

# TERMS AND CONDITIONS OF DELIVERY

of  
**UTG Unabhängige Tanklogistik GmbH**



## CONTENT

- 1. Scope**
- 2. Conclusion of contract**
- 3. Prices**
- 4. Payment conditions**
- 5. Reservation of title**
- 6. Transfer of risk**
- 7. Rights of the Customer due to defects**
- 8. Damages and liability**
- 9. Tax guarantees from customer**
- 10. Delivery**
- 11. Choice of law, place of jurisdiction and place of performance**
- 12. General provisions**

### **1. Scope**

Deliveries, services, offers and acceptances of offers are made only on the basis of these terms and conditions of delivery. They shall also apply to all future business relations. These terms and conditions of delivery shall be deemed to have been accepted at the latest upon receipt of the goods or services. Our previous terms and conditions of delivery shall cease to be applicable.

We hereby object to any counter-confirmations by the Customer with reference to his own terms and conditions of business and respective purchase terms and conditions.

Customers for the purpose of these terms and conditions of delivery are Contractors.

### **2. Conclusion of contract**

Our offers are subject to alteration without notice and are not binding. Our presentation of goods, particularly on the Internet, does not constitute an offer. Drawings, illustrations, dimensions, weights, and other performance figures are only binding if this is expressly agreed in writing.

In the ordering of desired goods, the Customer makes a binding declaration as to his contractual offer. The Customer does not incur any extra costs as a result of using telecommunications facilities when making the order. We are entitled to accept the contractual offer contained in the Customer's order within a period of fourteen (14) days from receipt.

We shall immediately confirm the receipt of the Customer's order by the same method by which we receive the customer's contractual offer. Confirmation of receipt only constitutes an acceptance of the contractual offer if we expressly declare this.

### **3. Prices**

Prices quoted by us do not include the currently valid statutory sales tax (VAT).

The price stated by us only includes delivery to the delivery address given by the Customer if we expressly state this. Otherwise, the shipping costs and, if applicable, packaging and/or the insurance of the goods shall be charged to Customer separately.

Unless otherwise stated, all prices stated in our offers are subject to change without notice. Otherwise, the definitive figures (prices/dates) are those stated in our order-confirmation. If we have not stated the price, the price calculation shall refer to our price list, generally valid on the day of the delivery of the goods.

In the case of customs free and or tax-free advantaged delivery, should the corresponding permit in line with the intended use be presented to us in good time. If the permit is not presented in good time or the permit is withdrawn, we shall charge the customs and tax rates applicable on the day of delivery of the goods.

If the quantity of goods purchased by the Customer deviates from the originally ordered quantity of goods, we reserve the right to alter the price on the basis of our price list generally applicable on the day of delivery.

We reserve the right, after timely notification and before delivering the goods, to raise the price of the goods to a reasonable extent which is necessary due to general price alterations outside our control (e.g. currency rate fluctuation, change to customs duties and other levies or clear increase in material and production costs) or due to price changes or alterations to surcharges of any type (e.g. transport costs) by suppliers.

In cases where more than six months exist between conclusion of the agreement with the Customer and the agreed and/or actual date of delivery, our prices, valid at the time of delivery or supply shall apply; if the latest stated prices exceed those agreed at first by more than 10%, the Customer is entitled to withdraw from the agreement. The procedure in the previous clause shall apply if the price of the goods has to be raised by a reasonable proportion due to price development which is beyond our control.

### **4. Payment conditions**

The Customer undertakes to pay the price including VAT within the payment period stated in the invoice commencing with the delivery date of the goods. On expiry of this period, the Customer shall be deemed to be in arrears.

Payment periods shall be agreed in writing. Inasmuch as payment periods have been agreed, they shall apply from the delivery date of the goods.

For each reminder which is sent within the period of default, a processing fee of EUR 3.00 plus the currently valid VAT will be levied.

If the Customer is in arrears, we are then entitled to demand interest of 8 percent above the base interest rate as lump-sum damages. We are permitted to provide evidence of higher damages.

Payments shall take place by bank transfer. A payment is only regarded as having taken place when we have the amount at our disposal. We expressly reserve the right to refuse the acceptance of cheques or bills. Acceptance of these will only indicate an under-taking to pay and not of payment itself. Discount and note charges shall be borne by the Customer and are due immediately.

We are entitled, in spite of any other terms of the Customer, to deduct any payments made in the first instance against previous debts. We shall inform the Customer about the type of set-off which has taken place. If costs and interest have already arisen, we are then entitled to count any payment first of all against these costs, then against the interest and finally against the main payment.

The Customer only has a right to set-off if his counterclaims have been established with legal effectiveness or have been recognised by us. The Customer can only exercise a right of retention if his counterclaim is based on the same contractual relationship.

If circumstances become known to us which put the creditworthiness of a Customer into question, in particular if he ceases payments, we are entitled to demand complete and immediate payment of the entire debt. In this case, we are also entitled to make deliveries subject to cash on delivery or to demand advance payments or sureties. The statutory right to withdrawal from the agreement due to default in payment remains unaffected.

## **5. Reservation of title**

We reserve ownership of the delivered goods up to fulfilment of all demands (including all balance demands from current account) against the Contractor, which are due to us for any legal reason.

We are obligated, at the request of the Customer to release all sureties due to us insofar as their value exceeds the demands to be secured by more than 20%, as long as these have not yet been paid.

Pledges or security transfers by the Customer are not permitted.

Processing or reworking of the reserved goods by the Customer is always carried out for us, however without any obligation for us. If the reserved goods are processed with other items which do not belong to us, we shall acquire co-ownership of the new item in the ratio of the value of the reserved goods to the other processed items at the time of processing. Otherwise, the same shall apply to the item created through processing as for the reserved goods. If the reserved goods are inseparably connected or mixed with items which do not belong to us, we shall acquire coownership of the new item in the ratio of the value of the reserved goods to the other connected or mixed items at the time of connection or amalgamation. If connection or amalgamation takes place in such a manner that the item of the Customer is to be regarded as the main item, it is regarded as having been agreed that the Customer transfer proportional co-ownership to us. The Customer shall keep sole ownership or co-ownership for us at no cost.

The Customer is entitled to sell the reserved goods in the correct course of business dealings and to have disposal over them. Any demands arising from resale or for other legal reason (e.g. insurance, non-permitted action) with regard to the reserved goods (including all balance demands from current account) which emerge for the Customer against his purchasers or against third parties shall be assigned immediately by the Customer in full to us as security. This shall apply irrespective of the fact as to whether the object of delivery is resold without or after processing. We accept this assignment. Our authority to collect the demand ourselves is unaffected by this; however, we undertake not to collect the demands as long as the Customer meets his payment obligations correctly and is not in arrears. In this case, we can demand that the Customer make known the assigned demands and their debtors, gives us all information necessary for collection, hands over the associated documents and notifies the debtors (third parties) of the assignment. In such a case, we are further authorised to notify the debtor of the assignment of the demand in the name of the Customer.

In the case of access to the reserved goods by third parties, in particular distraints, the Customer shall draw attention to our ownership and notify us without delay so that we can assert our ownership rights. In addition, the Customer shall notify us of any damage or destruction of the goods, change of ownership of the goods or any change in his own address without delay.

In the case of non-contractual behaviour on the part of the Customer, in particular in the case of default in payment, we are entitled to withdraw from the agreement and to repossess the reserved goods, which the Customer is obliged to surrender. Repossession of the reserved goods by us always means withdrawal from the agreement. Distraint of the reserved goods always means withdrawal from the agreement. In addition, we are entitled, in the case of violation of a notification duty in connection with reservation of title (see previous clause) to withdraw from the agreement and to demand surrender of the goods if continued observance of the agreement is no longer reasonable to us.

## **6. Transfer of risk**

The risk of accidental destruction or accidental deterioration of the goods is transferred on transfer, in the case of mail-order purchase on delivery of the goods to the carrier, the freight carrier or any other person or institution responsible for carrying out despatch to the Customer.

The same shall apply if the Customer is delayed in the receiving of goods.

## **7. Rights of the Customer due to defects**

With regard to faulty goods, we shall firstly carry out a repair or deliver a replacement, according to our choice. If subsequent performance fails, the Customer can, according to choice, in principle demand a decreased amount of compensation (mitigation) or a reversal of the agreement (withdrawal) and damages. In the case of slight defects, the Customer has no right of withdrawal. If the Customer selects damages, the liability limitations in accordance with no. 8 of these terms and conditions shall apply.

Customers shall examine the delivered goods without delay for quality and quantity deviations and notify us in writing of any recognisable defects within a period of 7 days from receipt of the goods and before re-delivery, processing, amalgamation, consumption or installation; otherwise assertion of a claim due to defects is ruled out. Concealed defects shall be notified to us in writing within a period of 7 days of discovery and before re-delivery, processing, amalgamation, consumption or installation of the goods. Timely return of goods satisfies the conditions. The Customer bears full responsibility of proof for all prerequisites of a claim in particular for the defect itself, for the exact time at which the defect was discovered and for the timely notification of a complaint. In the case of claims regarding quality defects, samples of at least 1 kg in weight are to be taken in the presence of our representative or an independent expert and handed over to us.

This warranty period is one year from the delivery of the goods with the reservation of clause 3. The one-year warranty period does not apply if we can be accused of gross fault or in the case of bodily injury or damage to health attributable to us, or in the case of loss of life of the Customer.

We shall not release to our Customers any legally binding guarantees unless something else has been agreed in writing. Reference to DIN standards or similar means only a close description of the goods but no guarantee for the existence of a property unless this has been expressly agreed. Analysis data only apply as approximate guide values inasmuch as they have not been guaranteed in writing. Manufacturers' guarantees are not affected by this. Properties of the goods delivered by us are only regarded as having been assured if we have confirmed this in writing.

## **8. Damages and liability**

In the case of slight violations of duty, our liability and that of our vicarious agents is limited to the foreseeable, average damage typical for the agreement.

In the case of a slightly negligent violation of duties, which are not significant violations with regard to the agreement and which do not detrimentally affect the execution of the agreement, we and our vicarious agents are not liable.

The above limitations of liability do not concern claims of the Customer from product liability or from guarantee. Further, the liability limitations shall not apply for physical injury or damage to the health of loss of life of the Customer which can be attributed to us.

For damage which arises through technical defects of the tank, surrounds, measuring instruments or other installations in direct possession of or through faulty information by the Customer, only the Customer can be held liable.

Before commencement of the delivery, the Customer shall take all measures which can prevent the spillage of oil or other damage. In particular, he shall open the valves to check the level and make the quantity to be taken over known. For any spillage of oil on areas which do not form part of our sphere of responsibility (e.g. ships) and any associated contamination of these areas and their near vicinity (also waters), the Customer is solely responsible. The Customer shall in particular provide the necessary hose guards and inform our persons charged with the delivery in good time before the filling capacity is reached.

We are not obliged to check containers etc. provided by the Customer for suitability – in particular cleanliness. We accept no liability for damage or defects arising as a result of damaged or otherwise inaccessible containers. The Customer undertakes in the cases of undeclared and/or non-taxed goods to use these only in accordance with the currently valid customs and tax law. He shall indemnify us against any customs and/or tax burden which arises from its use.

## 9. Tax guarantees from customer

The **Customer** gives us an irrevocable guarantee that neither the **Customer** nor any subsequent purchasers shall infringe any tax and/or disposal regulations which apply to the delivery of tax-free or tax-privileged products in connection with delivery on the **Customer's** permit or on a general permit.

When shipping energy products under the tax suspension procedure, the **Customer** shall observe the energy tax procedural regulations and periods of time which apply in the case concerned.

In case of breach of the foregoing guarantee, the **Customer** undertakes to indemnify us in full on first demand for all third-party claims, including but not limited to all applicable taxes, customs duties, other levies and tax fines as well as any reasonable legal fees sustained in that connection.

## 10. Delivery

Delivery dates or periods, which are bindingly agreed, require written form.

In case of the use of "F" clauses or "C" clauses towards Contractors, Incoterms are regarded as having been agreed in the currently valid version. We take the conditions of the "Tankleichter Travel Charter" as the basis for just services and transport.

In bunker shipping, we deliver exclusively on the basis of the captain's order obligating the ship owner (section 528 HGB). Charterers' orders have to be confirmed by the captain on the basis of his statutory ship-owner's power of attorney. The obligation of the charterer from his orders is not affected.

We are not responsible for delivery and services delays due to force majeure and due to occurrences, which significantly hinder or make the delivery impossible not only temporarily – in particular strike, official decrees etc. even if they occur with our suppliers – even when binding periods have been agreed. They entitle us to postpone the delivery or services by the term of the hindrance plus a reasonable start-up period or to withdraw fully or partly from the agreement concerning to the not yet performed part. If the hindrance lasts longer than three months, the Customer is entitled, after setting a reasonable period with respect to the not yet performed part of the agreement, to withdraw from the agreement. If the delivery period is extended or if we are exempted from our obligation, the Customer may not derive any right to damages from this. We can only refer to the stated circumstances if we have informed the Customer without delay.

Any setting of a period or declarations of withdrawal made against us by the Customer shall be made in writing. The selection of the manner and means of conveyance and transport shall be left over to us. We are entitled at any time to carry out partial deliveries and services unless the partial delivery or service is objectively and verifiably not in the interest of the Customer.

To establish the final delivery quantity, the quantity displayed on our or the supplier's measuring device is taken as a true and correct reading.

Containers (hire containers, pallets etc.) provided by us or third parties may neither be exchanged nor used as storage containers or given over to third parties and shall be returned to us or to the place designated by us without delay. If the Customer is delayed with return, hire costs can be charged at the commercially customary rate.

## **11. Choice of law, place of jurisdiction and place of performance**

For these terms and conditions and all legal relationships between the Customer and us, the law of the Federal Republic of Germany shall apply exclusively. The provisions of the CISG (United Nations Convention on Contracts governing the International Sale of Goods) shall not be applied.

The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our seat of business. The same shall apply if a Customer has no general place of jurisdiction in Germany or his place of residence or customary domicile are not known at the point of time of action being taken. We also have the right to take action at the court competent for such a Customer or at any other court which can be competent in accordance with national or international law.

The place of execution for all deliveries of goods is Bremerhaven.

## **12. General provisions**

If individual provisions of the agreement with the Customer including these terms and conditions are or become fully or partly ineffective, the validity of the remaining provisions is not affected. The fully or partly ineffective regulation shall be replaced by a regulation, the economic success of which most closely approaches that of the ineffective one.

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