

Brökelmann + Co. Oelmühle GmbH + Co.

general terms and conditions of sale and delivery for the supply of oils, fats, fatty acids, lecithin and all other products with the exception of oil cake, oil meal and other feedstuffs

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For all contracts and deliveries of the seller - as far as they do not concern oil cake, oil meal or other feed - exclusively the following terms and conditions shall apply. The Buyer acknowledges them as binding for the present and all future contracts.

Any deviating or supplementary terms and conditions of the Buyer or of a contracting agent which the Seller does not expressly accept in writing shall not apply and shall not bind the Seller even if the Seller does not expressly object to them.

The content of the contract results from the written sales confirmation or the contract of the seller including the above and following conditions. The failure of the Buyer to countersign the sales confirmation or the contract shall not affect the validity of the conclusion of the contract according to the sales confirmation / contract. Oral collateral agreements as well as amendments and supplements to this contract require the written confirmation of the seller.

Should any of these provisions be or become invalid, the remaining content of the contract shall remain binding. The ineffective provision shall be replaced by an effective provision which comes as close as possible to the economic result of the ineffective provision.

I. Delivery

1. delivery times are only considered as approximately agreed and will be adhered to as far as possible. Even if a calendar-based delivery time has been agreed, this does not constitute a transaction for delivery by a fixed date within the meaning of § 376 (1) of the German Commercial Code (HGB), unless the parties have agreed this as an exception. Agreements on binding or non-binding delivery dates must in any case be made in writing. Unless otherwise agreed, delivery shall take place within the agreed delivery period at the Seller's discretion. If the delivery period covers several months, delivery shall take place in approximately equal monthly instalments, unless otherwise agreed upon individually.

2. when determining the delivery time, "immediately" shall be understood to mean within 3 working days, but within 5 working days in the case of loading by ship, and "prompt" shall mean within 10 working days. The day of the conclusion of the contract is not included in this calculation. Working days in the sense of this and the following provisions are the days from Monday to Friday, provided they are not public or local holidays, and with the exception of 24 and 31 December. When such a public holiday exists shall be determined by the law or local custom of the place of performance for the delivery (see XIII clause 1).

3. a) Unless otherwise agreed in the contract, the seller may tender the goods for acceptance at his discretion during the delivery period. The seller may also tender the goods before the beginning of the delivery period, but not before delivery from the first day of the delivery period. The Buyer shall immediately - but at the latest within 5 working days - after receipt of the tender, issue a dispatch order in executable form for the acceptance of the goods. If the buyer does not accept the goods within a period of grace set by the seller in accordance with No. 3 c), the seller may, due to the essential importance of the timely issue of the shipping order, at his discretion either withdraw from the contract or its still unfulfilled part and / or claim damages instead of performance. Instead, he may also demand immediate payment against delivery of a delivery note / warehouse receipt. If a tender or an extension of time according to No. 3 c) by the Seller or a dispatch order of the Buyer is received by the other party after 4 p.m. of a working day, the tender, extension of time or dispatch order shall be deemed to be received on the next working day for the purpose of calculating the time limit.

b) If the Seller has not made use of his right to tender according to No. 1 and 3 a) and if the Buyer has not placed a dispatch order by the end of the delivery period or by the call date, the Seller may tender in the manner provided for in No. 3 a) even after expiry of the delivery period and set a grace period as long as the Buyer's obligation to accept delivery has not expired..

c) The grace periods to be granted in accordance with no. 3 a) and 3 b) must be

- for sales by "immediately" at least 2 working days;
- for sales for a longer period than "immediately" up to and including "prompt" at least 3 working days;
- for sales with a term longer than "prompt" at least 5 working days.

- d) If the seller demands compensation for damages instead of performance, the seller may determine the damages in particular by self-help sale or price determination. The self-help sale must be carried out by a sworn broker as far as possible immediately after expiry of the grace period. If a threatened self-help sale is not effected or not effected in the proper manner or time, the right to claim damages shall remain in force. Self-help sales are permissible. If the damage is determined by price determination, the deadline for price determination shall be the 1st working day after expiry of the grace period.
- e) If the buyer does not issue an executable shipping order in due time, the seller shall be entitled to store the goods for the buyer at the buyer's expense and risk himself or with a third party. The buyer shall provide insurance cover.
- f) In the event of late placement of the shipping order or late call-off, the Seller is entitled to postpone the delivery by as many working days as the Buyer was in arrears, plus a reasonable disposition time.

4. the seller reserves the right to make partial deliveries which are considered as independent deliveries and are payable as such, unless the partial fulfilment of the contract is of no interest to the buyer. If several contracts for the same products run simultaneously, the seller is entitled to fulfil the oldest contract first.

5. Deliveries to third parties (including inspectors, freight forwarders, shipping companies, etc.) against concluded contracts will only be made if the claim is accompanied by exemption certificates duly issued to the seller. The quantities of the claim and the exemption certificate must correspond exactly. The request must contain the contract number of the oil mill contract. If this number is missing when requesting or exempting an intermediate seller, the seller is not liable for contractual execution.

6. delivery may also be made from locations other than those provided for in the contract if this is appropriate for reasons of production, storage or marketing. Any additional costs arising from this shall be borne by the Seller. The seller shall be liable for any reduced costs incurred as a result.

7. The seller is entitled to refuse to execute the contract,

- a) if after conclusion of the contract a significant deterioration in the financial circumstances of the buyer occurs or becomes known to the seller, through which the claim to the counter-performance is endangered, unless advance payment is made or the payments are made in another way that ensures the seller (e.g. bank guarantees);
- b) as long as the Buyer is in arrears with the acceptance or acceptance of a delivery or with a payment from any contract concluded with the Seller;
- c) if the Buyer's company is liquidated, transferred to a third party or relocated abroad or takes another legal form after conclusion of the contract and if, as a result of the aforementioned changes, justified doubts arise as to the fulfilment of the contract by the Buyer, unless advance payment is made or payments are secured in accordance with a).

8. the seller may, unless otherwise agreed in the contract, at any time deliver goods equivalent to his make.

9.

- a) The seller is released from the observance of contractual delivery periods and, if applicable, from the fulfilment of the contract in accordance with the following provisions, insofar and for as long as circumstances arise in Germany or abroad which make the performance of the service considerably more difficult. This shall be the case if he is prevented from procuring raw materials, from processing or from delivering or loading them or if they are made unreasonably difficult for him. The parties regard the following circumstances in particular as unreasonable impediments: mobilisation, warlike events, riots, civil war, blockades, labour disputes, demonstrations, factory occupations, sabotage and go-slows; adverse natural events such as ice, high/low water, hurricanes, earthquakes, tidal waves, delayed or destroyed harvests;

impediments, delays, restrictions and suspensions of loading or transport;

hindrances caused by explosions, fire, total or partial destruction of production facilities or of warehouses, machines and machine parts;

machine breakage or significant other operational disruptions; consequences of an "energy crisis", shortage of fuel, auxiliary materials or energy;

shortage of labour due to illness or epidemics; failure to supply the Seller with raw materials, auxiliary materials or packaging material or to supply the Seller in accordance with the contract;

sovereign measures, in particular official orders and the like in Germany or abroad.

Impeding circumstances in the above sense shall not be deemed to be those culpably brought about by the Seller.

- b) In the cases mentioned in No. 9 a), the Seller is entitled to initially postpone the agreed delivery time for the expected duration of the hindrance or part thereof. A corresponding notification of the buyer must be made immediately verbally, by telephone or in writing, it is not bound to any form at first.
In case of a verbal or telephonic notification, the Seller is obliged to confirm in writing or by telex as soon as this is reasonable under the circumstances; if a written / telex confirmation is mentioned above, it is in any case also sufficient if the declaration / confirmation is made by e-mail or by fax.
However, the Seller shall be free to choose to deliver goods equivalent to his make at the latest until the end of the impediment.
After the end of the hindrance, the seller is obliged to deliver within a reasonable period of time within the scope of his production and other possibilities and must inform the buyer of the corresponding delivery date as soon as possible.
- c) The seller is not obliged to replace the affected deliveries with purchases from third sources, unless the buyer assumes the additional costs arising from this and agrees to the resulting delays in delivery.
- d) If the total period of the hindrance is more than 3 months, either party may withdraw from the contract. The right to withdraw from the contract does not apply if the seller is still obliged to receive or accept the raw materials or part of the raw materials on the basis of his raw materials purchase contracts after 3 months and the buyer can reasonably be expected to continue the contract. In the case of contracts covering several deliveries, the above-mentioned right of withdrawal shall only apply to those deliveries which were to be carried out under the contract during the period of impediment.

II. loading

1. the buyer has the right to be present or to be represented at the loading for the purpose of weight determination or sampling.
2. in the absence of special instructions from the buyer, the choice of transport route shall be made by the seller at his best discretion without liability for the cheapest shipment.
3. the goods generally travel uninsured at the expense and risk of the buyer, unless otherwise contractually agreed.
4. If the goods are accepted by vehicles provided by the buyer, these must be received within the working hours specified by the seller as quickly as the operating conditions of the factory make this necessary, if necessary also in the second or third shift, without the seller having to pay any extra costs incurred by the buyer due to overwork etc. If it is not possible for the Buyer's own team to receive the goods in accordance with the operational requirements, the Seller shall endeavour to provide professional labour at the Buyer's expense. The loading of water vehicles is carried out according to space usage.
5. If the goods are accepted by a third party (forwarder, transport or freight carrier) on behalf of the buyer, the bills of lading or consignment notes issued to "Order" and/or endorsed in blank shall be handed over to the seller on request.

6. in the case of rail shipments, the seller is entitled, with notification to the buyer, to load the goods at his own address.

7. the seller is not responsible for not loading with the promised vessel if the shipping company has made other arrangements for the vessel.

8. the goods are loaded during the time indicated by the seller. Costs arising from delays in loading due to weather conditions (e.g. demurrage charges, demurrage charges for wagons and the like), as well as wagon/container, wagon and siding charges and the delivery costs for general cargo shall be borne by the buyer, unless otherwise agreed in the contract.

III. weight

1. the agreed quantity may be exceeded or fallen short of by up to 5 % by the seller for reasons of production or loading technology or due to the ship's space. Under- or overruns of up to 2 % will be settled at the contract price, over- or underruns exceeding this amount will be settled at the daily price.
2. the weight determined by the supplying factory is exclusively decisive

IV. Packaging

1. with unobjected acceptance of the goods by the railway, shipping company or other carriers, the seller's liability for improper packaging or loading ends.
2. if delivery in Buyer's tank wagons or tank trucks has been agreed, these shall be presented immediately, at Seller's request, carriage paid to the supplying works and - unless otherwise agreed - in a clean, ready-to-fill condition. The Seller is not responsible for any contamination or other impairment of the goods due to uncleanness or other defects or unsuitability of the containers provided by the Buyer. The seller is entitled but not obliged to clean the containers provided by the buyer at the buyer's expense, whereby the seller is liable for damage to the containers or the goods to be filled in accordance with the provisions under VII.1. and 2. As long as the tank wagons / tank trucks required for dispatch to be provided by the buyer are not available, the seller is not obliged to make delivery; however, the seller is entitled - after notifying the buyer accordingly - to effect delivery using his own or leased tank wagons or tank trucks. In this case too, delivery shall be effected at the expense and risk of the Buyer.
3. packaged goods are generally delivered on Euro exchange pallets 1200 x 800 mm or Düsseldorf pallets. In the case of delivery or collection ex works, corresponding, equivalent pallets must be returned immediately. In case of non-return, EUR 10.00 per pallet will be charged.
4. containers of 550 kg each shall be subject to a deposit of EUR 165.00. Damaged or missing parts will be charged at the replacement value.

V. Quality

1. the quality of the goods to be delivered shall be in accordance with the contractual agreements. In the absence of any other agreements, goods of customary commercial quality, in particular with regard to purity and unspoilness, are to be delivered. As the specific application is not subject to the Seller's control, the Buyer must himself carry out tests to determine the suitability of the product for his specific application. It is the Buyer's responsibility to ensure that appropriate measures are taken to determine the legal status of products in the relevant geographical area.
2. if offered or purchased according to sample, the same shall only apply as a type sample. The term "as before" is to be understood as "approximately as before".

VI. Duty to examine, warranty

1. the goods must be carefully inspected by the recipient for completeness / damage before acceptance / acknowledgement. The recipient is solely responsible for ensuring that in the event of a complaint, all measures required under the relevant regulations are carried out in good time and in the correct form, in particular the necessary facts of the case, and must inform the seller immediately.

2.

the buyer must inspect the goods immediately after delivery and if defects are found, the buyer must notify the seller in writing immediately after delivery. The defects must be confirmed to the seller in writing immediately after notification with detailed reasons. The goods complained about must be left in the shipping containers so that the Seller can properly verify the justification of the complaint; this does not apply only if the Seller expressly waives this in writing and the Buyer ensures the completely separate storage of the goods complained about and their non-processing in a flawless manner. Insofar as this paragraph stipulates that declarations / notifications of the parties must be made in writing, it is sufficient in each case if the declarations / notifications are made by e-mail or fax.

3.

the buyer is obliged to clarify before the start of processing by means of tests suitable in scope and methodology whether the delivered goods are suitable for the purposes intended by him.

4.

if the buyer does not or not properly comply with the obligations according to nos. 1 to 3, the goods shall be deemed to have been approved, unless the defects in question were not recognisable during proper inspection / testing.

5.

if a defect which was not initially recognisable later becomes apparent, the purchaser is obliged to notify this immediately in accordance with No. 2; otherwise the goods are deemed to have been approved even in view of this defect.

6.

in the event of a timely and justified complaint, the seller is entitled to first take back the defective goods and replace them with goods in conformity with the contract. If the Seller does not fulfil this obligation or does not do so in accordance with the contract within a reasonable time, the Buyer may set the Seller a final deadline in writing within which the Seller must fulfil its obligations. If no replacement delivery is made by the Seller or if it fails, the Buyer may assert the more extensive statutory warranty rights, taking into account the following Section VII.

VII. damages, limitation of claims for defects

1.

the seller is liable for damages within the framework of the statutory provisions if the damage is due to intent or gross negligence on the part of the seller, his representatives or vicarious agents. Liability for simple negligence is excluded, provided that there is no culpable breach of an essential contractual obligation or injury to life, body or health of a human being or a mandatory liability based on the provisions of the Product Liability Act.

2.

the buyer's claims for damages are limited to the typical, foreseeable damage. This does not apply to claims based on intentional or grossly negligent conduct of the seller, his legal representatives or vicarious agents. Furthermore, the limitation shall not apply to liability for damages resulting from injury to life, body or health of a human being and in cases of mandatory liability according to the provisions of the Product Liability Act.

3.

claims to which the buyer is entitled in the event of defects in the delivered goods in accordance with § 437 BGB (German Civil Code) shall become time-barred after a period of one year. The period begins with the delivery of the goods. This does not apply if the BGB prescribes longer periods, especially in the cases of §§ 438 para. 1 no. 2, 478, 479 BGB.

VIII. Pricing

1.

The price may be increased by the amount by which the cost price of the seller increases, that after conclusion of the contract Costs and/or duties on goods, energy and/or services rise or have risen. Examples (but not limited to): (a) taxes, excise duties, fees, tariffs, levies, customs duties or customs classifications and/or
(b) increase in existing freight rates in connection with of any kind of transport and/or
(c) Higher costs for raw materials, auxiliary and operating materials or ingredients as well as higher fuel and/or duty and energy costs, or Insurance premiums and hardship allowances.

2.

the buyer shall bear any additional costs which may arise from any approved part loads or which may arise after conclusion of the contract due to an increase in freight rates, small water, flood or ice surcharges or similar circumstances. It is irrelevant whether these additional costs are incurred by the Seller at the time of purchase or delivery.

3.

the agreed price and the additional costs to be borne by the buyer are each exclusive of value added tax. Value added tax (VAT) is added to them at the statutory rate, which the purchaser must also pay.

IX. Payment

1.

the seller is entitled to demand advance payment against delivery of goods ready for loading.

2.

Irrespective of the agreed method of payment, the Seller may demand advance payment for the delivery if

- a) after conclusion of the contract a significant deterioration in the financial circumstances of the Buyer occurs or the Seller becomes aware of a circumstance which gives rise to justified doubts as to the Buyer's solvency, unless payment is guaranteed in another way which secures the Seller (e.g. bank guarantee),
- b) the Buyer is in default with the acceptance, acceptance or payment of a delivery

3.

bills of exchange will only be accepted if "payment by bill of exchange" is expressly agreed in the contract. Bills of exchange and cheques are always accepted only on account of performance. In the case of payment by bill of exchange, the drafts sent to the buyer by the seller must be returned to the seller free of charges within 7 days of the date of sending, together with acceptance and bank domicile. Discount charges, bill charges and interest on arrears are always payable immediately.

4.

the buyer is not entitled to offset or deduction of any kind whatsoever, unless the claim for offsetting has been acknowledged by the seller in writing or has been legally established.

5.

if the buyer does not pay the agreed purchase price within the payment period stipulated in the contract, he will be in default without a reminder, unless he immediately proves that he is not responsible for the delayed payment.

6.

in the case of the supply of oils or fats subject to tax, duty, etc., the amount of tax, duty, etc. is payable net, i.e. without discount.

7.

representatives or employees of the seller are not authorized to collect payments without special written authorization.

X. Default of payment, suspension of payment by the buyer

1.

if the buyer is in default of payment to the seller for at least one delivery under this or another contract, or has suspended payments, or if facts exist which are equivalent to a suspension of payments, or if he has not honoured a bill of exchange or cheque within the period stipulated, or if he has revoked a direct debit issued to him by the seller in accordance with the contract, or has had it returned unredeemed, the seller is entitled - subject to his other rights - to withdraw at any time, in whole or in part, from individual or all contracts which have not yet been settled. A grace period shall only be granted in the event of default of payment, granting a first period of three working days, but only 24 hours in the event of revocation / dishonour of a direct debit.

2.

the interest rate for monetary debts is 13 %, but at least 8 %

- for consumers 5 % - above the respective base rate. The seller can claim further damages.

XI. Reservation of title

1.

the seller retains title to all goods delivered by him until the complete settlement of his total claims, also from other contracts concluded with the buyer, from the current business relationship with the buyer (reserved goods). This shall also apply if the purchase price for individual deliveries of goods has been paid because the retention of title serves as security for the Seller's current outstanding balance claim. The retention of title shall also remain in force as long as the seller is not released from a bill liability entered into in the interest of the buyer.

2.

if the seller withdraws from the contract, the buyer has to return the object burdened with the reservation of title immediately. In this case, the seller may enter the premises where the goods subject to retention of title are stored and take possession of them. The buyer shall bear the costs of taking back the goods.

3.

the treatment or processing of the reserved goods shall be deemed to have been carried out on behalf of the seller, without any obligations arising therefrom for the seller.

The seller is entitled to the ownership of the new object created by the treatment or processing. In the event of processing with other goods not belonging to the seller, the seller shall be entitled to co-ownership of the new object in the ratio of the value of the reserved goods to the new object at the time of processing. The value of the goods subject to retention of title is the purchase price charged to the buyer by the seller for this purpose. If the goods subject to retention of title are mixed or combined with other goods not belonging to the seller, the seller shall also be entitled to co-ownership of the mixed stock, the combined goods or any new item in accordance with the invoice value of the seller for the goods subject to retention of title involved, even if one of the other goods is to be regarded as the main item owned by the buyer, and in other cases - as far as legally possible. In addition, the Buyer assigns to the Seller his claims against third parties to which he is entitled from the processing of the reserved goods up to the Seller's invoice value for the processed reserved goods to secure the Seller's total outstanding claim. Insofar as the seller acquires ownership or co-ownership of mixed, combined or processed goods or new items, these shall also be deemed to be goods subject to retention of title within the meaning of these provisions. The buyer shall store them free of charge for the seller. He shall always keep the goods subject to retention of title sufficiently insured at his own expense and hereby assigns his claim to any insurance benefits to the Seller to the extent of the value of his ownership or co-ownership.

4. the buyer may only resell the goods subject to retention of title in the ordinary course of business and subject to retention of title, but may not pledge them, assign them as security or subject them to similar dispositions. Furthermore, the following applies:

- a) All claims (including any ancillary rights) to which he is entitled from any resale of the goods subject to retention of title are assigned by the buyer to the seller as security up to the amount of the seller's respective outstanding total claim. If the reserved goods are resold together with other goods ("en bloc" sale, etc.) for a total price, the assignment shall be made in accordance with the invoice value of the Seller for the reserved goods sold together with the goods.
- b) In the event that the resold reserved goods pursuant to No. 3 are only co-owned by the Seller, the hereby executed assignment shall be effected at least with regard to that part of the claim from the resale which corresponds to the value of the affected original reserved goods.
- c) If the buyer receives bills of exchange or cheques from his customers/buyers from the resale, he hereby assigns to the seller the corresponding bill of exchange or cheque claims existing against his customers/buyers to the amount of the claims assigned to the seller in accordance with letters a) and b) from the resale. The ownership of the bill of exchange or cheque documents is hereby transferred from the buyer to the seller; the buyer shall keep the documents in safe custody for the seller. In the case of partial payment(s), the assignment shall remain in force until full payment has been made by the buyer's customer / his buyer.

5. as long as the buyer duly meets his payment obligations to the buyer, he is authorized until revoked to collect the claims transferred to the seller by way of security. This direct debit authorization is limited in that disposal of these claims is only permitted concurrently with payment of the proceeds to the Seller, and only when these proceeds fall due. The proceeds to be disbursed shall be at least equal to the amount due to the Seller from the individual claim assigned to him by way of security, whereby in the event of premature or delayed satisfaction of the Seller, the corresponding interest compensation shall be taken into account. The Seller shall only revoke the direct debit authorization if considerable doubts arise as to the Buyer's solvency or if the Buyer is in default of payment; if the Buyer ceases to make payments, the direct debit authorization shall expire without any revocation being necessary. If the direct debit authorization is revoked or lapses, the Buyer shall immediately notify the third-party buyers of the transfer of the claim for payment to the Seller, provide the Seller with all information and documents required to assert its rights, and hand over to the Seller any customer bills of exchange or checks in this regard. The seller may notify the debtors of the assignment.

6. The buyer must immediately inform the seller by telex or telefax of any seizure by third parties, which has taken place or is imminent, of the goods subject to retention of title or of the claims assigned in whole or in part to the seller and must immediately object to such measures by third parties, e.g. execution of execution on the goods subject to retention of title. Furthermore, the buyer is obliged to hand over all necessary information and documents to the seller immediately upon the seller's request, so that the seller can assert his rights from co-ownership according to items 3. and 4. against third parties, especially in case of suspension of payments by the buyer.

7. The seller's reservation of title is subject to a resolutive condition in such a way that the ownership of the reserved goods is transferred to the buyer without further ado upon complete fulfilment of his respective outstanding total claim against the buyer. At the request of the Buyer, the Seller shall release securities to which he is entitled at his discretion, provided their value exceeds the total claim to be secured by 20%.

8. from the time the buyer ceases to make payments or applies for insolvency proceedings against his assets, the buyer is no longer authorised to sell, process, combine or mix the reserved goods with other goods / items and must immediately arrange for separate storage or labelling of the reserved goods. Furthermore, the buyer must allow the amounts received from claims assigned to the seller to be credited to a separate account or kept in separate custody.

XII. Orders by the authorities

If, after the conclusion of the individual contract, new obligations of any kind affecting the terms of the contract are imposed on the Seller by sovereign measures, in particular official orders and the like, these are to be assumed by the Buyer in the relationship of the contracting parties to each other, provided that, according to the customs and practices applicable in trade, it can be assumed that the contracting parties would have agreed to this assumption if the corresponding sovereign measure had already existed when the contract was concluded.

XIII. Place of performance, application of law and jurisdiction,

severability clause

1. The place of performance for all mutual obligations is 59067 Hamm. The place of jurisdiction for all legal disputes, also in the context of a bill or cheque process, is Hamm.

2. Unless otherwise provided for in these General Terms and Conditions of Sale and Delivery or in the contract, the statutory provisions of the Federal Republic of Germany, in particular those of the German Civil Code (BGB) and the German Commercial Code (HGB), shall be deemed to have been agreed, expressly excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

3. Should a provision in these terms and conditions of business or a provision within the framework of other agreements be or become invalid, the validity of the rest of the contract shall not be affected. In this case, the contractual partners are obliged to replace the invalid provision with a provision that comes as close as possible to the invalid provision in terms of its economic success.