
Grain purchasing conditions

Hemelter Mühle GmbH & Co. KG, hereinafter also referred to as the “Buyer”.

1. Applicability:

- 1.1. These terms and conditions of purchase shall apply to all contracts concluded by the Buyer to the exclusion of all other terms. The Buyer does not accept any terms and conditions of the Seller’s that conflict with or deviate from these terms and conditions of purchase. These purchasing conditions shall also apply even if, being aware of the Seller’s conflicting conditions or conditions diverging from its own purchasing conditions, the Buyer accepts delivery of the goods without reservation.
- 1.2. If the Buyer additionally agrees with the Seller on the application of the terms and conditions that are standard in the German grain trade (hereinafter also referred to as “Uniform Conditions”), a grain contract note or another form contract, the Buyer’s terms and conditions of purchase shall always take precedence over the terms and conditions contained in the aforementioned sets of rules.

2. Conclusion of contract:

- 2.1. All agreements concluded between the parties must be recorded in full in writing at the time of conclusion of the contract. The Buyer’s employees are not authorized to make verbal agreements that deviate from the written agreement or go beyond it. Any changes and additions to the agreements must be recorded in writing.

3. Delivery and time of delivery:

- 3.1. Save as provided for in an expressly deviating agreement, delivery shall be carried out free of charge. The risk of accidental loss or accidental deterioration of the goods shall not pass to the Buyer until the goods have been transferred to the Buyer at the latter’s Company site or at their contractually-agreed destination. The statutory provisions on the transfer of risk in the event of default of acceptance shall remain unaffected.
- 3.2. The Seller shall be obliged to inform the Buyer immediately in writing if he/it becomes aware of circumstances due to which he/it is not likely to be able to comply with the agreed delivery times. The Supplier’s liability for any delay shall remain unaffected by the above.

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3.3. If the Buyer claims damages instead of performance, the Buyer shall be entitled, but not obliged, to calculate our loss by determining the price difference and to demand that the Seller compensate both for the price difference and for the cost of determining the price. The Uniform Conditions shall apply mutatis mutandis as regards the implementation of said price determination. Upon request, the Uniform Conditions can be made available to the Seller. In this case, a broker approved on a German grain or product exchange is to be commissioned with the task of determining the price. The deadline for the price determination shall be the next business day following the expiry of the period of grace. If, in accordance with the statutory provisions, no period of grace is required, the effective date shall be the day following the occurrence of the event relevant to non-performance.

4. Payment:

- 4.1. The contractually-agreed price shall be binding.
- 4.2. The Buyer shall be entitled to set-off or retention rights to the extent permitted by statute.
- 4.3. Payment of the purchase price shall be made in return for a proper invoice and presentation of the delivery note *as well as receipt of the goods*. If it is contractually agreed that the Seller must provide further documents, their proper submission shall also be a prerequisite for the payment of the purchase price.

5. Quality and guarantee of product quality:

- 5.1. Save as provided in more extensive contractual requirements, the delivered goods must be customary in the trade and healthy, and comply with all legal requirements, and in particular legal requirements regarding foodstuffs and animal nutrition. The Seller shall undertake to deliver to the Buyer only goods that have been examined for possible residues and contaminants without exceeding the limit values.
- 5.2. The Seller shall undertake to comply with the measures recommended in the leaflet entitled "Measures for the safe handling of cereals, oilseeds and legumes" (current status in each case) published by the trade associations of the cereals and oilseeds industry. The Buyer will be happy to provide the information sheet on request.

- 5.3. The Seller shall also undertake to strictly comply with the requirements of the “Guidelines on storage, handling and transportation of cereals” of the Association of German Mills (VDM), which we will make available on request, in particular with regard to permissible previous loads and necessary cleaning measures. With the presentation of the transport documents, the Seller undertakes to indicate the type of goods involved in the last three transportation assignments of the transport vehicle (previous loads).
- 5.4. None of the products delivered to the Buyer are subject to GMO labelling, in particular pursuant to Regulations (EC) Nos. 1829/2003 and 1830/2003.
- 5.5. The Seller undertakes, in good time upon tendering the goods, to provide written information, including all necessary information (active substance, etc.) on any storage protection treatment of the goods carried out by the Seller or its suppliers, taking into account all active substances approved by law in Germany.
- 5.6. Goods must not come from fields fertilized with sewage sludge.
- 5.7. Goods must be free of allergens.

6. Product and manufacturer’s liability; insurance cover:

- 6.1. The Seller shall be obliged to hold the Buyer harmless against claims for damages by third parties due to personal injury or damage to property, if these are based on a defect in the product delivered by the Seller - said defect having come about within the Seller’s sphere of control and organization or that of its suppliers - and for which the Seller is itself liable vis-à-vis third parties.
- 6.2. In the context of its liability as laid down in subsection 1, the Seller shall also be obliged to reimburse any expenditure arising from or in connection with a recall operation instigated by us. The Buyer shall inform the Seller - as far as possible and reasonable - regarding the content and scope of the recall measures and give the Seller an opportunity to respond. Other statutory claims shall remain unaffected.
- 6.3. The Seller shall take out and maintain a product liability insurance with coverage of at least EUR 0.5 million per person / per case of damage to property or goods. If requested to do so, the Seller shall be obliged to submit his/its current product liability insurance and recall cost insurance policies to the Buyer and to provide information on the amount of the insurance sum.

7. Origin

- 7.1. Cereals must always be of EU origin and come from the following countries of origin: Germany (DE), Czech Republic (CZ), France (F), Poland (PL), Romania (RO), Slovakia (SK), Austria (AUT), Hungary (HUN), Denmark (DK), Belgium (BE), Netherlands (NL).
- 7.2. Cereals originating from other countries of origin must be reported to the Buyer when notification is given of their delivery, the country of origin being stated.

8. Sampling and retention samples:

- 8.1. Sampling shall be carried out according to the Uniform Conditions of the German Cereals Trade (latest version Section 31 et seq.). In the case of ship or train cargoes, by way of derogation from Annex II para. V of the Uniform Conditions of the German Cereals Trade, the individual samples drawn and examined by the Buyer in respect of each 125 mt shall be deemed to have been explicitly agreed upon. The retention samples taken by the Buyer will be duly stored for at least 6 months.
- 8.2. The Seller is entitled to have further samples secured with a lock taken by itself or, when the goods are unloaded, by a sworn sampler working with HM. Costs arising in this context from possible waiting times or interruptions of the unloading process are to be borne by the Seller.
- 8.3. In the case of grain deliveries by inland waterway and rail, the weights and quality levels determined during unloading shall be deemed to have been explicitly agreed upon.
- 8.4. If the Buyer has commissioned an analysis of the goods and if this results in a defect in the goods, the Seller has the right to request the carrying out of a follow-up analysis within 5 business days of the receipt of the 1st certificate of analysis. If the results of the 1st and 2nd analysis differ from one another, each party has the right to request a 3rd analysis within 5 business days of the presentation of the 2nd certificate of analysis. The average values of those analyses that come closest to each other will be the decisive factor. Analyses are to be commissioned solely from accredited analysis institutes. The Buyer is entitled to store the goods before the analysis results become available and, if necessary, with regard to its storage capacities, to mix them with goods already in storage.

- 8.5. If the goods prove to be defective according to the results of the analysis/analyses, the Seller will bear the cost of the analyses and will also be liable for the goods that have been additionally contaminated by the storage. In all other respects, the rights of the Buyer in this case shall be determined in accordance with Section 9. If the goods prove to be free of defects, the analysis costs will be borne by the Buyer.

9. Warranty for defects:

- 9.1. If the goods are defective, the Buyer will be unreservedly entitled to the statutory warranty rights.
- 9.2. The rights of the Buyer due to defects fall under the statute of limitations after three years. The limitation period begins with the delivery of the contractual item. The statutory limitation provisions in the event of a recourse by the Seller pursuant to Section 445b BGB (German Civil Code) will remain unaffected.

10. Discharging times in the event of ship and rail delivery:

- 10.1. In the case of grain deliveries by inland waterway, the Ordinance of 26.01.1994, Section 1 (Dry Goods Shipping), relating to the loading and discharge days as well as the loading and unloading times in inland waterway transport, shall play a decisive role.
- 10.2. Section 22 of the Uniform Terms and Conditions (basis: normal water) shall be excluded and any costs will be borne by the Seller.
- 10.3. For grain deliveries by train/block train, the fastest possible unloading operation will be carried out. Trains with a length of more than 520m must be registered in advance and approved by HM. In the event of technical and/or logistical disruptions or hindrances, the Buyer reserves the right to unload for a further 72 hours.
- 10.4. Permissible types of wagons: UAGPS, TADGS, TAGNPPS - other types only by arrangement. The wagons must be suitable for transporting breadmaking cereals.

11. Quality assessment:

- 11.1. Weighing and sampling operations shall be carried out during unloading by the Buyer or upon receipt at another discharge point by the warehouse keeper.

11.2. If the quality parameters determined at the place of delivery are not met or exceeded in the direction of depreciation, the Buyer shall have the right to refuse acceptance or to make customary discounts.

11.3. The Buyer shall be entitled to store the goods before the analysis results become available and, if necessary with regard to its storage capacities, to mix them with goods already in storage.

11.4. If the goods prove to be defective, the Seller shall also be liable for the goods that have been additionally contaminated by storage. In all other respects, the rights of the Buyer in this case shall be determined in accordance with Section 9.

11.5. Only naturally moist (non-wetted) goods will be accepted.

12. Contamination and undesirable/prohibited substances:

12.1. In the case of ship and train cargoes, the sample material relating to each partial load of 125 mt will, as a general rule, be collected and analyzed separately. It shall be deemed to be explicitly agreed that each sample representing this 125 mt partial load must comply with the contractual provisions. Furthermore, it shall be deemed to be explicitly agreed that each retention sample taken by the Buyer may not exceed legally-defined maximum levels and officially recognized reference values. In all other respects, the rights of the Buyer in this case shall be determined pursuant to Section 8.

This applies in particular to:

- Lead
- Cadmium
- Deoxynivalenol (DON)
- Ochratoxin A
- Mercury
- Ergot sclerotia
- Zearalenone (ZEA)
- Genetically modified organisms (GMOs)
- Goods must not exceed the legal residue limit in respect of chlorpyrifos and chlorpyrifosmethyl.

13. Minimum requirement as regards the Hagberg falling number in respect of ship and train loading:

- 13.1. Products must not fall short of a minimum falling number per 125 mt of sample material of 180 sec. in respect of standard ground wheat or 100 sec. in respect of bread rye, *otherwise* the Buyer reserves the right to refuse acceptance of the affected delivery.

14. Arbitration Agreement and applicable law:

- 14.1. All disputes arising from and in connection with the contract shall be conclusively settled by the arbitration tribunal of the Verein der Getreidehändler der Hamburger Börse e.V. in accordance with the latter's arbitration rules, to the exclusion of ordinary legal recourse.
- 14.2. In all other cases, the place of jurisdiction shall be Rheine.
- 14.3. This contract shall be governed by the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

15. Other items:

- 15.1. Supplement to Section 25 EHB (Uniform Terms and Conditions) & Section 55 EHB: The Seller must always declare additional or reduced quantities in writing before tendering them.
- 15.2. The Buyer reserves the right to audit the storage of the grain delivered after giving prior, timely notice thereof.
- 15.3. HM requests that the name(s) of the cereal(s) in the delivery concerned be stated on the delivery note.

Date: 1 June 2023