to the contractual relationship with our customer. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded. Insofar as mandatory regulations of other legal systems cannot be waived in this Agreement under the international conflict of laws applicable in Germany, these shall remain unaffected.
2. The place of jurisdiction shall be our registered office; however, we shall be entitled to file lawsuits against the customer at the premises of the customer. Section 1 of the unified conditions of the German grain trade shall hereby be explicitly waived.