

## General Terms and Conditions of Sale, Delivery and Service (GTCS)

### § 1 Scope, Form

(1) These General Terms and Conditions of Sale (GTCS) shall apply to all our business relationships with our customers ("Purchaser/s"). The GTCS shall only apply if the Purchaser is an entrepreneur (§ 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTCS shall, in particular, apply to contracts for the sale and/or delivery of movable property ("Goods"), irrespective of whether we manufacture the Goods by ourselves or purchase them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the GTCS in the version valid at the time of the Purchaser's order or in any case in the version last notified to him in text form shall also apply as a framework agreement for similar future contracts without our having to refer to them again in each individual case.

(3) Our GTCS shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Purchaser shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Purchaser without reservation in the knowledge of the Purchaser's General Terms and Conditions.

(4) Any individual agreements made with the Purchaser in individual cases (including ancillary agreements, supplements and amendments) shall in any case take precedence over these GTCS. For the content of such agreements, subject to proof to the contrary, a written contract or our written confirmation shall be decisive.

### (5) Legally relevant declarations and notifications

by the Purchaser with regard to the contract (e.g. setting of a deadline, notice of defects, withdrawal or reduction), must be made in writing or by telex, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in the case of doubts about the legitimacy of the declarant, shall remain unaffected.

(6) References to the applicability of statutory provisions shall only have clarifying significance. The statutory provisions shall therefore apply even without such clarification, insofar as they are not directly amended or expressly excluded in these GTCS.

### § 2 Conclusion of the contract

(1) Our offers shall be subject to change and non-binding. This shall also apply if we have provided the Purchaser with catalogues, technical documentation, other product descriptions or documents - also in electronic form - to which we reserve the property rights and copyrights.

(2) The order of the Goods by the Purchaser shall be deemed to be a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within two weeks of its receipt by us.

(3) Acceptance may be declared either in writing (e.g. by order confirmation) or by delivery of the Goods to the Purchaser.

(4) If no written contract is concluded, the delivery note shall be deemed to be the order confirmation. It shall be decisive for the more detailed article description. If sales contracts are concluded orally or by telephone, the content of the confirmation letter shall be decisive unless the recipient objects immediately, at the latest within one business day.

### § 3 Delivery and default of acceptance

(1) Unless otherwise agreed, Goods of average type and quality or healthy average quality of customary condition shall be delivered in accordance with the statutory provisions. We shall be entitled to make part deliveries insofar as this is reasonable for the Purchaser. Excess and shortfall quantities of up to 5% of the agreed delivery shall be deemed to be in accordance with the contract if "circa" or an equivalent addition is used in the contract for the delivery quantity. We shall be entitled to claim the quantity range for each part delivery, provided that we declare this at the latest at the time of the respective part delivery, otherwise the quantity range can only be claimed for the outstanding delivery quantity.

(2) Delivery and receipt shall take place in the case of agreements with the following designations:

- a) "Immediate delivery": within three business days after conclusion of the contract;
- b) "Prompt delivery": within seven business days after conclusion of the contract;
- c) "Delivery at the beginning of a month": from the 1<sup>st</sup> to 10<sup>th</sup> day of the respective month;
- d) "Delivery in the middle of a month": from the 11<sup>th</sup> to 20<sup>th</sup> day of the respective month;
- e) "Delivery at the end of a month": from the 21<sup>st</sup> day to the end of the respective month;
- f) "Delivery 1<sup>st</sup> half of a month": from the 1<sup>st</sup> to the 15<sup>th</sup> day of the respective month;
- g) "Delivery 2<sup>nd</sup> half of a month": from the 16<sup>th</sup> day to the end of the respective month;

- h) "Delivery within a designated month": within the month;
  - (i) "Delivery within a period of two months": within the two months at any point of time;
  - k) "Delivery for more than one month": within each month in approximately equal monthly part deliveries;
  - l) "Successive delivery": in approximately equal part deliveries within the agreed delivery time.
- (3) Saturdays, Sundays or legally recognised public holidays are not considered business days. In the cases of paragraph (2) lit. c) to lit. g) the delivery time will therefore be extended to the next business day. In the cases of paragraph (2) lit. h) to lit. l), the delivery time will end on the preceding business day.
- (4) Delivery dates and delivery times shall be extended by the duration of any grace period set.
- (5) The individual contractual agreement of other delivery times shall remain unaffected by this.
- (6) In the case of contracts for delivery, deliveries shall be made within the agreed delivery time at the discretion of the Seller. The Purchaser must give us the shipping order without being asked to do so no later than five working days before the delivery date or the delivery time, in the case of paragraph (2) lit. a), however, already upon conclusion of the contract.
- (7) If delivery on call has been agreed, the Purchaser must make the call within the agreed time, at least five working days before the expiry of the deadline, in the case of paragraph (2) lit. a), however, already upon conclusion of the contract. After receipt of the call-off declaration, we shall deliver within five working days, unless a different delivery time has been agreed.
- (8) We shall be entitled to withdraw from the contract and/or to claim damages instead of performance if we have unsuccessfully set the Purchaser a grace period after the expiry of the time for performance. We shall also have these rights in those cases in which it is not necessary to set a grace period. In the event of untimely receipt of the call-off or shipping order, the grace period shall be three business days if a delivery time of less than one month has been agreed, and five business days if a delivery time of one or more than one month has been agreed. The same shall apply if, contrary to the agreement, the shipping order relates only to a part of the delivery with regard to the part not ordered. In all other cases, the grace period shall be seven business days. If a grace period is granted before the expiry of the time for performance, it shall start to run on the first business day after the expiry of the time for performance. It is not necessary to set any grace period if the

other party expressly declares in writing that it will not perform the contract.

#### **§ 4 Impediments to performance and delay in delivery**

(1) If we are unable to meet binding delivery times for reasons for which we are not responsible (unavailability of the performance), we shall inform the Purchaser of this immediately and at the same time inform him of the expected new delivery time. The new delivery time must not exceed 4 weeks for a contractual time for performance of up to one month, and 6 weeks for contracts with a longer time for performance. If the performance is also not available within the new delivery time, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the Purchaser. A case of unavailability of the performance in this sense shall be deemed to be, in particular, the delayed self-delivery by our supplier if we have concluded a congruent cover transaction and neither we nor our supplier are at fault or if we are not obliged to procure in individual cases. Further cases of unavailability of performance shall be force majeure, import or export bans at home or abroad, official measures, complete or partial destruction of manufacturing plants or warehouses due to natural disasters, explosions, fire; strike, riot, lockout, war, political unrest, acts of terrorism and other circumstances of equal severity for which we are not responsible.

(2) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Purchaser shall be required.

(3) The rights of the Purchaser pursuant to § 11 of these GTCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonable-ness of performance and/or subsequent performance), shall remain unaffected.

#### **§ 5 Packaging and shipping**

(1) The Goods shall be packed in a customary manner at the expense of the Purchaser. Returnable packaging must be emptied by the recipient no later than 60 days after the expiry of the best-before date and returned in perfect condition. They may not be filled with other Goods or used in any other way. If, in the case of oil deliveries by Intermediate Bulk Container (IBC), the borrowed containers are not returned on time and/or in a proper condition, we shall be entitled to damages in the amount of € 165/net per container. We reserve the right to prove that higher damage has been incurred.

The Seller reserves the right to prove that no damage at all or only less damage has been incurred.

(2) Shipping shall be at the risk of the Purchaser, even in the event of carriage paid delivery. We shall be entitled, but not obliged, to take out transport insurance. If insurance is taken out, the costs shall be borne by the Purchaser. Transport cost increases, tariff changes, ice, high or low water surcharges may be added to the purchase price by us, especially if we are charged accordingly by the pre-suppliers.

(3) Losses or damage during rail transport must be claimed by the recipient from the railway and certified by a railway official before the consignment is accepted lest the claim for compensation against the railway lapses. Damage during rail transport shall not entitle the recipient to refuse acceptance.

## **§ 6 Prices**

(1) Unless otherwise agreed, our deliveries and calculations shall be made at our prices and conditions valid on the day of delivery. All public charges, increases and value-added tax, equalisation tax, levies, duties, direct and indirect charges, freight rates, etc., which are imposed on the Goods sold or the associated raw materials after conclusion of the contract shall be borne by the Purchaser.

(2) All prices quoted by us shall be exclusive of statutory value-added tax, unless expressly agreed otherwise or value-added tax is already shown openly.

(3) Unless otherwise agreed, we shall be entitled to set prices at our reasonable discretion.

(4) In the case of excess quantities pursuant to § 3 (1), 2 % shall be paid at the contract price and the remaining quantity at the daily price, unless otherwise agreed. The obligation to pay the purchase price shall not apply to shortfalls.

## **§ 7 Payment, settlement, advance payment and security**

(1) The purchase price shall be due and payable within 14 days of invoicing and delivery or acceptance of the Goods. However, we shall be entitled at any time, also within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment.

We shall declare a corresponding reservation at the latest with the order confirmation.

(2) Upon expiry of the aforementioned payment term, the Purchaser shall be in default. During the period of default, interest shall be charged on the purchase price at a rate of 9 percentage points above the respective base interest rate p.a. We reserve the right to claim further default damages. With respect to merchants, our claim to the commercial due date interest (§ 353 of the German Commercial Code (HGB)) shall remain unaffected.

(3) The Purchaser shall only be entitled to rights of setoff or rights of retention insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the Purchaser's reciprocal rights shall remain unaffected, in particular pursuant to § 10 (7) sentence 2 of these GTCS.

(4) If it becomes apparent after the conclusion of the contract (e.g. due to an application for the opening of insolvency proceedings, delay on the part of the Purchaser in accepting, taking delivery of or paying for a delivery) that our claim to the purchase price is jeopardised by the Purchaser's lack of ability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of specific items (custom-made items), we may declare withdrawal immediately; the statutory regulations on the dispensability of setting a deadline shall remain unaffected.

(5) Payment by cheque and bill of exchange shall only be permitted by express agreement and shall then only be valid on account of performance. Discount charges, bill of exchange tax and expenses shall be borne by the Purchaser and are due immediately.

## **§ 8 Reservation of title**

(1) We shall reserve title to the Goods sold until all our current and future claims arising from the purchase contract and any ongoing business relationship (secured claims) have been paid in full.

(2) The Goods subject to reservation of title must neither be pledged to third parties nor assigned as security before the secured claims have been paid in full. The Purchaser must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties have access to the Goods (e.g. seizures) belonging to us. Upon request, the Purchaser shall insure the Goods subject to reservation of title at his own expense. We shall be entitled to pay the insurance premium at his expense.

(3) In the event of conduct by the Purchaser in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to request surrender of the Goods on the basis of the reservation of title. The request for surrender shall not necessarily include the declaration of withdrawal; we shall rather be entitled to request only the surrender of the Goods and to reserve the right of withdrawal. If the Purchaser does not pay the purchase price due, we may only assert these rights if we have previously set the Purchaser a reasonable payment term without success or if setting such a term is dispensable according to the statutory provisions.

(4) Until revoked in accordance with (c) below, the Purchaser shall be entitled to resell and/or process the Goods subject to reservation of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a) The reservation of title shall extend to the products resulting from the processing, mixing or combining of our Goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with Goods of third parties, the property rights to the latter remain, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined Goods. In all other respects, the same shall apply to the resulting product as to the Goods delivered under reservation of title.

(b) The Purchaser hereby assigns to us by way of security the claims against third parties arising from the resale of the Goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the Purchaser mentioned in paragraph 2 shall also apply with regard to the assigned claims. The Purchaser also assigns to us as security those claims which accrue to him against a third party as a result of the combination of our Goods with real property. We accept the assignment.

(c) The Purchaser shall remain authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Purchaser meets his payment obligations towards us, there is no deficiency in his ability to pay and we do not assert the reservation of title by exercising a right pursuant to para. 3. If this is the case, however, we may demand that the Purchaser informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we shall be entitled to

revoke the Purchaser's entitlement to further sell and process the Goods subject to reservation of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Purchaser's request.

### **§ 9 GMO**

1) We hereby declare that our products comply with the relevant legal regulations, in particular with the regulations (EC) No. 1829/2003 and (EC) No. 1830/2003 as amended. We do not use any genetic engineering methods in the manufacture of our products.

2) As part of our existing and certified quality assurance systems, we regularly carry out random sampling and subsequent laboratory tests to determine whether our products contain ingredients that require labelling in accordance with Regulations (EC) No. 1829/2003 and (EC) No. 1830/2003 as amended.

3) If, in the future, we should determine - within the scope of our quality assurance measures - that a labelling obligation exists for components and/or parts supplied to us by third parties, we shall not use the respective batches within the scope of our production process. The same shall apply to batches and stocks that have demonstrably and recognisably come into contact with genetically modified products.

4) To the best of our knowledge, we shall do everything necessary and reasonable to avoid processing genetically modified products, ingredients and/or components as part of our manufacturing process.

5) For their part, each of our contractual partners shall be obliged to supply only such products that are not subject to the labelling obligation within the meaning of Regulations (EC) No. 1829/2003 and (EC) No. 1830/2003 as amended.

### **§ 10 Warranty**

(1) The statutory provisions shall apply to the rights of the Purchaser in the event of any defects of quality or defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the Goods to a consumer (supplier recourse pursuant to §§ 478, 479 BGB).

(2) The basis of our liability for defects shall primarily be the agreement reached on the quality of the Goods. All product descriptions which are the subject of the individual contract or which have been publicly announced by us (in particular in catalogues or on the homepage of our website) shall be deemed to be the agreed quality of the Goods. Unless otherwise agreed, Goods of average type and quality or of healthy average quality customary in the trade shall be delivered in accordance with the statutory provisions.

(3) Insofar as the quality has not been agreed, it is to be assessed according to the statutory regulation whether a defect exists or not (§ 434 (1) sentence 2 and 3 BGB). However, we shall not accept any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) Insofar as we purchase Goods from third party suppliers, we shall not be obliged to have the Goods analysed before resale or further processing. This shall in particular apply if we have purchased under a guarantee of content and quality or if we may assume from experience (e.g. from test results within the scope of quality assurance pursuant to § 9 (2)) that the Goods purchased from us have the agreed or guaranteed quality.

(5) The Purchaser's claims for defects presuppose that he has fulfilled his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). If a defect becomes apparent during delivery, inspection or at any later time, we must be notified of this in writing without any undue delay. Timely dispatch shall be sufficient to meet the delivery time. If the purchaser fails to carry out the proper inspection and/or to give notice of defects, our liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions.

(6) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering an item free of defects (replacement). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.

(7) We shall be entitled to make the subsequent performance owed dependent on the Purchaser paying the purchase price due. The Purchaser, however, shall be entitled to retain a reasonable part of the purchase price in relation to the defect.

(8) The Purchaser shall grant us the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected Goods for inspection purposes.

In the event of a replacement delivery, the Purchaser shall return the defective item to us in accordance with the statutory provisions. Subsequent performance shall not include the removal of the defective item or the re-installation if we were not originally obliged to install it.

(9) We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, if there is actually a defect. Otherwise, we may demand reimbursement from the Purchaser of the costs incurred as a result of the unjustified request for rectification of the defect (in particular inspection and transport costs), unless the non-existent defectiveness was not recognisable to the Purchaser.

(10) In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the Purchaser shall have the right to remedy the defect himself and to demand compensation from us for the expenses objectively necessary for this. We are to be notified immediately of such self-performance, if possible in advance. The right of self-performance shall not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(11) If the subsequent performance has failed or a reasonable deadline to be set by the Purchaser for the subsequent performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Purchaser may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there shall be no right of withdrawal.

(12) Claims of the Purchaser for damages or reimbursement of futile expenses shall exist in the case of defects only in accordance with § 11 and shall be otherwise excluded.

## § 11 Other liability

(1) Insofar as nothing to the contrary arises from these GTCS including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.

(2) Damages may be claimed by reporting the difference between the contract price and the daily price (price reporting). The price reporting shall be carried out in accordance with the guidelines of the Standard Terms and Conditions for the German Grain Trade by a broker who is a member of a German grain and commodity exchange. The cut-off date for the price reporting shall be the business day following the expiry of the grace period.

The costs of the price reporting shall be borne by the defaulting party. After the price difference has been reported, the other party may lodge an objection within seven business days after the result has become known and arrange for a new price reporting on the basis of the same criteria at its own expense. If the parties do not accept this result either, the right to judicial review shall remain unaffected. Further damages shall remain unaffected by the price reporting.

(3) We shall be liable for damages - for whatever legal reason - within the scope of liability for fault in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable subject to a more lenient standard of liability in accordance with statutory provisions (e.g. for diligence in own matters)

a) for damages arising from injury to life, limb or health,

b) for damages arising from the not insignificant breach of a material contractual obligation (obligation, the fulfilment of which enables the proper performance of the agreement in the first place and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

(4) The limitations of liability resulting from para. 3 shall also apply in the event of breaches of duty by or in favour of persons for whose fault we are responsible in accordance with statutory provisions. They shall not apply insofar as we have fraudulently concealed a defect or have assumed a guarantee for the quality of the Goods and for claims of the Purchaser under the German Product Liability Act (Produkthaftungsgesetz).

(5) Due to a breach of duty which does not consist of a defect, the Purchaser may only withdraw or terminate if we are responsible for the breach of duty. Any free right of cancellation of the Purchaser (in particular according to §§ 651, 649 BGB) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **§ 12 Limitation period**

(1) In deviation from § 438 (1) no. 3 BGB, the general limitation period for claims arising from defects of quality or title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall begin with acceptance.

(2) If, however, the Goods are a building or an object which has been used for a building in accordance with its customary manner of use

and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provision (§ 438 (1) no. 2 BGB). Other special statutory provisions on the limitation period (in particular § 438 (1) no. 1, (3), §§ 444, 479 BGB) shall also remain unaffected.

(3) The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the Purchaser based on a defect of the Goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, claims for damages of the Purchaser pursuant to § 11 (3) sentence 1 and sentence 2(a) as well as pursuant to the German Product Liability Act shall become statute-barred exclusively according to the statutory limitation periods.

## **§ 13 Liens**

The Purchaser is hereby advised that we shall be entitled to a statutory fruit lien on the fruit produced in the harvest, including fruit not yet removed from the plot, in accordance with the German Act to Secure the Fertiliser and Seed Supply (Gesetz zur Sicherung der Düngemittel- und Saatgutversorgung) of 10 January 1949 on account of all claims arising from the supply of fertiliser and recognised seed or approved commercial seed.

## **§ 14 Applicable law and place of jurisdiction**

(1) These GTCP and the contractual relationship between us and the Purchaser shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Purchaser is a merchant within the meaning of the German Commercial Code (HGB), a legal person of public law or a special fund under public law, the exclusive - and international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our company's place of business. However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCS or a prior individual agreement or at the general place of jurisdiction of the Purchaser. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.

(3) All disputes arising from transactions with agricultural products and manufactured Goods derived therefrom, with feed and fertilisers, from transactions related to the packaging, transport, insurance and storage of these Goods, as well as

from commission transactions and intermediate activities, and from all other agreements made in connection with the aforementioned transactions, shall, in deviation from para. (2), be decided by the Arbitration Court of the Association of Grain Traders of the Hamburg Stock Exchange e.V. (Schiedsgericht des Vereins der Getreidehändler der Hamburger Börse e.V.), Adolfsplatz 1, 20457 Hamburg, to the exclusion of the ordinary course of law. There shall be no general exclusion of the ordinary legal process. At the option of the claimant, all disputes may also be settled before the ordinary court at the place of performance of the delivery obligation - in accordance with these GTCS or a prior individual agreement - or at the general place of jurisdiction. For the exercise of the right to choose, the filing of the action itself shall be sufficient; no pre-litigation declaration to the contractual partner shall be required.

### **§ 15 Data protection provisions**

- (1) We only collect data from customers in the context of processing contracts. In doing so, we observe the legal requirements, in particular the German Telemedia Act (TMG) and the German Federal Data Protection Act (BDSG). Inventory and usage data of the customer are only collected, processed or used insofar as this is necessary for the processing of the contractual relationship.
- (2) We will not use customer's data for the purposes of advertising, market or opinion research without the customer's prior consent.

Rostock, October 2018  
Power Oil Rostock GmbH

