

## **Terms and conditions of delivery and payment**

### **§ 1 General information – Scope of application**

1.1 The following terms and conditions of delivery and payment apply exclusively to the delivery of the products of the individual companies of the Emsland Group based in Germany; we do not recognise any terms and conditions of the buyer that contradict or deviate from our terms and conditions of delivery and payment, unless we have expressly agreed to their validity in writing. Our terms and conditions of sale shall also apply if we carry out the delivery to the buyer without reservation in the knowledge of conflicting terms and conditions of the buyer or terms and conditions of the buyer that deviate from our terms and conditions of delivery and payment. The following terms and conditions of delivery and payment apply exclusively in the contractual relationship between the selling company of the Emsland Group and the buyer.

1.2 The terms and conditions of delivery and payment shall be deemed accepted by the buyer, unless the buyer rejects them immediately and in writing.

1.3 Individual agreements made with the buyer in individual cases (including side agreements, additions and changes) shall in any case take precedence over these terms and conditions of delivery and payment. A written contract or our written confirmation is decisive for the content of such agreements. The same applies to any supplementary agreement of the Hamburg final feed certificate no. II in its currently valid version.

1.4 The terms and conditions of delivery and payment are an integral part of all contracts that we conclude with the buyer about the goods offered by us, without having to refer to them in each individual case. The version valid at the time of conclusion of the contract is decisive in each case. We will inform the buyer about changes to our terms and conditions of delivery and payment. The terms and conditions of delivery and payment only apply if the buyer is an entrepreneur (§ 14 BGB).

### **§ 2 Conclusion of contract**

2.1 Our offers are subject to change and non-binding, unless they are expressly designated as binding or include a specific acceptance period.

2.2 By ordering the desired goods, the buyer bindingly declares his contractual offer.

2.3 We are entitled to accept the contract offer contained in the order within three weeks by sending an order confirmation or by sending the ordered products within the same period.

2.4 The contract is concluded subject to the reservation that in the event of incorrect or improper self-delivery, we may not be able to deliver or may only be able to make a partial delivery. This only applies in the event that we are not responsible for the non-delivery. In the event of unavailability or only partial availability of the goods, we will inform the buyer immediately and reimburse the buyer's advance payments immediately.

### **§ 3 Prices and payment**

3.1 In the case of continuing obligations, framework agreements and contracts with a delivery date that is later than three months after conclusion of the contract, we reserve the right to make the following price adjustments. The basis for calculating the prices are the price structures negotiated with the buyer in each case. If there are changes in subsidies, raw material prices, energy costs of production or transport costs from three months after the date of the order confirmation, we have the right to pass on the price increases caused by this to the buyer, unless they are compensated by a reduction in other cost factors of the price structure. We will prove the changes to the buyer on request. Similarly, we will pass on uncompensated price reductions to the buyer.

3.2 Unless otherwise agreed in writing with us, all invoices must be paid within ten (10) days after receipt of the invoice to a bank account designated by us (in principle, the account of the respective supplying company) without deductions. Bills of exchange will only be accepted if their term does not exceed ninety (90) days and the fees (discount commission) will be refunded in case of discounting. They are payable at a bank. Nevertheless, we reserve the right to refuse to accept a bill of exchange. Bills of exchange are accepted only for processing.

3.3 After expiry of the payment period, the buyer is in default of payment. The statutory rules regarding the consequences of late payment, in particular the default interest, apply. We reserve the right to prove and assert a higher damage caused by delay.

3.4 We are entitled to execute or render outstanding deliveries or services only against advance payment or security if we become aware of circumstances after conclusion of the contract that are likely to significantly reduce the creditworthiness of the buyer and which jeopardise the payment of our outstanding claims by the buyer from the respective contractual relationship (including from other individual orders for which the same framework contract applies).

#### **§ 4 Delivery**

4.1 The delivery takes place from the factory or from the warehouse. If, in exceptional cases, delivery carriage paid at the German railway station or shipping port (Incoterms 2020) has been agreed in writing, the recipient will be charged additional freight costs for urgent deliveries and express deliveries.

4.2 All events of force majeure or other events that are unforeseeable and unavoidable at the time of conclusion of the contract (e.g. unforeseeable and unavoidable operational disruptions, difficulties in the procurement of materials and energy, transport delays, strikes, lawful lockouts, lack of manpower, energy or raw materials, difficulties in obtaining necessary official permits, official measures or the omitted, incorrect or untimely delivery by suppliers) release us from the performance of the contractual obligations assumed as long as these events continue. We are obliged to inform the buyer immediately if such an event occurs; at the same time, we are obliged to inform the buyer of how long such an event is expected to last. If such an event lasts longer than three months, we can withdraw from the contract. The consideration will be refunded immediately.

4.3 Our statutory rights of withdrawal and termination as well as the statutory provisions on the execution of the contract in the event of exclusion of the obligation to perform (e.g. impossibility or unreasonableness of performance and / or subsequent performance) remain unaffected.

4.4 If we are in default with a delivery or service or if a delivery becomes impossible for us, for whatever reason, our liability is limited to damages in accordance with § 9 of these Terms and Conditions of Delivery and Payment.

#### **§ 5 Delivery date and partial deliveries**

5.1 Deadlines and dates for deliveries and services promised by us are always only approximate, unless a fixed deadline or a fixed date has been expressly promised or agreed.

5.2 If the buyer is in default of acceptance, we are entitled to demand compensation for the resulting damage and any additional expenses. The same applies if the buyer culpably violates cooperation obligations. With the occurrence of the default of acceptance or delay on the part of the debtor, the risk of accidental deterioration and accidental destruction passes to the buyer

5.3 Partial deliveries are permitted, provided that they can be used by the buyer within the scope of the agreed intended purpose.

#### **§ 6 Withdrawal**

We reserve the right to withdraw from the contract or to terminate continuing obligations if there is an objectively justified reason that was not already recognisable at the time of conclusion of the contract. An objectively justified reason may in particular be the buyer's conduct in violation of the contract, incorrect information about the buyer's creditworthiness, the change of ownership in the person of the buyer, which significantly affects our interests, or the application for the opening of the buyer's insolvency proceedings or the occurrence of other facts that endanger our claim to the purchase price due to the buyer's lack of performance. The right of withdrawal in § 4 of these Terms and Conditions of Delivery and Payment as well as the statutory right of withdrawal remain unaffected.

#### **§ 7 Place of performance and transfer of risk**

The place of performance for all obligations arising from the contractual relationship is our place of business or our warehouse, unless otherwise specified. All deliveries are made at the risk of the buyer ex works (Incoterms 2020), unless otherwise specified. The buyer also bears the transport risk for all goods sent to us by return.

## **§ 8 Warranty**

8.1 Warranty claims expire one (1) year from the transfer of risk. However, our legal liability according to § 9 of these Terms and Conditions of Payment and Delivery remains unaffected by this.

8.2 The basis of our liability for defects is solely the agreement made on the quality of the goods. All specifications, including the shelf life of the goods, which are the subject of the individual contract, are deemed to be an agreement on the quality. Only if and insofar as no specification has been agreed is it to be assessed according to the legal regulation whether a defect exists or not (§ 434 Para. 1 BGB). Claims for defects do not exist in the case of only insignificant deviation from the agreed quality if such has been agreed in writing, or in the case of only insignificant impairment of usability.

8.3 The buyer's claims for defects presuppose that he has fulfilled his statutory inspection and notification obligations (§ 377 HGB). Notices of defects must be made in writing. The buyer bears the full burden of proof for all claim requirements, in particular for the defect itself, for the time of the defect and for the timeliness of the notification of defects. If the buyer fails to carry out a proper inspection and / or report a defect, our warranty for the defect that has not been reported is excluded.

8.4 If the delivered item is defective, the buyer can first demand the removal of the defect (repair) or delivery of a defect-free item (replacement delivery) as subsequent performance at his discretion. If the buyer does not declare which of the two rights he chooses, we can set him a reasonable deadline for this. If the buyer does not make the choice within the deadline, the right to choose shall pass to us at the end of the deadline.

8.5 We are entitled to make the owed subsequent performance dependent on the buyer paying the due purchase price. However, the buyer is entitled to withhold a reasonable part of the purchase price in relation to the defect.

8.6 The buyer has to give us the time and opportunity necessary for the owed subsequent performance, in particular to hand over the rejected goods at our request for inspection purposes. In the case of replacement delivery, the buyer must return the defective item to us at our request and at our expense, otherwise destroy it at our expense if we have agreed to this in advance.

8.7 We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs, if there is actually a defect. However, if a request by the buyer to remedy a defect turns out to be unjustified, we can demand reimbursement of the costs incurred by the buyer.

8.8 In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the buyer has the right to remedy the defect himself and to demand compensation from us for the objectively necessary expenses. We are to be notified immediately, if possible in advance, of such a self-performance. The right to self-performance does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

8.9 If the subsequent performance has failed twice or a reasonable period to be set by the buyer for the subsequent performance has expired unsuccessfully or is dispensable according to the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.

8.10 Claims of the buyer for damages or reimbursement of futile expenses exist only in accordance with § 9 and are otherwise excluded.

## **§ 9 Liability**

9.1 We are liable in accordance with the statutory provisions if the buyer asserts claims for damages based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents.

9.2 Insofar as we are not accused of an intentional breach of contract, the liability for damages is limited to the foreseeable, typically occurring damage.

9.3 We are liable in accordance with the statutory provisions if we culpably violate an essential contractual obligation, the violation of which endangers the purpose of the contract (cardinal obligation); in this case, however, the liability for damages is limited to the foreseeable, typically occurring damage.

9.4 Statutory liability for culpable injury to life, limb or health remains unaffected and unrestricted; this also applies to mandatory liability under the applicable Product Liability Act.

9.5 Unless otherwise provided above, any further liability for damages than that provided for in § 9 is excluded – regardless of the legal nature of the asserted claim. This applies in particular to claims for damages due to other breaches of duty or due to tortious claims for compensation for property damage in accordance with § 823 BGB.

9.6 The limitation according to §§ 9.2, 9.3 and 9.5 also applies if the buyer demands compensation for useless expenses instead of a claim for compensation for damage instead of performance.

9.7 Insofar as the liability for damages towards us is excluded or limited, this also applies with regard to the personal liability for damages of our employees, workers, employees, representatives and vicarious agents.

## **§ 10 Retention of title**

10.1 We reserve title to the purchased item until receipt of all payments from the business relationship with the buyer. If there is a current account relationship between the buyer and us, the retention of title also refers to the respectively recognised balance; the same applies if a balance is not recognised, but a "causal" balance is drawn, for example because the buyer becomes insolvent or liquidated.

10.2 In the event of a breach of contract by the buyer, in particular in the event of default of payment, we are entitled to withdraw from the contract in accordance with the statutory provisions and to demand the return of the goods on the basis of the retention of title and the withdrawal. If the buyer does not pay the due purchase price, we may only assert these rights if we have previously set the buyer a reasonable deadline for payment without success or if such a deadline is dispensable according to the statutory provisions.

10.3 After withdrawal from the contract, we are authorised to dispose of the purchased item; the proceeds of disposal are to be offset against the buyer's liabilities – minus reasonable disposal costs.

10.4 The buyer is entitled to resell the purchased item in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the final invoice amount (including VAT) of our claim which accrue to him from the resale against his customers or third parties, regardless of whether the purchased item has been resold without or after processing. We accept the assignment.

10.5 The buyer remains authorised to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the receivable as long as the buyer meets his payment obligations from the proceeds received, does not default on payment and, in particular, no application for the opening of insolvency proceedings has been filed or payment has been suspended. If this is the case, we can demand that the buyer informs us of the assigned claims and their debtors, provides all information required for collection, hands over the associated documents and notifies the debtors (third parties) of the assignment.

10.6 The processing or transformation of the purchased item by the buyer is always carried out for us. If the purchased item is processed with other items that do not belong to us, we acquire co-ownership of the new item in the ratio of the value of the purchased item (final invoice amount, including

VAT) to the other processed items at the time of processing. Incidentally, the same applies to the item created by processing as to the purchased item delivered under reservation.

10.7 If the purchased item is inseparably mixed with other items that do not belong to us, we acquire co-ownership of the new item in the ratio of the value of the purchased item (final invoice amount, including VAT) to the other mixed items at the time of mixing. If the mixing takes place in such a way that the buyer's item is to be regarded as the main item, it is agreed that the buyer transfers proportionate co-ownership to us. The buyer shall keep the resulting sole ownership or co-ownership for us free of charge.

10.8 We undertake to release the securities to which we are entitled at the request of the buyer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released is our responsibility.

## **§ 11 Final provisions**

11.1 The place of jurisdiction for all possible disputes arising from the business relationship between us and the buyer is, at our discretion, the registered office of the selling company of the Emsland Group or the registered office of the buyer. However, the exclusive place of jurisdiction for actions against us is the registered office of the selling company of the Emsland Group. Mandatory statutory provisions on exclusive places of jurisdiction remain unaffected by this provision.

11.2 Our contracts and these Terms and Conditions of Delivery and payment are subject exclusively to the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the German conflict of laws rules that would apply under a foreign law.

11.3 Should individual provisions of these Terms and Conditions of Delivery and Payment be or become legally invalid or void in whole or in part, this shall not affect the validity of the remaining provisions.

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