

Terms of Payment and Delivery for Milled Products

Version approved on June 1, 2004 by the Association of German Mills (Verband Deutscher Mühlen e.V.)

I. General Provisions

- (1) These terms of payment and delivery shall apply exclusively to all supplies made by the seller to the buyer. The terms supplies or deliveries as used in these terms of payment and delivery shall also cover other work and services provided by the seller for the buyer.
- (2) Buyers' terms and conditions which conflict with or expand on these terms of payment and delivery shall only apply if, and to the extent that, they are explicitly accepted in writing by the seller. The seller's terms of payment and delivery shall also apply if the seller unconditionally supplies the buyer despite being aware of the buyer's conflicting or extended terms and conditions.
- (3) As soon as the first delivery is made to the buyer, these terms of payment and delivery shall also apply to future deliveries made by the seller to the buyer.
- (4) Agreements pertaining to supply quantities, prices, delivery dates and other agreements which are not specified in the following terms of payment and delivery or which deviate from these must be made in writing.
- (5) If one or several provisions are ineffective, this shall not affect the validity of the remaining provisions.

II. Choice of Law, Legal Venue

- (1) The business relationship between the seller and the buyer shall be subject to the law of the Federal Republic of Germany to the exclusion of the United Nations Convention for the International Sale of Goods.
- (2) Legal disputes shall be settled by the contracting parties by submitting such disputes to the agreed arbitration tribunal without recourse to the state courts. If an arbitration tribunal has not been agreed, the dispute shall be settled by the stock exchange arbitration tribunal specified by the seller, or alternatively the stock exchange arbitration tribunal with regional jurisdiction for the seller.
- (3) The seller shall retain the right to bring actions before the ordinary court with jurisdiction for the seller for claims based on bills of exchange and cheques, as well as for claims against which no objection has been raised before the date on which the action is brought.

III. Prices

Prices for flour, semolina, coarse-grained flour and bruised grain are quoted in 100kg units

- a.) Net, including paper sack
- b.) Net, loose

carriage paid for the required quantity to the buyer's station or the warehouse at the buyer's principle place of business using the most cost effective means of freight. Valued-added taxes shall be payable in all cases. If smaller quantities are planned by the buyer, the cost of additional freight shall be borne by the buyer.

IV. Place of Performance, Transport

- (1) The place of performance for the delivery is the place of loading or, if delivery is agreed from the warehouse the place of performance shall be the buyer's warehouse.
- (2) The place of performance for payment shall be the registered place of business of the seller's commercial office.
- (3) The risk shall pass at the latest with the transfer of the delivery item (beginning of the loading process) to the freight carrier, haulage contractor or other company contracted to deliver the shipment to the buyer. If the seller transports the shipment itself, the risk shall pass to the buyer as soon as loading begins. If shipment is delayed owing to circumstances for which the buyer is responsible, the risk shall pass on the day on which readiness for shipment is notified.
- (4) At the request and cost of the buyer, the seller shall insure the shipment against theft, breakage, transport, fire and water damage and other insurable risks.
- (5) If the buyer wishes to monitor loading to ensure it is performed correctly, the buyer shall bear the ensuing costs.

V. Quality

- (1) If shipment of a particular make or brand is agreed, the milled product must correspond with the average of such make or brand at the time the contract is concluded.
- (2) Unless a different level of quality is agreed, delivery shall be made of healthy goods of average quality and grade.
- (3) Sales subject to special quality terms shall be subject to individual contractual agreement.
- (4) Such agreement shall be authoritative for all sample-based sales.
- (5) If "roughly according to sample", "type sample" or "average samples" are sold, small deviations – e.g. in colour, milling grade, grading – shall be permitted.

VI. Day of Settlement

The invoice date shall be

- (a) the bill of lading date if freight is sent by ship;
- (b) the loading date if freight is sent by rail or road;
- (c) the day of outbound delivery if shipment is made from the warehouse and from an incoming ship.

VII. Payment

- (1) Unless otherwise agreed, payment for flour, semolina, coarse-grained flour and bruised grain shall be due within 14 days of the invoice date at no discount.
- (2) If it becomes apparent after the contract has been concluded that there are objective or discernible grounds for doubting the buyer's credit standing, the seller shall be entitled to demand concurrent cash payment, payment on presentation of documents, advance payment or furnishing of security prior to loading within three business days even if a different form of payment has been agreed. If the buyer fails to comply with this request within the stated period, the seller shall be entitled to withdraw from all contracts with the buyer.
- (3) Interest, surcharges, etc. shall be due for settlement with invoices.
- (4) The buyer shall only be entitled to offset against counterclaims against which no legal recourse is possible or which have been acknowledged by the seller. The buyer shall only be entitled to exercise a right of retention if the buyer's counterclaim is based on the same contractual relationship.
- (5) Deductions shall not be made for natural waste and loss.

VIII. Default in Payment

- (1) Delay in payment by the buyer shall be deemed default.
- (2) In cases of delayed payment the seller shall be entitled to interest from the first day of such delay of eight percentage points above the base rate.
- (3) If the buyer delays in making payment, the seller shall have the right – after abortive expiry of a period of three business days – to withhold any outstanding deliveries pending full payment for

deliveries already made by the seller. The seller shall also be entitled to demand damages from the buyer and/or to withdraw from the contract.

IX. Delivery and Acceptance

- (1) The seller may demand that the buyer accepts the goods within an agreed delivery period in a single shipment or part shipments of at least 5,000 kg each. If the seller exercises this option, the buyer shall be notified immediately.
- (2) A distinction shall be made between
 - (a) "immediate delivery": Delivery and acceptance on the third business day after conclusion of the contract.
 - (b) "prompt delivery": Delivery and acceptance on the eighth business day after conclusion of the contract at the latest.
 - (c) "Delivery on schedule": If the delivery period is longer than one month, delivery and acceptance may only be required in equal monthly quantities and instalments of at least 5,000 kg.
- (3) This shall not affect the agreement of alternative delivery periods.
- (4) The buyer shall issue executable loading orders:
 - (a) automatically for sales which are for "immediate delivery" immediately upon conclusion of the contract;
 - (b) automatically for sales which are for "prompt delivery" within four business days of conclusion of the contract;
 - (c) automatically for sales for "delivery on schedule" within four business days at the latest prior to expiry of the stipulated delivery period. If the seller requests that the buyer issue a loading order, this must be issued within four business days of receipt of said request. The seller shall stipulate the day of delivery five days in advance if the goods are delivered by ship and the buyer is required to make the ship ready on this day;
 - (d) immediately upon initial notification of arrival if delivery per "incoming ship" is agreed. Executable loading orders can only be changed in agreement with the seller.
- (5) If the loading location is not specified in the contract, notification of arrival of the goods shall be made.
- (6) If a loading order is received in good time, the seller shall make delivery within the agreed delivery period. If the seller deviates from the loading order issued, the seller shall bear the additional costs incurred.
- (7) If delivery or collection is undertaken by means of silo, the metric weight measured by the seller at the place of loading and the loaded quality shall be authoritative. At the request of the buyer the silo shall be appropriately sealed immediately after loading is complete. The weighing documents specifying the loaded weight shall be submitted to the buyer on request.
- (8) The buyer shall be entitled to demand that a sample be taken and the weight measured by a sworn sampler and weighing official who shall attend in good time for loading in the silo. The costs incurred shall be borne by the buyer. Notification of defects, including for hidden defects, regarding goods loaded in silos shall only be deemed to be well founded and legitimate if the average sample taken at the loading location in compliance with this paragraph demonstrates the defects notified. In all other respects the provisions of Section XV shall apply.

X. Failure of the Buyer to Accept and Receive the Goods on Time

- (1) If the buyer fails to accept or issue the loading order in good time, the seller shall be entitled to grant the buyer a period of grace within which to fulfil the contract. Said period shall be specified in writing and the period must be at least three business days. The period of grace can be set in combination with a request for the issue of a loading order. In the latter case, the entire period shall be seven business days. If the buyer's loading order is issued behind schedule, the seller shall be entitled – notwithstanding the rights stipulated in Section X – to prolong the delivery period by the time by which the buyer has delayed.
- (2) Upon abortive expiry of the period of grace the seller shall be entitled to withdraw from the contract and/or demand compensation for damages.
- (3) The buyer shall be deemed to have defaulted on acceptance if the buyer fails to accept a delivery which has been correctly made by the seller. As long as the buyer defaults on acceptance the seller shall be entitled, after issuing a warning, to arrange a public auction on the account of the buyer by a sworn broker. Contracting in one's own name shall be allowed.
- (4) The seller shall be also entitled to store the goods during default on acceptance on the account of and at the risk of the buyer in a public warehouse or in any other secure storage location.

XI. Collection of the Goods by Road Vehicles

- (1) The buyer shall only collect the goods with a road vehicle if this has been explicitly agreed, or if goods are sold "ex warehouse". Collection can only take place during normal business hours. A road vehicle with silo shall only be used if explicitly agreed.
- (2) An agreement to collect the goods with a road vehicle shall not transform a delivery business into a call forward business transaction.

XII. Default by the Seller

- (1) If the seller defaults on due delivery, the following minimum periods of grace must be set:
 - (a) Four business days for sales which are for "immediate delivery"
 - (b) Eight business days for sales which are for "prompt delivery"
 - (c) Ten business days for sales which are for "delivery on schedule"
- (2) Upon abortive expiry of the period of grace the seller shall be entitled to notify the buyer of its withdrawal from the contract by letter, fax or e-mail and/or to demand compensation in lieu of performance in accordance with the provisions of Section XVI.
- (3) If the buyer demands compensation in lieu of performance as stipulated in Section XVI, the buyer shall be entitled to buy the goods publicly on the account of the seller within three business days on the open market or to make a covering purchase.
- (4) If the buyer has failed to accept delivery or make payment on time in relation to the same or other contractual relationship with the seller, the contractual delivery period or period of grace shall not begin to run against the seller. If the buyer alters a loading order which has already been drawn up, a period of grace which has already been set shall cease to be effective unless such change only concerns the loading address.

XIII. Retention of Title

- (1) The seller retains title to the goods supplied by it pending full payment. This shall also apply if a payment target has been agreed. If the buyer presents cheques or bills of exchange, the seller shall – even in the event of prolongation – continue to retain title until such cheques or bills have been redeemed.
- (2) The buyer shall insure the supplied goods against damages and submit evidence of such cover on demand. Claims arising against the insurer shall be assigned by the buyer in advance to the seller to secure the seller's claims.

- (3) If the buyer acts in breach of contract, by defaulting on due payment in particular, the seller shall be entitled – after expiry of a period of three days – to withdraw from the contract and demand surrender of the retained goods.
- (4) The buyer shall be entitled to sell reserved goods to third parties in the course of its ordinary business activities. All claims arising from the resale, including all assignable subsidiary rights, shall hereby be assigned by the buyer to secure all claims held by the seller arising out of the business relationship with the buyer. The buyer shall be entitled to collect claims provided that the buyer properly fulfils all the payment obligations arising from the business relationship with the seller.
- (5) The seller shall, at the request of the buyer, release collateral security if and to the extent that the realizable value of the collateral exceeds the nominal value of the seller's claims against the buyer by a total of 120%.
- (6) The buyer shall be entitled to process, mix or work the goods in the course of its ordinary business activities.
- (a) Supplied goods shall be processed and worked on behalf of the seller. The seller shall be regarded as the manufacturer as defined by §950 BGB (German Civil Code) at every stage of processing and working including of the finished goods. If the goods are processed or worked with goods which belong to the buyer or a third party, the seller shall acquire co-title to the new item in accordance with §947(1) BGB.
- (b) If the goods supplied by the seller are mixed or joined with goods which belong to the buyer or third party, the seller shall acquire co-title in accordance with §947(1), 948(1) BGB.
- (c) In cases (a) and (b) the buyer shall store the goods for the seller.
- (d) The buyer shall be entitled to sell and deliver the newly created goods to third parties if such transactions form part of the buyer's ordinary business activities. The provisions of Section XIII. (4) shall apply accordingly.
- (7) If the buyer has met in full the payment obligations to the seller arising from deliveries, the seller shall surrender to the buyer any claims held by it from the prior assignment. Separate agreements do not need to be made for each of the claims.
- (8) The buyer shall neither pledge nor assign the goods prior to full payment. Pledges and any other measures taken by third parties which prejudice the supplied goods subject to reservation of title, items made from the same and the assigned claims shall be notified by the buyer to the seller by letter, fax or e-mail without delay. The buyer shall bear any intervention costs incurred by the seller.

XIV. Calculation of Time Periods

- (1) The start date on which the periods referred to in these terms of payment and delivery begin to run shall not include the date itself on which the period is set.
- (2) As referred to in these terms of payment and delivery, business days are working days with the exception of Saturdays and December 24th and 31st.

XV. Warranty

- (1) The buyer shall inspect the supplied goods for defects and completeness immediately upon receipt. Receiving inspections shall include sample inspections of the internal condition of the goods (chemical or technical analyses, baking samples and similar) which must be documented in writing by the buyer. A copy of the documentation of receiving inspections shall be submitted to the seller on request. Defects shall be notified to the seller without delay. If it is possible to determine the internal condition of the goods by making sample inspections, the defect notification period shall be extended for the time needed to perform an immediate inspection during ordinary business operations, which time shall not, however, exceed 20 business days. If defects are detected, the buyer shall arrange for samples to be taken by a sworn expert which shall immediately be submitted to the arbitration tribunal. The date on which the sample will be taken shall in all cases be notified to the seller in good time and as closely as possible to the date on which defects are notified.
- (2) Whenever defects are notified, the seller shall be entitled to inspect and examine the allegedly defective goods. The seller shall be entitled to be present when samples are taken by the expert.
- (3) If the buyer fails to notify defects in the supplied goods to the seller, or if it fails to do so in good time, in compliance with the provisions of Section XV. (1), the goods shall be deemed to have been contractually approved.
- (4) In the event of defects in supplied goods, the seller shall provide supplementary performance in the form of replacement delivery unless this is only possible at unreasonable cost. If the seller refuses to provide supplementary performance, or if such performance is unreasonable or proves abortive, the buyer shall, at its own discretion, be entitled to a reduction in price or to withdraw from the contract.
- (5) The buyer's right to withdraw is excluded if the seller has only committed an insubstantial breach of contract. The latter applies in particular if costs not exceeding 5% of the value of the goods are caused by the defect. This shall not affect claims to a reduction in price.
- (6) The warranty period is one year commencing at the time the goods are delivered to the buyer.
- (7) The seller shall only be liable for compensation for damages and reimbursement for wasted expenditure incurred by the buyer as a result of or in connection with material defects or defects in title as specified in the rules of Section XVI.
- (8) If the buyer asserts claims for reductions in price, reimbursement for expenditure or damages against the seller based on the discovery of defects, the buyer shall be entitled to apply to the arbitration tribunal with jurisdiction according to Section II (2) to determine the amount of such claim. Buyer and seller shall submit to the decision reached by the arbitration tribunal on the amount by which prices shall be reduced, reimbursement for expenditure and damages without recourse to the state courts.

XVI. Compensation for Damages and Wasted Expenditure

- (1) The seller's liability for damages, regardless of the legal ground for such liability (e.g. owing to violation of obligations or to tortious acts) and for reimbursement for wasted expenditure shall be governed by the following provisions.
- (2) The seller shall be liable for damages incurred by the buyer as a result of intentional or grossly negligent conduct by corporate bodies, senior managers or other employees of the seller. The provisions of Section 831(1) Sentence 2, BGB remains unaffected.
- (3) The seller shall also be liable for damages incurred as a result of breach of contract for which the seller is responsible. This liability shall, however, be limited to foreseeable damages which are intrinsic to the contract provided they are due only to slight negligence or caused by agents in performance.
- (4) Claims for compensation for or in relation to defects in supplied goods shall become statute barred one year after the risk has passed.
- (5) In all other respects liability is limited to compensation for damages. Statutory claims based on the German Product Liability Act and for injuries to life, limb and health remain unaffected.
- (6) The buyer's claims shall remain unaffected by the provisions of Sections XV and XVI if the seller has fraudulently concealed the defect or provided a guarantee. Properties, condition or storage life of a delivery item or other circumstances shall only be deemed to be subject to guarantee if an explicit guarantee has been given. The scope of the guarantee liability shall be determined according to the content of the guarantee undertaking. The liability of the seller shall be limited to precisely those damages which the guarantee was designed to prevent.
- (7) The provisions of this Section XVI shall likewise apply to reimbursement for wasted expenditure (Section 284 BGB).

XVII. Rights of Recourse

- (1) The provisions of §478 and 479 BGB regarding a businessperson's rights of recourse relating to the sale of consumer goods remain unaffected. If the buyer sells goods supplied by the seller to a consumer, the buyer shall be entitled to demand supplementary performance from the seller in accordance with §478(1) BGB, to withdraw from the contract with the seller, to reduce the purchase price or to demand compensation pursuant to Section XVI if the buyer is required to take back the goods from the consumer owing to defects in the same or is required to reduce the price charged to the consumer for the same. In accordance with §478(2) BGB the buyer shall also be entitled to demand reimbursement from the seller for expenditure pursuant to §439(2) BGB incurred by and paid to the consumer by the buyer as a result of the defect in the goods. The buyer's claims against the seller pursuant to Section XVII (1) Sentence 2 and 3 shall only take effect if the defect asserted by the consumer existed prior to the passage of risk to the buyer. If the defect becomes apparent in the goods within the first six months since the passage of risk to the consumer, it shall be assumed that the defect existed prior to passage of risk to the buyer. The provisions of Section XVII (1) Sentences 2-5 shall apply accordingly to claims held by the buyer against the seller pursuant to §478(5) BGB. The period of limitation for a businessperson's right of recourse pursuant to §478, 479 BGB shall be five years beginning at the time the goods are delivered to the buyer.
- (2) Recourse claims based on §5 of the German Product Liability Act of the buyer against the seller shall be excluded if the defect in the goods cannot be demonstrated to have been caused in the area of influence of the seller.

XVIII. Recall of Goods

If the buyer plans to recall goods supplied by the seller which have been resold by the buyer or to recall goods produced by the buyer from the goods supplied by the seller, or if the responsible authorities order the buyer pursuant to §9 of the German Product Safety Act (ProdSG) to recall, secure or destroy such goods, the buyer shall notify the seller without delay at the earliest possible opportunity before carrying out the planned or ordered action. Section XVIII Sentence 1 applies accordingly if the buyer plans or the responsible authorities order the buyer pursuant to §8 ProdSG to issue a warning about such goods to the general public. The buyer's right to comply with legal requirements to recall goods or to issue a public warning about the same in the way required by law shall remain unaffected by the provisions of Section XVIII Sentence 1 and 2.

XIX. Impediments to Performance

- (1) Traffic problems, strikes, lockouts, stoppages, excluding interruptions to production caused by fire and other circumstances of force majeure which are short term in nature and which make production or delivery impossible, shall prolong the delivery periods by the duration of such impediment for up to 30 days. Within this period the seller shall make delivery or declare that it will be able to make delivery within the next 14 days. The contract shall terminate on expiry of the delivery period which has been extended for 44 days if delivery has not yet been made.
- (2) If performance of the contract is prevented by war, blockade, prohibition of import, export or transit in Germany and abroad, by fire or other incidents of force majeure the end of which is, by their very nature, foreseeable, the seller shall be entitled and required to declare within a period of ten days of the occurrence of such incident whether it will be able to fulfil the contract. If there are good grounds for assuming that the contract can be fulfilled in the foreseeable future without, owing to the occurrence of the incident, it being possible to specify the exact point in time at which delivery will be made, the declared period shall only commence at the time at which it becomes possible to make such declaration. The grounds for postponing such declaration shall be subject to the judgement of the arbitration tribunal. If it is not possible to issue a declaration within 60 days of the incident occurring or if the seller has not made delivery within 21 days of submission of the declaration or within the prolonged delivery period, the part of the contract relating to the unfulfilled delivery shall be deemed to be terminated.
- (3) The seller shall not be deemed to have defaulted for the duration of the impediment. The buyer shall not be able to derive claims for damages from the impediment to performance.
- (4) These provisions shall not affect agreements between the parties on the delivery and acceptance of substitute products.

XX. Termination of Contracts

A contract terminates automatically unless a reminder of acceptance or delivery is sent by letter, fax or e-mail within three months of the final delivery period specified in the contract. If a reminder is sent within this period, but the party sending such reminder fails to assert its contractual rights within three months of making such declaration, the contract and all claims of the contracting parties shall be finally regarded as having expired.

XXI. Animal Feed

- (1) The above terms and conditions shall apply likewise to animal feed with the following exceptions.
- (2) Prices for animal feed apply from the mill. Valued-added taxes shall be payable in all cases.
- (3) If animal feed is accepted by the truckload at the mill in quantities of less than 5 t, the seller shall be entitled to make a surcharge. This surcharge shall not be made if the delivery of less than 5 t is specified by the seller.
- (4) Payment for animal feed shall be made immediately at no discount following receipt of the goods or on presentation of the loading documents or freight release.