

General Terms and Conditions of Sale and Delivery

(As of January 2012)

1. General Remarks

1.1 The following General Terms and Conditions of Sale and Delivery shall apply exclusively to the business relations between BMT Bunker und Mineralöltransport GmbH (hereafter referred to as „Seller“) and its buyers, provided nothing to the contrary has been agreed explicitly in writing. Should the Buyer on its part refer to its own general terms and conditions, then the validity of the same is hereby contested if and insofar as they deviate from these General Terms of Sale and Delivery to the Seller's detriment. The Seller's General Terms and Conditions shall also apply if the Seller makes the delivery without reservation to the Buyer, in the knowledge that contrary or differing terms and conditions from those of the Seller exist.

1.2 Amendments or supplements of the contract or the General Terms and Conditions of Sale and Delivery must be in written form to be valid.

1.3 When referring to the rights and obligations of the Buyer this shall also relate at all times to companies associated with the Buyer.

2. Offers and Orders

2.1 Any offers and estimates of costs by/of the Seller are to be understood as being conditional and dependent on availability. They are subject to change and shall include only such services as are expressly specified. A contract shall therefore only be deemed to have been concluded on confirmation of the order by the Seller or delivery of the goods.

2.2 Any documents to which access has been given shall be deemed to contain only those approximate values customary in the trade unless something to the contrary is explicitly defined in the contract specifications. The Seller reserves the right to make alterations to such documents or particulars or the contract goods themselves, in so far as such alterations do not constitute fundamental alterations and are reasonable for the buyer. The same shall apply to changes in the quality of the contract goods. In the case of standardized goods, the tolerances permitted on standards specification sheets shall apply. Samples and specimens shall be deemed to be representative samples, intended as an approximate illustration of the finished goods.

2.3 Certificates, verification from official and non-official authorities as well as any records pertaining to our non-binding offers remain the property of the Seller.

2.4 In the case of imported goods the contract shall be deemed to be concluded subject to the provision that the Seller is granted any export or import licenses which may be required.

3. Prices

3.1 The prices listed shall be deemed to be net, in the agreed currency. Any costs in excess of this, duties, contributions, taxes and the like are to be paid in addition by the Buyer to the Seller.

3.2 In the event that costs, duties, contributions, taxes and the like which are taken into account when setting the price increase and in particular, in the event that crude oil import prices increase between the date of the last price agreement and the date of delivery by more than 10 % (excluding tax), the Seller shall, even where a fixed price has been agreed, be entitled to demand at its equitable discretion an appropriate, adjusted price, based upon market rates provided, however, that four months have elapsed between said dates.

3.3 Insofar as no price has been agreed, the price shall be billed according to the prices of the Seller applicable on the date of dispatch.

4. Payment/Off Setting/Assignment/Retention

4.1 All payments due shall be made immediately after receipt of the invoice, without any deduction, if not expressly agreed otherwise.

4.2 Place of performance for payments by the Buyer is the Seller's registered office. Payments shall be made such that the Seller's accounts are credited on the due date.

4.3 In the case of arrears in payment, the Seller shall be entitled, with effect from the relevant due date, to charge default interest at the rate of 8 % p. a. above the basic rate of interest. Rights to the assertion of further damages claims remain thereby unaffected.

4.4 If it has been agreed that payment shall be made in installments, and if the Buyer falls either wholly or in part into arrears in respect of two consecutive installments, the entire remaining balance shall become due for payment forthwith.

4.5 In the case of non-compliance with the modes of payment agreed upon with the Seller, delay in payment or deterioration of the Buyer's financial position, the Seller shall be entitled to perform further deliveries or services only concurrently against immediate payment or against provision of adequate security of the Seller's choosing. This shall also apply to partial deliveries and partial services. Alternatively, the Seller shall be entitled to withdraw from

all contracts with the Buyer with immediate effect and all debts owing to the Seller become due and payable.

4.6 The Buyer shall not assign counter-claims to third parties unless there is no interest warranting protection on the Seller's part, or the Buyer's legitimate interests in the assignability of the claim override the Seller's counter-interests.

4.7 The Buyer may not withhold performance on account of any counter-claims, including those arising from earlier or current transactions, nor may it offset them with counter-claims, unless such counter-claims are undisputed and/or have been established with final and legal effect.

5. Retention of title

5.1 Title to the delivered goods shall pass to the Buyer only after all amounts owed have been paid in full by the Buyer and its associated companies, including future receivables arising from mutual business relations.

5.2 If sale is to be effected by way of transferring title to tanks, the joint ownership of the Seller and its right to recover towards the warehouse keeper will pass to the Buyer, as specified in paragraph.

5.3 If the goods subject to retention of title are processed, connected, refined, blended or mixed with other materials/substances not belonging to the Seller, the Seller acquires co-ownership of the new object in accordance with the ratio of the value of the retained goods to the value of the other goods.

5.4 The Buyer shall keep safe the goods subject to retention of title for the Seller with the due care and diligence of a prudent businessman.

5.5 Provided the Buyer and its associated companies duly meet their obligations to the Seller, the goods delivered may be resold. The Buyer hereby assigns all claims resulting from reselling the goods subject to retention of title. The Seller accepts such assignment. If the goods subject to retention of title are resold together with other goods, the assignment of future claims shall apply only to the gross invoice value of the Seller's goods subject to retention of title. If a third party acquires the sole ownership of the new item, the Buyer hereby assigns all claims against the third party amounting to the value of the goods subject to retention of title to the Seller. The Buyer is entitled to collect the receivables assigned provided the Buyer and its associated companies meet their contractual obligations towards the Seller and do not face financial collapse. Upon the Seller's request, the Buyer is obliged to issue individual declarations of assignment to the Seller, name any third party debtors and notify these of the assignment of claim.

5.6 If the Buyer falls into arrears with payment of the purchase price, it shall forfeit its right to possess those goods subject to retention of title, the delivery of which establishes a claim to the purchase price. If the Seller so requests, the Buyer shall provisionally release the goods subject to retention of title until the agreed purchase price has been paid in full. In this case, the Buyer permits the Seller, as of this moment, to immediately transfer said goods from its storage container into the Seller's means of conveyance at his expense.

5.7 In the event that the value of the securities exceeds the receivables to be secured by more than 20 % - including receivables owed by associated companies - the Seller shall, upon request, release guarantees/securities of its own choice amounting to 20 % of the exceeded value.

6. Passing of risk / quality and quantity assessment / dispatch / acceptance

6.1 Place of performance for the delivery is the respective place of delivery, where risk passes to the Buyer.

6.2 It is at the Seller's discretion to choose the means of assessing the delivery quantity from either shore tank measurement, weighing the empty and full means of transportation/container at the dispatch point with the aid of flow meters, or by means of measuring devices integrated in the means of transportation. The data determined by the dispatching office shall be authoritative with regard to the quality of the goods.

6.3 In the absence of any special agreement, the Seller may choose at its discretion the route, type of forwarding and the method of transport. The Seller only makes insurance arrangements on instruction by and at the expense of the Buyer.

6.4 If the Buyer delays receipt or acceptance, the Seller is entitled to store the remaining deliverable quantities at the risk and expense of the Buyer and charge for them as delivered including any incidental costs, or withdraw from the contract or claim damages on account of non-compliance, which, at the Seller's discretion, shall take the form of the actual damages caused by the delay, or the form of a lump sum of 10% of the agreed purchase/delivery price. In the latter case, the Buyer reserves the right to prove that no damages or minor damages have been incurred by the Seller.

- 6.5 Before delivery, the Buyer is obliged to determine the capacity of its tank and specify the exact amount to be filled. It shall ensure that its tank and the measuring device are in perfect technical condition. Tank overflow damages due to a tank or measuring device being technically faulty or because the capacity or the amount to be filled has been indicated inaccurately by the consignee, as well as damages/detriment caused by contamination and/or blending in a container provided by the Buyer (e.g. tank, tank truck or ship), shall not be compensated for. Measures subsequently taken by the Seller do not constitute acknowledgement of the obligation to replace.
- 6.6 The Seller is entitled to excess or shortfall deliveries up to +/- 5 %. Excess deliveries are to be paid for by the Buyer, shortfall deliveries will be reimbursed.
7. Delivery impairments
- 7.1 If a delay of delivery occurs due to circumstances for which the Seller is not responsible, particularly circumstances beyond his control (such as untimely self-supply, business disruptions or traffic delays), the Seller is entitled – with the exclusion of any damage or liability claims by the Buyer - to postpone the delivery for the duration of the hindrance or to withdraw from the contract. The Seller shall notify the Buyer immediately of such disruptions. In the case of extended disruption, the Seller is entitled, for the duration of the hindrance, including a reasonable break-in period and lead time, to restrict deliveries and distribute the available quantities at his equitable discretion between all customers, also regionally. The contracting parties are released from their commitment to purchase or their obligation to deliver in respect of quantities not delivered.
- 7.2 If, due to delivery delay, acceptance poses a demonstrably undue burden to the Buyer, it is entitled to withdraw from the contract after a reasonable grace period has expired.
- 7.3 Withdrawal declared by the Seller or Buyer does not apply to partial deliveries already made.
- 7.4 The Buyer can only assert claims resulting from the exceeding of loading or discharging times if these are reported immediately, in writing, not later than a 30-day period after delivery and if it can prove damages have been sustained.
8. Means of transportation
- 8.1 If goods are to be transported in containers or other means of transport supplied by the Buyer, these shall be made available in good time at the delivery facility, in good order and condition as prescribed by law and with freight and charges prepaid. The Seller is not obliged to control suitability, good order and condition, cleanness, capacity and other parameters. At time of delivery by the Seller, the same applies to storage containers owned by the Buyer or at its specified point of reception.
- 8.2 For the duration of provision or use, the Buyer is liable for loss of and damage to all means of transportation and containers made available to it by the Seller, even if the Buyer is not culpable. The Buyer insofar exempts the Seller from any third party claims.
- 8.3 The Buyer shall empty the means of transportation and containers without delay and return them clean, in good order and condition and with freight and charges prepaid to the address specified by the Seller. They may not be used for purposes other than agreed by contract.
- 8.4 Particular arrival times and incoming temperatures of the goods cannot be guaranteed. If steam is required for unloading the goods, it shall be made available by the Buyer at its own expense.
- 8.5 Receipt of packaged goods by the first carrier/forwarder shall be deemed conclusive proof of the faultless condition of any outer packaging at time of transfer.
9. Complaints/Warranties
- 9.1 Any complaints concerning the deliveries shall be asserted against the Seller in writing – notwithstanding shorter time limits for claims against the carrier – immediately after delivery, at the latest within seven days.
- Acknowledgement of claims regarding inadequate quality requires, among other things, that the Seller is made available a sealed sample of at least one liter of the delivery goods. The Buyer shall give the Seller the opportunity to select the sample itself or allow the Seller to determine itself that sampling has been executed properly.
- 9.2 In case of complaint, the Buyer shall preserve the rights of recourse against third parties such as forwarding agents, carriers, warehouse keepers, Federal Railway (Bundesbahn) and others and also take all steps necessary to enforce and maintain claims – including preservation of evidence in coordination or accordance with instructions by the Seller – provided the Seller has not assumed the assertion of the rights.
- 9.3 In the case of defective delivery or lack of assured properties, the Buyer can only request replacement – with all further warranty claims being excluded. For this, the Seller shall be liable to the same extent as for the original delivered item. If replacement delivery has not taken place in due course, the Buyer can, at its discretion, demand reduction of the purchase price or cancellation of the contract.
- 9.4 Agreement of quality characteristics, disclosure of analytical data or reference to DIN standards do not imply assurance of properties of the goods to be delivered.
10. Liability
- 10.1 Damage claims against the Seller are excluded unless they are based on gross negligence or intent.
- 10.2 The Seller's liability is in each case limited in amount to the net invoice value of the individual defective delivery.
- 10.3 The Buyer is liable to the Seller for compliance with the applicable regulations for customs and taxes on oil to be heeded by the Buyer itself and its subsequent buyers. If, when ordering, the Buyer fails to unambiguously express how it wishes payment of mineral oil tax due on the goods to be handled, this shall be done at the Seller's discretion. The Buyer is liable for the payment of mineral oil tax and other duties the Seller has to pay due to improper use of the goods, even if the Buyer is not at fault.
- 10.4 Strict liability for property damage and bodily injury remains unaffected.
11. Data processing
- The Buyer agrees that the Seller processes data relating to the Buyer obtained in connection with their business relation in compliance with the German Federal Data Protection Act for the performance of the Seller's own business purposes. This includes but is not limited to storing or transmission of data to a credit protection agency, insofar as data processing is conducted within the scope of the purpose of the contract or it is necessary to safeguard the legitimate interests of the Seller and there are no grounds for assuming that the Buyer's interests worthy of protection are in the exclusion of processing and especially said transmission.
12. Jurisdiction/applicable law/partial invalidity
- 12.1 The Seller's may, at its discretion, decide whether the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is that of either the Seller or the Buyer.
- 12.2 The substantive law of the Federal Republic of Germany shall apply, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 12.3 Subordinate to these General Terms and Conditions of Sale and Delivery, the INCOTERMS apply in the most current version.
- 12.4 In the event that provisions of these General Terms and Conditions of Sale and Delivery should be or become fully or partly invalid, the other provisions contained therein shall remain unaffected.

BMT Bunker und Mineralöltransport GmbH