

## Guideline

# Terms and Conditions of Delivery and Payment for Mill Products



**Terms and Conditions of Delivery and Payment for Mill Products dated May 1<sup>st</sup> 2015.**

## 1. General Provisions

- (1) These Terms and Conditions of Delivery and Payment exclusively apply to all Mill Products, e.g. flour, semolina, coarse grained flour, coarse wholemeal, baking ingredients (hereinafter „Mill Products“), Milling-By-Products, e.g. middlings and bran (hereinafter „Milling-By-Products“) or other services and products provided by the mills. Unless otherwise stated, Mill Products are all products and services as described in the sentence before.
- (2) These Terms and Conditions of Delivery and Payment shall exclusively apply for all Deliveries and Services of Mill Products.
- (3) Contradictory or additional terms and conditions of the Purchaser only apply if and insofar as the Seller explicitly agrees to them in writing. The Seller's Terms and Conditions of Delivery and Payment apply even if the Seller, advised of the Purchaser's contradictory or additional terms and conditions, unreservedly makes Deliveries to the Purchaser.
- (4) If these Terms and Conditions of Delivery and Payment require written forms, the transmission by surface mail, telefax or by e-mail is sufficient.
- (5) Through the first Delivery to the Purchaser, these Terms and Conditions of Delivery and Payment also become part of the Seller's future Deliveries to the Purchaser.
- (6) In case the Contract is not concluded in written form, the delivery note shall be the letter of confirmation.
- (7) The agreements/ provisions concerning the quantities delivered, prices, delivery dates and other arrangements, which are not specified in the following Terms and Conditions of Delivery and Payment or which differ from these, must be made in writing.
- (8) The invalidity of individual provisions does not affect the validity of the remaining provisions.

## 2. Applicable Law, Place of Jurisdiction

- (1) The business relationship between the Seller and the Purchaser is subject to German law; exclusion/ exception of the UN Convention on the International Sale of Goods shall not apply.
- (2) Legal disputes shall be decided by the arbitration tribunal agreed between the Parties on concluding the Contract to the exclusion of recourse to the state courts. If an arbitration tribunal is not agreed between the Parties, the Seller may nominate an exchange arbitration tribunal. If no exchange arbitration tribunal is agreed in the Contract and the Seller has not nominate an exchange arbitration tribunal within 4 weeks after written request by Purchaser the regional exchange arbitration tribunal responsible for the place where the Seller has their registered offices shall decide.
- (3) The Seller reserves the right to sue for accounts receivable, against which no objection has been made by the day on which the suit is brought, before the general court responsible for the Seller.

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### 3. Prices

The prices quoted for flour, semolina, coarse-grained flour and coarse wholemeal are for 100 kg

- a) Net packed
- b) Net loose

Delivery is free of charge to the agreed Purchaser station. Seller may chose means of transportation. VAT taxes are always to be paid in addition to the quoted prices. If the Purchaser arranges for smaller quantities the additional freight charges shall be borne by the Purchaser.

### 4. Place of Performance, Transport

- (1) The place of performance for the Delivery is the place of loading, in case of agreed delivery ex warehouse from the Seller's warehouse.
- (2) The place of performance for payment is the place in which the Seller has their business establishment.
- (3) Risk is transferred to the Purchaser at the latest on handover of the Delivery item (start of the loading process) to the forwarder, carrier or other company assigned to carry out the shipment. If the Seller carries out the transport themselves, the risk is transferred to the Purchaser with the start of loading. If the dispatch is delayed due to circumstances for which the Purchaser is responsible the risk is transferred on the day on which the goods are ready for dispatch.
- (4) At the request and cost of the Purchaser the Seller shall insure the consignment against theft, breakage, transport, fire and water damage and other insurable risks.
- (5) If the Purchaser wishes the loading to be checked to ensure it is carried out properly, they shall bear the costs incurred for this.

### 5. Quality

- (1) If the Delivery of a specific make or a specific brand is agreed, the grain milling product shall correspond to the average of this make or this brand at the time the Contract is concluded.
- (2) If the quality of the goods is not agreed, goods of average quality and grade shall be supplied.
- (3) Sales with particular quality conditions require an individual legal agreement.
- (4) For sale by sample this is decisive.
- (5) If „approximately as sample“, „type sample“ or „average sample“ is sold, minor differences – e.g. in colour, milling, grain size – are allowed, as far as the deviations are reasonable for the Purchaser

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## 6. Invoicing Date

- (1) The invoice date
  - a) for goods loaded onto a ship is the date of the bill of lading.
  - b) for dispatch by rail or road is the loading date.
  - c) for delivery ex warehouse and from incoming ship is the date of the delivery or release.

## 7. Payment

- (1) Unless agreed otherwise, payment for Mill Products is due for payment without deductions within 14 days of invoice date. Payment for Milling-By-Products is due immediately without deduction. The compliance with the terms of payment shall be of essence of the Contract.
- (2) Payment order or cheques will be accepted only on account of performance but not in lieu of performance. The fulfilment of payment in case of payment order or cheques only occurs with value date of the bank credit.
- (3) If, after the Contract has been concluded, objective indications of the Purchaser's lack of creditworthiness arise or become recognisable to the Seller, the Seller has the right to demand cash payment, payment concurrent with delivery, payment against documents, cash in advance or surety within a period of three Business Days before loading, even if another method of payment has been agreed. If the Purchaser fails to meet this demand within this deadline the Seller can withdraw from all contracts with the Purchaser.
- (4) Interest, surcharges, etc. are due on withdrawal from the Contract.
- (5) The Purchaser can only offset if their counterclaims are legally established, undisputed or recognised by the Seller. The Purchaser is entitled to exercise their right of retention insofar as their counterclaim is based on the same contractual relationship.
- (6) Deductions for natural shrinkage are not permitted.

## 8. Default of Payment

- (1) The Purchaser is in default of payment if they fail to pay on time.
- (2) In the event of default of payment the Seller is entitled to interest on defaulted payment from the date on which the default begins equal to nine percentage points above the base interest rate.
- (3) In the event of the Purchaser's default of payment, following the fruitless expiry of a deadline of three Business Days, the Seller has the right to refuse still outstanding Deliveries until they have received full payment for the Deliveries which the Seller has already made. The Seller is also entitled to demand compensation from the Purchaser and/or to withdraw from the Contract.

## 9. Delivery and Acceptance

- (1) The Seller can demand that the Purchaser accepts the goods within the agreed delivery deadline in one load or in partial loads, as far as this is reasonable for the Purchaser. If the Seller makes use of partial loads, they shall inform the Purchaser in good time. Partial loads shall be considered as partial fulfilment of the delivery agreement.
- (2) If the Parties agree on circa-quantities an additional or smaller quantity of 2% shall be deemed as a fulfilment of the Contract. The purchase price shall be determined by the actual quantity delivered.
- (3) A differentiation is made between
  - a) „immediate Delivery“: Delivery and acceptance on the third Business Day following conclusion of the Contract.
  - b) „prompt Delivery“: Delivery and acceptance on the eighth Business Day following conclusion of the Contract at the latest.
  - c) „Delivery on scheduled date“: If the delivery period here is more than one month, the Delivery and acceptance can only be demanded in equal monthly quantities and instalments.
- (4) The agreement of other delivery dates is not affected by this.
- (5) The Purchaser is obliged to issue executable loading orders, namely
  - a) for sales for „immediate Delivery“ without request immediately on concluding the Contract.
  - b) for sales for „prompt Delivery“ without request within four Business Days of conclusion of the Contract.
  - c) for sales on „scheduled date“ without request four days before the stipulated delivery deadline expires at the latest. If the Seller asks the Purchaser to issue a loading order, this shall be issued within four Business Days of receipt of this request. The Seller is obliged to stipulate the Delivery date with five days' advance notice, if the goods are delivered by ship and the Purchaser is obliged to provide the ship on this date.
  - d) for agreed Delivery from „incoming ship“ immediately after the first tender of Delivery.

Executable loading orders issued can only be changed in agreement with the Seller.

- (6) If the place of loading is not named in the Contract, the goods are to be tendered.
- (7) If the loading order is received in good time, the Seller is obliged to deliver within the agreed Delivery period. If the Seller deviates from the loading order issued they shall bear any additional costs incurred as a result.
- (8) For delivery or collection in the silo the metric weight and loaded quality determined by the Seller at the place of loading is decisive. At the request of the Purchaser the silo is to be sealed in a suitable way immediately after the loading has finished. The weighing documents for the weight loaded at the mill shall be issued to the Purchaser on request.
- (9) The Purchaser can demand that sampling and determination of weight by a sworn sampler and weigher present in good time be carried out on loading into the silo. The costs incurred for this are borne by the Purchaser. Defect notices, including for concealed defects, with regard to goods delivered loaded in silos are only deemed to be reasonable and justified, if the average sample taken at the place of loading according to this paragraph has the defects complained of. Otherwise the provisions of Section XIV and XV shall apply.

### **10. Delay in Taking Delivery and Default in Acceptance by the Purchaser**

- (1) If the Purchaser delays in acceptance or issuing the loading order, the Seller is entitled to set an extension of time for performance of the Contract. The deadline shall be set in writing and shall be at least three Business Days. The setting of an extension of time can be linked to a request to issue the loading order. In this case the total period of time is seven Business Days. If the Purchaser's loading order is late, notwithstanding the rights arising from Section X, the Seller is entitled to extend the delivery period by the time by which the Purchaser is in default.
- (2) Following fruitless expiry of the extension period the Seller can withdraw from the Contract and/or claim compensation.
- (3) If the Purchaser fails to accept a properly offered delivery of the Seller, the Purchaser is in default in acceptance. During the Purchaser's default in acceptance, following prior warning, the Seller is entitled to make a direct self-help sale by a sworn broker for the account of the Purchaser. Self-dealing is permitted.
- (4) During the Purchaser's default in acceptance the Seller also can store the goods in a public warehouse or in another secure way on account of and at the risk of the Purchaser.

### **11. Seller's Default**

- (1) If the Seller is late in making the Delivery, an extension of time for the Delivery shall be set the following minimum extensions of time shall be set:
  - a) for sales for „immediate Delivery“ four Business Days.
  - b) for sales for „prompt Delivery“ eight Business Days.
  - c) for sales for „scheduled date“ ten Business Days.
- (2) As long as the Purchaser is in default of acceptance of the Delivery, payment or another contractual duty arising out of the same or another contractual relationship with the Seller, the contractual Delivery period or extension of time against the Seller shall be in abeyance. If the Purchaser changes an already issued loading order, any already set extension of time is rendered invalid, unless the change only concerns the loading address.

### **12. Retention of Ownership**

- (1) The Seller retains ownership of the delivered goods until they have received full payment of all current or future claims, due from the Purchaser to the Seller. This also applies if a payment period has been agreed. If the Purchaser issues cheques as payment, the retained ownership of the Seller continues to exist until cash payment, even in the event of possible prolongation.
- (2) The Purchaser is obliged to insure the goods to be supplied against damage and to provide evidence that insurance has been taken out on request. The Purchaser transfers their claim against the insurer arising out of a loss in advance to the Seller to secure their claims up to the amount of the Seller's accounts receivable, the Seller shall accept the assignment now

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- (3) In the event of behaviour of the Purchaser in violation of the Contract, in particular in the event of default of payment, the Seller is entitled, following a notice period of three Business Days to withdraw from the Contract and to demand surrender of the goods subject to retention of ownership.
- (4) The Purchaser is entitled to sell on goods subject to retention of ownership to third parties in their ordinary business transactions. The Purchaser herewith assigns to the Seller in full the accounts receivable arising out of the selling on including all assignable subsidiary rights to secure all the Seller's accounts receivable arising out of the business relationship with the Purchaser. The Purchaser is entitled to collect the accounts receivable as long as they properly fulfil all their payment obligations arising out of their business relationship with the Seller.
- (5) At the request of the Purchaser the Seller shall release their choice of collateral, if and insofar as the realisable value of the collateral exceeds 120 % in total of the nominal value of the Seller's accounts receivable claims against the Purchaser.
- (6) The Purchaser is entitled to process, mix and use the goods in their proper business transactions.
  - a) The processing and use of the delivered goods always takes place on behalf of the Seller. In each processing and use state and also with regard to the finished goods, the Seller is to be viewed as being the manufacturer as defined in § 950 BGB (German Civil Code). If the goods are processed or used together with goods which belong to the Purchaser or a third party, the Seller acquires co-ownership of the resulting new item in accordance with § 947 Para. 1 BGB.
  - b) If the goods delivered by the Seller are combined or mixed with goods which belong to the Purchaser or third parties, the Seller acquires co-ownership in accordance with §§ 947 Para. 1, 948 Para. 1 BGB.
  - c) In cases (a) and (b) the Purchaser undertakes to hold the goods in safe custody for the Seller at the expense of the Purchaser.
  - d) The Purchaser is entitled to sell on and deliver the new item made to third parties, if this is the usual practice in their proper business transactions. The provision in Section XII. Para. 4 applies accordingly.
- (7) If the Purchaser has fulfilled all their payment obligations to the Seller arising out of Deliveries, the Seller shall assign to the Seller any accounts receivable they are still entitled to under the assignment in advance. A separate agreement with respect to the individual accounts receivable is not required.
- (8) The Purchaser is prohibited from pledging the goods or assigning them by way of security before they have been paid for in full. The Purchaser shall immediately notify in writing the Seller by letter, facsimile or e-mail of attachments and other impairing measures of third parties with regard to the goods delivered subject to retention of ownership, the items made from the goods and the assigned accounts receivable. The Purchaser shall bear any intervention costs of the Seller.

### 13. Calculation of Deadlines

- (1) The day on which the deadline is set shall not be included for the start of the periods of time provided for in these Terms and Conditions of Delivery and Payment.
- (2) Business days in the meaning of these Terms and Conditions of Delivery and Payment are working days with the exception of Saturdays and with the exception of 24 and 31 December.

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## 14. Warranty

- (1) The Purchaser shall examine the delivered goods immediately following receipt for errors and completeness. The incoming goods inspection also includes random examination of the inner quality of the goods (chemical or technical analysis, baking test and similar), which is to be documented in writing by the Purchaser. On request a copy of the incoming inspection documentation shall be issued to the Seller. The Seller is to be immediately notified of any obvious defects of the goods (i.e. defects, which are obvious via a reasonable income inspection). In case of hidden defects the Purchaser shall notify in writing the Seller immediately after discovering the defect.
- (2) In the event of criticism the Purchaser shall have samples of the criticized goods taken by a sworn expert and to immediately hand these over on calling the arbitration tribunal. The Seller is always to be notified in good time of the date on which the samples are to be taken, if possible together with the defects notice.
- (3) With each defects notice the Seller is entitled to examine and test the complained of goods. The Seller is entitled to take part in the sampling by the expert.
- (4) If the Purchaser fails to notify the Seller of the defects in the delivered goods or not in good time according to Section XIV Para 1, the goods shall be deemed to be contractually approved.
- (5) In the event of defects in the delivered goods the Seller shall provide subsequent performance through substitute Delivery, unless this is only possible with disproportionate costs. If the Seller refuses subsequent performance, or if it is unreasonable or has failed, the Purchaser can choose to either reduce the purchase price or to withdraw from the Contract.
- (6) The Purchaser's right to withdraw from the Contract is excluded if the Seller's breach of duty is immaterial. This is the case in particular, if the reduced value caused by the redhibitory defect is not higher than 5 % of the value of the goods. The claim to reduction of the purchase price is unaffected by this.
- (7) The warranty period is one year from the time of delivery of the goods to the Purchaser.
- (8) The Seller is liable for the compensation of losses and wasted expenditure of the Purchaser or in relation to redhibitory or legal defects only according to the provisions in Section XV.
- (9) If the Purchaser claims a purchase price reduction or compensation for expenses or losses from the Seller due to the defects found, the Parties shall immediately start with negotiations about the claims of the Purchaser. If the Parties cannot agree on a settlement within 3 month after discovering the defect, the Parties shall call the arbitration tribunal responsible according to Section II Para. 2 to determine the amount of the claim. The Purchaser and Seller subject themselves to the decision of the arbitration tribunal regarding the amount of the purchase price reduction, the claim for reimbursement of costs and the compensation claim excluding recourse to the state courts.

## 15. Compensation for Damages and Wasted Expenditure

- (1) The Seller's liability for compensation, for whatever legal reason (e.g. due to breach of a duty arising out of the obligation and due to unlawful act) and for reimbursement of wasted expenditure is determined according to the following provisions.

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- (2) The Seller is liable for the Purchaser's losses incurred due to deliberate intent or grossly negligent behaviour of the bodies, managerial employees or other employees of the Seller. The provision of § 831 Para. 1 Sentence 2 BGB remains unaffected.
- (3) The Seller is also liable for losses incurred due to a breach of essential contractual obligations for which the Seller is responsible. However, this liability is limited to foreseeable losses typical for this type of Contract, provided they are caused by only slight negligence or by vicarious agents.
- (4) Claims for compensation due to or in relation to defects in the delivered goods expire one year after the transfer of risk.
- (5) Otherwise liability for compensation is excluded. Legal claims arising out of the Product Liability Law (ProdHaftG) and due to fatal or physical injuries or damage to health plus the provision of §§ 478 f. BGB remain unaffected.
- (6) The Purchaser's claims remain unaffected by the provisions of Sections XIV and XV, provided the Seller is guilty of malicious silence with regard to a defect or has provided a guarantee. The characteristics, quality or durability of a delivered item or other circumstances are only deemed to be guaranteed if a guarantee has explicitly been given. The content of the guarantee pledge is decisive for the scope of the guarantee liability. The Seller is only liable for those losses which are intended to be directly prevented by the guarantee.
- (7) The provisions of this Section XV. apply accordingly to the remuneration of wasted expenditure (§ 284 BGB).

## 16. Recall of Goods

If the Purchaser plans to recall goods delivered by the Seller, which the Purchaser has sold on, or goods which the Purchaser has produced from the goods delivered by the Seller, or if the competent authority orders the Purchaser to recall the goods in accordance with § 9 Product Safety Law (ProdSG), or to secure or destroy these goods, they shall inform the Seller without delay at the earliest possible date before implementing the planned or ordered measures. The aforementioned applies accordingly if the Purchaser plans or the competent authority orders the Purchaser to warn the public of these goods in accordance with § 8 ProdSG. The Purchaser's right to fulfil any legal obligation to recall the goods or to warn the public about these goods in the legally required way, remains unaffected by the provisions described in Sentence 1 and 2 above.

## 17. Obstacles to Performance

- (1) Transport disruptions, strikes, lock-outs, operational disruptions, excluding impossibility to produce caused by fire and other short-term obstacles the nature of which is based on force majeure, which make production or Delivery impossible, extend the delivery deadlines by the duration of the obstacle up to 30 days maximum. Within this period the Seller shall deliver or shall declare that they are able to deliver within a further 14 days. Following expiry of the Delivery date extended by 44 days the Contract expires, insofar as it has not been performed with regard to the Delivery. The Seller shall immediately notify the Purchaser about the occurrence of such an event.
- (2) If fulfilment of the contractual performance is obstructed by war, blockade, a ban on import, export or transit at home or abroad, fire and other circumstances based on unforeseen and unindebted force majeure, which by their very nature are of an unforeseeable duration, the Seller is entitled and obliged



to notify the Purchaser immediately about such an event and declare within ten days of the occurrence of the event, whether or not they are able to fulfil the contractual performance. If there is justifiable reason to assume that the contractual performance can be fulfilled within a foreseeable time, without being able to give the precise delivery date due to the event that has occurred, the declaration period does not start until the date on which this is possible. The justification for postponing the declaration is subject to establishment by an arbitration tribunal. If it is not possible to make the declaration within 60 days of the occurrence of the event or if the Seller has not delivered within 21 days of giving the declaration or the extended delivery period, the Contract is deemed to have expired with regard to delivery of the part that has not been performed.

- (3) The Seller is not in default for the duration of the obstacle. The Purchaser cannot base any claims for compensation on the obstacle to performance.
- (4) In case of termination of the Contract payments already made shall reimbursed from Seller to Purchaser.
- (5) The Parties agreement concerning Delivery and acceptance of substitute makes is not affected by these provisions.

## 18. Expiry of Contracts

A Contract expires automatically if a reminder of acceptance or Delivery is not sent by letter, facsimile or e-mail within three months of the final delivery date specified in the Contract. If a reminder is sent within this period, but the reminding party does not exercise their contractual rights within three months of issuing the reminder, the Contract and all claims of the Parties to the Contract shall be deemed to be finally expired.

## 19. Change of Legal Situation

In case of changing the legal situation after conclusion of Contract or sovereign regulations are issued, which provide any new obligation regarding the disposal or delivery of the agreed goods those modification of the legal situation or official obligation shall be deemed as agreed between the Parties.

May 1<sup>st</sup> 2015