

GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT

PETROFER AG
REINACH/SWITZERLAND

I. Conclusion of the Contract

1. These general terms and conditions of delivery and payment shall apply to all our present and future contracts with the customer unless these terms are excluded or modified in a single case by written agreement. They shall apply to all contracts, deliveries and further services including consulting services and provision of information, etc. even if not expressly referred to in a single case. We shall not be bound by and reject any terms differing from ours, including in particular terms and conditions of purchase, even if we should not contradict them expressly upon receipt of orders or confirmations referring to Buyer's terms and conditions. In case of direct sales (third party products being directly delivered to the customer, "Streckengeschäft") the conditions of the producers shall apply in addition to our General Terms and Conditions.
2. Our offers shall not be binding and may be altered or withdrawn by us. No contract or agreement, in particular no oral agreement, covenant, order or offer shall be binding on us without our confirmation in writing. Silence in response to offers or orders of buyers may not be construed as acceptance or confirmation.
3. Information, drawings, pictures, technical data, weights and measures as well as descriptions of performance included in brochures, catalogues, circulars, announcements, price lists or documents which are part of our offer are not binding unless expressly defined as binding in a written agreement.

II. Prices

Our prices are ex-works (works or storage of the producer) and must be understood plus transport, customs duties and VAT unless otherwise stipulated.

III. Payment and Settlement of Accounts

1. Unless agreed different in writing payment shall be effected without any delay and without any deduction upon receipt of the invoice and invoices shall be issued when the goods are ready for despatch.
2. If the Buyer's payments are in arrears we are entitled to charge interest at the current rates charged by Swiss banks for overdraft provisions, but at least the interest rate provided for by Swiss law. We reserve the right to claim compensation for any further losses resulting from delay in payment.
3. If it becomes apparent that payment by the Buyer might be jeopardised as a result of a deficiency in his creditworthiness (including but not limited to the withdrawal, revocation, reduction or refusal of credit insurance by our regular credit insurance company) we may suspend the performance of our obligations and demand payment of all open invoices and prepayment of any future delivery unless the Buyer provides adequate assurance of his payment. If we have already despatched the goods before the grounds described before become evident, we may prevent the handing over of the goods to the Buyer even though the Buyer holds a document which entitles him to obtain them. We also may withdraw from the contract or demand compensation for non-performance if the Buyer should not comply with his obligations within a reasonable time. We may also forbid and prevent any re-sale and processing of the delivered goods and withdraw the authorization to collect payments from his customers for the delivery of goods to which clause V concerning retention of title is applicable.

4. The Buyer is not allowed to make any set off based on alleged claims which are not expressly recognized by us or established by legally binding court decision.

IV. Terms and Dates of Delivery

1. Our commitment to deliver is subject to our correct and timely self-delivery unless we are responsible for the deficient or late self-delivery.

2. Any confirmation as to delivery times shall only be approximate. Delivery times shall commence with the date of our order confirmation and are subject to the timely clarification of any details of the order as well as of the fulfilment of any of the Buyer's obligations, e.g. to produce official certifications, to provide letters of credit and payment guarantees or to pay agreed instalments.

3. Any agreed delivery time shall be considered to be met if and in so far the goods have left the works or warehouse at such time or date. If and in so far the goods fail to be despatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for despatch.

4. If the delivery is delayed by our fault, the Buyer, after setting a reasonable grace period, may withdraw from the contract if and in so far as the goods have not been delivered by this date. Damage claims for delay and non-performance may only be made in accordance with clause X of these Conditions.

V. Retention of Title

1. All items supplied (goods subject to retention of title) shall remain our property until all our claims against the Buyer in connection with the business relationship in question including future contracts have been fulfilled. This shall also apply in the case of payments being made by the Buyer in respect of specific invoices or claims.

2. The Buyer is permitted to process the goods subject to retention of title or to combine or connect them with other objects. Such processing shall take place on our account but without creating any obligation for us. The Supplier shall hold the new item thus created in safekeeping and treat it with care. The new item is deemed to be "goods subject to retention of title". The parties agree that in the event that the goods are connected or combined with other items which do not belong to us, we shall, under all circumstances, acquire co-ownership of the new item in proportion to the ratio of the value of the goods subject to retention of title that have been connected or combined with other items to the value of the other items in question at the time of the connection or combination thereof. The new item thus created is, in this proportion, deemed "goods subject to retention of title". In case our property rights should expire through processing, combining or mixing the Buyer shall already now transfer onto us his ownership rights in respect of the new stock or items in the amount of the invoice concerning the goods reserved, and the co-ownership rights in respect of new stock or items shall be regarded as "goods subject to retention of title".

3. The Buyer may sell the goods subject to retention of title only in routine business on his usual terms and conditions and only as long as he is not in arrears with his payment obligations, provided that the claims from resale shall be transferred to us in accordance with points 4 to 6. The Buyer shall not be entitled to dispose of the goods subject to retention of title in any other way.

4. The Buyer hereby assigns and transfers his claims resulting from resale of the reserved goods to us already now. The claims serve the purpose of protection to the same extent as the reserved goods. If the reserved goods are sold by the Buyer together with other goods not under reserve of title in our favour, transfer of the claims related to the resale shall be effected only in proportion to the value of the reserved goods individually resold. In case of sale of goods in which we have only shared ownership in accordance with point 2, transfer of the claims shall be effected in proportion only.

5. The Buyer is authorized, until revocation of such authorization, to collect upon claims arising from the resale which have been assigned and transferred to us. We shall revoke the authorization only for good cause, particularly in the case of default in payment or deficiency in the creditworthiness of the Buyer. The Buyer shall not be entitled to assign or transfer his claims to third parties, including but not limited to the sale of receivables to factoring banks, except with our prior written consent. At our request the Buyer is obliged to immediately advise his customers of the transfer of receivables onto us – unless we do it ourselves – and to provide us with information and documents necessary for collection.
6. Our retraction of the goods or assertion of our reserved title or seizure of the goods subject to retention of title does not constitute rescission of the contract unless we have expressly declared such rescission. The Buyer's right of possession of the reserved goods shall expire if he does not meet his obligations from this contract or any other contract with us.
7. The Buyer has to inform us immediately about any seizure of goods or other impairments by third parties.
8. As far as the value of the existing securities exceeds 10 % of our secured claims we shall at the Buyer's request release the securities of our choice.
9. We shall be authorized to apply for inscription of the retention of title in case such inscription is necessary under the applicable law.

VI . Qualities, Measures, Weights and Product Designations

1. Grades, sizes and classifications of the goods shall be determined in accordance with the agreed standards or, in absence of such an agreement, with the EN-standards effective at the time of the conclusion of the contract, or in absence of such standards with trade practice and usage. Any reference to such standards and to similar rules, to works certificates and to similar inspection documents as well as reference to grades, classification, sizes, weights or usage of the goods shall not be regarded as warranty of fitness for a special purpose nor as a guarantee. The same shall apply to declarations of conformity and to any conformity marks such as e.g. CE and GS.
2. The weight of the goods shall be determined on our or our suppliers' scales and shall be evidenced by presentation of the pertinent weight check. Where provided by law, the weight may be determined without weighing in accordance with the standards. Instead of physical weighing we may calculate the weight on the basis of the applicable standards ("theoretical weight"). Any indications given in the delivery notes as to the number of pieces, bundles etc. are not binding, if and in so far as the goods are invoiced by weight. Where, in accordance with trade usage, the goods are not weighed piece by piece, the total weight of the delivery shall prevail. Any difference with regard to the calculated weight of the single pieces shall be proportionally allocated to them.

VII. Inspection and approval, Certificates of Control

1. We shall not be obliged to inspect and approve any goods when taken over from a producer or a dealer unless the applicable standards or contractual agreement provide for inspection and approval. In case of goods which by compulsory law must be inspected and approved, the goods shall be controlled by the manufacturer or the applicable official institution and supplied with the manufacturer's certificate of inspection and acceptance.
2. Where testing and inspection of the goods has been agreed upon, the goods must be inspected in the mill or in our warehouse immediately after the Buyer has been informed that the goods are ready for despatch. The Buyer shall bear his personal inspection costs, whereas the costs of inspection will be invoiced to him in accordance with our price list.
3. Should, through no fault of ours, an agreed upon inspection of the goods fail or be delayed or be incomplete, we shall be authorised to despatch the goods without prior inspection or to store them at the Buyer's expense and risk and to invoice the goods to him.

VIII. Despatch, Transfer of Risk, Partial Delivery, Continuous Delivery

1. Unless otherwise agreed in writing, we shall determine the way and means of despatch as well as the carrier and forwarding agent.
2. If, for a reason for which the Buyer is responsible, take-over or despatch of the goods were delayed, we shall be entitled, at our discretion and at Buyer's risk and expense, to put the goods into storage and to take all further measures deemed suitable to preserve the goods notified ready for shipping are not called up in due course, and to invoice the goods. The statutory regulations in respect of default in acceptance shall remain unaffected.
3. To the extent it is customary business practise, we will deliver the goods packed and protect against rust at the Buyer's expense. We do not take back packaging, protective equipment and transport aids unless agreed upon in writing. An express written agreement is required for any packaging beyond transportation purposes or for other type of special protection, e.g. for longer-term preservation or storage.
4. The risk of loss or damage shall pass to the Buyer when the goods are handed over to the forwarder or carrier, latest, however, when leaving the plant or warehouse of the producer or dealer.
5. We are entitled to execute partial deliveries of reasonable quantities.
6. Where the contract provides for continuous deliveries, the Buyer shall divide the quantities and grades of the goods into approximately equal monthly shipments. Otherwise we shall be entitled to specify them at our own fair and just discretion. Where the particular calls for delivery exceed the total contractual quantity, we shall be entitled, but not committed, to deliver the surplus quantity and invoice it at the prices applicable at the time of the call or the delivery.

IX. Defects and warranty

1. The Buyer shall immediately notify us in writing of any defects of the goods at the latest seven days after their delivery. Defects which, even upon careful inspection, cannot be discovered within this period must be notified to us in writing immediately upon their discovery, at the latest, however, before the elapse of any agreed or statutory warranty period. In such cases the Buyer must suspend any processing or manufacturing of the goods.
2. If and in so far the Buyer's claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect or deliver non-defective goods ("substitution"). Should we fail to substitute the goods or decline the substitution, the Buyer may, upon the elapse of an adequate additional period of time set to us, withdraw from the contract or reduce the purchase price. In cases where the defect is only minor or where the goods have already been resold, processed or transformed, he may only reduce the purchase price.
3. We will reimburse the Buyer his expenditures in connection with the substitution only in so far as such expenditures are reasonable and proportional to the purchase price of the goods, in no case more than the purchase price. We will bear any further expenses such as for the mantling and dismantling of the defective goods only in accordance with the rules of Section X of these Conditions.
4. If and in so far as the goods are subject to contractually agreed testing and inspection by the Buyer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection. If the Buyer, due to his own negligence, has no knowledge of the defect, then he may claim only such defects which we have knowingly not disclosed to him or which are subject to a guarantee.
5. If the Buyer fails to immediately give to us the opportunity to inspect the defect, especially if he fails - upon our request - to immediately make the goods or samples hereof available to us, he will lose all of his warranty rights.

6. No warranty shall be given in respect of goods sold as declassified material with regard to such defects either specified in the contract or to those normally to be expected. Goods classified as "Ila-Ware" ("secondaries") are not subject to any warranty.
7. Our further liability is subject to Section X.

X. General Limit of Liability, Limitation Period

1. Our liability for breach of contractual or extra-contractual obligations, in particular for non-performed or deferred deliveries, for breach of duties prior to the contract as well as for tortious acts - including our responsibility for our managerial staff and any other person employed in performing our obligations - shall be restricted to damages caused by our wrongful intent or by our gross negligence and shall in no case exceed the foreseeable losses and damages characteristic for the type of contract in question. In all cases and in the event of delivery delays that are the responsibility of us, liability is limited to the invoiced value of the product.
2. The aforesaid restriction shall not apply to the extent that such restriction is not legally permissible under the applicable law.
3. Unless otherwise agreed to any contractual claims which the Buyer is entitled to in connection with the delivery of the goods shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer.

XI. Venue and Applicable Law

The place of jurisdiction shall be at Arlesheim, Switzerland, or - at our discretion - at the Buyer's principle place of business or his registered office. All legal relationships between us and the Buyer shall be governed by the laws of Switzerland. The application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.