

GENERAL TERMS OF DELIVERY (GTD)



of UTG Unabhängige Tanklogistik GmbH (UTG)

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1. Scope of application

- 1.1. Our deliveries, services, offers and acceptance of offers are made exclusively on the basis of these GTD. These shall also apply to all future business relationships without the need for renewed reference to these GTD, unless expressly agreed otherwise in individual cases. These GTD shall be deemed to have been accepted at the latest upon acceptance of the goods or services. Consequently, our previous terms and conditions of delivery consequently shall cease to apply.
- 1.2. Any deviating, conflicting or supplementary terms and conditions of purchase of the **customer** are hereby expressly rejected. We shall not be bound by such terms and conditions even if we do not object to them again upon conclusion of the contract, unless their validity has been expressly confirmed in writing.
- 1.3. **Customers** within the meaning of these terms of delivery are business enterprises.

2. Conclusion of contract

- 2.1. Our offers are subject to change and non-binding unless they are expressly designated as firm. Our presentation of goods, in particular on the internet, does not constitute an offer. Drawings, illustrations, dimensions, weights or other performance data are non-binding unless they are expressly agreed or guaranteed in writing as the quality of the goods. This shall not affect the manufacturer's warranty.
- 2.2. Any properties of the delivered goods specified by us shall be deemed guaranteed only if confirmed in writing.
- 2.3. By ordering the goods, the **customer** makes a binding contractual offer. The **customer** does not incur any additional costs when ordering by using means of distance communication.
- 2.4. We are entitled to accept the contractual offer contained in the **customer's** order within a period of 14 days from the date of submission.
- 2.5. We shall confirm receipt of the **customer's** order without delay in the same way as we received the **customer's** contractual offer. Confirmation of receipt shall constitute acceptance of the contractual offer only if this is expressly stated.

3. Prices

- 3.1. The prices quoted by us are exclusive of the respective statutory value added tax, mineral oil tax, customs duty and EBV [Strategic Petroleum Reserve] contribution or other amounts levied by law or on the basis of laws at the respective statutory rates. Only the prices stated in our order confirmation shall apply.
- 3.2. The price quoted by us shall include delivery to the delivery address specified by the **customer** only if this is expressly stated. The **customer** will otherwise be charged separately for the costs of transport and, if applicable, packaging and/or insurance of the goods.
- 3.3. If we have not specified a price, the price shall be calculated on the basis of our generally valid price list on the day of delivery of the goods.
- 3.4. If the quantity of goods accepted by the **customer** differs from the quantity of goods originally ordered, we reserve the right to change the price on the basis of our generally valid price list on the day of delivery. In the event of any reduced purchase quantity for which the buyer is responsible, we reserve the right to pass on the increased freight costs accordingly.
- 3.5. If, between the time of conclusion of the contract and the day of delivery of the goods, the purchase costs increase due to price increases by upstream suppliers or if the goods sold become subject to public charges (in particular customs duties, sales or energy taxes etc.) prior to delivery or if such charges are newly introduced, we shall have the right to increase the price to the extent of the change that has occurred. The **customer** shall be given due notice of any such increase prior to delivery of the goods.
- 3.6. If the new prices exceed the initially agreed prices by more than 10%, the **customer** shall be entitled to withdraw from the contract. The provision stated under Section 3.5 shall take

precedence if the price of the goods has to be reasonably increased due to a price development beyond our control.

4. Terms of payment

- 4.1. Payment terms must be agreed in writing.
- 4.2. The **customer** undertakes to pay the price, including taxes and contributions, within the payment period stated in the invoice or the agreed payment term beginning on the day of delivery of the goods - irrespective of receipt of the goods or invoice by the buyer. The **customer** shall be in default of payment on expiry of this period.
- 4.3. Payments should be made by bank transfer. A payment shall be deemed effected only when the amount is at our disposal. We expressly reserve the right to refuse cheques or bills of exchange, which will be accepted solely on account of payment pending full discharge. Discount and bill charges shall be borne by the **customer** and are due immediately.
- 4.4. Any payments made to our employees or representatives shall be deemed in discharge of debts only if the person concerned has presented a collection authorisation.
- 4.5. A processing fee of EUR 3.00 plus the respective statutory value added tax may be charged for each reminder sent within the payment default period.
- 4.6. In the event of late payment, we shall be entitled to charge interest at a rate of 9 percentage points above the base rate.
- 4.7. Payments shall always be offset against the most recent claim, even if the buyer has stipulated otherwise, unless we have declared otherwise.
- 4.8. The **customer** shall have a right of set-off or retention only insofar as his counterclaims are undisputed, have been legally established or recognised by us. The **customer** shall be entitled to exercise a right of retention only if his counterclaim is based on the same contractual relationship. The **customer's** rights in the event of defective delivery and the defence of non-performance of the contract shall remain unaffected by the provisions stated in the above Section 4.7.
- 4.9. If we become aware of circumstances that indicate a deterioration in the **customer's** financial situation after conclusion of the contract (e.g. default of payment from previous deliveries, failure to honour cheques, bills of exchange or direct debits on time), or in the event of other serious breaches of duty by the **customer**, we shall be entitled to make deliveries on a cash on delivery basis, demand advance payments or the provision of security. If the **customer** does not fulfill such a request, we shall be entitled to refuse future deliveries without prejudice to any further claims. This shall not affect our statutory right to withdraw from the contract due to default of payment.
- 4.10. If securities exceed the claim by more than 20 %, we shall release securities that are not required on request by the **customer**.

5. Delivery, delivery times and dates

- 5.1. Delivery is at the risk and expense of the **customer**.
- 5.2. If "F" clauses or "C" clauses are used in relation to business enterprises, the Incoterms as amended from time to time shall be deemed agreed. The terms and conditions of the Tanker Voyage Charter shall apply to pure services and transport.
- 5.3. In the bunker business, we deliver exclusively on the basis of a special captain's order under obligation of the shipowner (Section 528 German Commercial Code ["HGB"]). Orders placed by the charterer must be confirmed by the ship's captain on the basis of a legal power of attorney for the shipowner. This shall not affect the charterer's obligation resulting from the orders.
- 5.4. Specified delivery periods and dates are binding only if they have been expressly agreed in writing. Amendments to a contract shall extend the envisaged deadlines accordingly.
- 5.5. Force majeure and other extraordinary circumstances such as operational disruptions, labour disputes, lockouts, delayed deliveries by upstream suppliers, shortages of raw materials or energy, difficulties in procuring means of transport and traffic disruptions, as well as government measures and the destruction, loss or damage of goods ordered by us, regardless of whether

they have occurred on our premises or those of our suppliers, shall release us from our performance obligation for the duration of the disruption and the extent of its impact, provided that we are not responsible for these circumstances. In the event of hindrances of a temporary duration, the performance deadlines shall be extended by the period of the hindrance plus a reasonable start-up period. We are entitled to make subsequent deliveries of any shortfall quantities within a reasonable period of time, provided that the part delivery can be used by the buyer and is therefore of interest. If we are also unable to make part deliveries through no fault of our own, we shall be entitled to withdraw from the contract. In that case we shall inform the buyer immediately and reimburse any payments already made without delay.

We can invoke the aforementioned circumstances only if we notify the **customer** immediately.

- 5.6. Deadlines and notices of cancellation by the **customer** must be given to us in text form.
- 5.7. The choice of transport route and means of transport is at our discretion.
- 5.8. We are entitled to make part deliveries and render part performance insofar as this is reasonable for the buyer, in particular insofar as the part delivery is usable and the remaining delivery is ensured.
- 5.9. The quantity displayed on our or our supplier's measuring equipment shall be decisive for determining the final delivery quantity. If the buyer requests official railway weighing at the station of departure, this shall be carried out at his expense.
- 5.10. Before delivery commences, the **customer** shall take all necessary measures to prevent oil spillage or other damage. In particular, he shall open the valves, check the stocks and announce the quantity to be accepted. The **customer** shall be solely responsible for any spillage of oil onto areas that are not attributable to our area of responsibility (e.g. ships) and any resulting pollution of these areas and their surroundings (including bodies of water). In particular, the **customer** shall provide the necessary hose guards and inform the persons we have entrusted with the delivery in good time before the fill level is reached.
- 5.11. We are not obliged to check the suitability of any containers etc. provided by the **customer**, in particular for cleanliness. We shall not be liable for damage or defects resulting from defective or otherwise inaccessible containers.
- 5.12. Containers provided by us or third parties (loaned containers, pallets, etc.) may not be exchanged, used as storage containers or given to third parties and must be returned to us or the location designated by us in a clean condition without delay. If the **customer** is in default with container return, we shall be entitled to charge rental costs at the customary commercial rate. The **customer** shall be liable for any culpable damage / loss of the loaned containers and packaging provided to him or to a third party appointed by him from the day of their dispatch until their return to the return address specified by us.

6. Acceptance and default of acceptance

- 6.1. The **customer** is obliged to accept or take delivery of the goods immediately upon our request.
- 6.2. If the **customer** does not accept the delivery within the deadline set by us, we shall be entitled, after setting a reasonable further deadline, to withdraw from the contract in whole or in part and to demand compensation instead of performance, at our discretion either compensation for the damage incurred or - without proof of damage - 10 per cent of the agreed gross price. The **customer** reserves the right to prove that we have incurred less or no damage.
- 6.3. The **customer** guarantees that the filling, transport and storage facilities that he operates or uses are in perfect technical condition and are operated in accordance with all safety regulations under public and/or private law. Furthermore, the **customer** guarantees that the personnel employed by him or at his instigation are fully familiar with the operational and legal safety regulations for handling hazardous goods.
- 6.4. The risk of accidental loss and accidental deterioration of the goods shall pass to the **customer** upon handover or, in the case of sale to destination according to **customer's** instructions, upon delivery of the goods to the forwarding agent, carrier or other person or organisation designated to handle the shipment. This also applies to part deliveries/part performance and also if we have assumed other services (e.g. transport). Handover shall be deemed effected even if the **customer** is in default of acceptance.

- 6.5. The **customer** shall be deemed to be in default of acceptance if delivery / performance cannot be effected or is not permissible due to the provision of a filling, tank and storage facility which is not technically permissible or defect-free (cf. Section 6.3).

7. Retention of title

- 7.1. We reserve title to the delivered goods until fulfilment of all claims (including all current account balance claims) to which we are entitled against the **customer** on any legal grounds now or in future. The **customer** is obliged to insure all goods that are subject to retention of title comprehensively against loss and damage.
- 7.2. We undertake to release the securities to which we are entitled at the **customer's** request if their value exceeds the claims to be secured by more than 20%, insofar as these have not yet been settled.
- 7.3. Any processing or transformation of the reserved goods by the **customer** shall always be carried out on our behalf, but without any obligation on our part. If the reserved goods are processed with other items not belonging 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. The item created by processing shall be deemed to be reserved goods within the meaning of these terms and conditions.
- 7.4. If the reserved goods are inseparably combined or mixed with other items not belonging to us, we shall acquire ownership of the new item in the ratio of the value of the reserved goods to the other combined or mixed items at the time of combination or mixing. If the combination or mixing is carried out in such a way that the **customer's** item is to be regarded as the main item (Section 947 (2) German Civil Code ["BGB"]), it is agreed that the **customer shall** transfer co-ownership to us on a pro rata basis. The **customer shall** keep the items of which we have sole ownership or co-ownership for us free of charge.
- 7.5. The **customer** is authorised to sell and dispose of the reserved goods in the ordinary course of business. The **customer** hereby assigns to us in full by way of security any claims arising from resale or on any other legal grounds (e.g. insurance, tort) in respect of the reserved goods (including all current account balance claims) which accrue to the **customer** against his customers or third parties. This shall apply irrespective of whether the delivery item is resold without or after processing. We accept the assignment. The **customer** is entitled and obliged to collect claims from resale as long as we do not revoke this authorisation and shall immediately transfer the amount of the claims to which we are entitled from the collected claims. This shall not affect our right to collect the claim ourselves; however, we undertake not to collect the claims as long as the **customer** duly fulfils his payment obligations and is not in default of payment. In this case, we are entitled to demand that the **customer** 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. In such a case, we are also authorised to notify the debtor of the assignment of the claim on behalf of the **customer**.
- 7.6. The **customer** is not permitted to pledge reserved goods or transfer them by way of security. In the event of seizure of the reserved goods by third parties, in particular distraint, the **customer** shall notify the third party of our ownership and inform us immediately so that we can enforce our ownership rights. In addition, the **customer** shall notify us immediately of any damage to or destruction of the goods, of any change of ownership of the goods and/or change of address.
- 7.7. If the **customer** acts in breach of contract, in particular in the event of default in payment, we shall be entitled to withdraw from the contract and take back any reserved goods; the **customer** shall be obliged to surrender such goods. If we take back the reserved goods, this shall always constitute termination of the contract. We shall further be entitled to withdraw from the contract and demand return of the goods in the event of a breach of duty of notification or disclosure in connection with the retention of title (see previous paragraph) if we can no longer reasonably be expected to adhere to the contract.

8. Rights of the customer due to defects

- 8.1. In the event of defects in the goods, we shall initially fulfil our warranty obligations at our discretion by repair or replacement.
- 8.2. If the supplementary performance fails, the **customer** shall be entitled at his discretion to demand a reduction of the purchase price (deduction) or rescission of the contract (withdrawal) as well as compensation. In the case of only minor defects, the **customer** shall not be entitled to withdraw from the contract. If the **customer** chooses compensation, the liability limitations pursuant to Section 9 of these GTD shall apply.
- 8.3. **Customers** are obliged to inspect the delivered goods immediately for deviations in quality and quantity and to report any obvious defects in writing within a period of 7 days from receipt of the goods and before any onward delivery, processing, mixing, consumption or installation of the goods; the **customer** shall otherwise not be entitled to assert any claim for defects. Hidden defects must be reported to us in writing within a period of 7 days from discovery and before onward delivery, processing, mixing, consumption or installation of the goods. Timely dispatch shall suffice to meet the deadline.
- 8.4. The **customer** shall bear the full burden of proof for all requirements for a claim, in particular for the defect itself, for the time of discovery of the defect and for compliance with the deadline for notification of the defect. In the event of quality defects, samples of at least 1 kg of the rejected goods, as delivered, must be taken in the presence of our representative or an independent expert and handed over to us. The goods must still be unmixed/distinguishable for this purpose.
- 8.5. Notwithstanding Section 9.3, all warranty claims shall become time-barred one year after delivery of the goods. Section 9.2 shall apply accordingly.

9. Compensation and liability

- 9.1. We - including our legal representatives and vicarious agents - shall not be liable in the event of simple negligence.
- 9.2. This limitation of liability shall not apply to liability (i) for intent and gross negligence, (ii) under the Product Liability Act, (iii) due to the assumption of a guarantee, (iv) for damages resulting from injury to life, body or health, (v) and/or insofar as it concerns a breach of an obligation the fulfilment of which defines the contract and if the **customer** is entitled to rely on compliance with such an obligation ("material contractual obligations"). However, compensation for the simple negligent breach of material contractual obligations shall be limited to the damage typical for such contracts and foreseeable at the time of conclusion of the contract. The foregoing provisions do not constitute any change in the burden of proof to the detriment of the **customer**.
- 9.3. The **customer** shall have sole liability for any damage caused by technical defects in the tanks, enclosures, measuring devices or other equipment in the **customer's** direct possession or by incorrect information provided by the **customer**. Section 9.2 shall apply accordingly.

10. Customer's tax guarantee

- 10.1. The **customer** warrants that neither he nor subsequent purchasers violate any tax and/or disposal regulations that must be observed when delivering tax-free or tax-privileged products in connection with the delivery whether on the **customer's** permit or on a general permit. In particular, the **customer** is responsible for use of the goods for the intended purpose permitted under tax and customs law and for ensuring that the tax recipient has the necessary customs permit in the case of untaxed deliveries. The **customer** shall be liable for tax and customs duties that we have to pay due to improper use of the goods or lack of a customs permit. We are not obliged to the **customer** to check the validity of any permits and/or fulfilment of the legal requirements for the delivery of preferential deliveries.
- 10.2. When shipping energy products under the tax suspension procedure, the **customer** shall observe the applicable procedural regulations and deadlines under energy tax law.
- 10.3. In the event of breaches of the above guarantee declarations, the **customer** undertakes to indemnify us in full on first demand against all third-party claims, in particular against all taxes, customs duties, other levies and tax fines incurred, as well as any reasonable legal fees incurred in that connection.

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

- 11.1. These GTD and the entire legal relationship between the **customer** and UTG shall be governed solely by the law of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.
- 11.2. Sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship - including disputes arising from documents and cheques – shall be our registered office (Bremerhaven). The same shall apply if a customer does not have a general place of jurisdiction in Germany or if his place of residence or habitual abode is unknown at the time the action is filed. We also have the right to take legal action at the competent court for a customer or at any other court that may have jurisdiction under national or international law.
- 11.3. Place of performance for all goods deliveries shall be Bremerhaven; place of performance for all payment obligations shall be the registered office of the seller.

12. Data protection

- 12.1. The **customer** agrees and consents to the storage of all data relating to the **customer** from the present business relationship, including personal and invoice-related data, in accordance with the provisions of the General Data Protection Regulation (GDPR) as part of our electronic data processing and, if necessary, the transmission of such data to credit agencies and logistics service providers in compliance with the requirements of the GDPR.
- 12.2. **Customers** are advised that their consent to the collection and storage of data is purely voluntary. **Customers** have a right of access (Art. 15 GDPR) and a right to rectification (Art. 16 GDPR), to erasure (Art. 17 GDPR), to restriction of processing (Art. 18 GDPR), a right to object to processing (Art. 21 GDPR) and a right to data portability (Art. 20 GDPR).
- 12.3. We are authorised to obtain information from credit agencies in accordance with Article 6 (1) (f) GDPR. Irrespective of this, data shall also be reported to credit agencies in case of breach of contract. Pursuant to the GDPR, these reports may be made only insofar as this is necessary to safeguard our legitimate interests or those of the general public and the **customer's** legitimate interests are not impaired as a result.
- 12.4. Further information about data protection is provided at <https://utg-tanklogistik.de/datenschutz/>.

13. Other provisions

- 13.1. Should any individual provisions of the contract with the **customer**, including these GTD, be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions.
- 13.2. The wholly or partially invalid provision shall be replaced by a provision whose economic success comes as close as possible to that of the invalid provision.

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