

General Conditions of Purchase

1. General

These conditions of purchase exclusively apply to all purchase contracts for feedstuff concluded by us. The seller accepts them as binding for the present and all future purchase contracts. We do not accept opposing, deviating or complementary conditions of the seller.

2. Relation to Form Contracts

These conditions of purchase shall prevail over any form contract which might be agreed.

3. Delivery / Acceptance / Rights in case of Non-Performance

(1) The agreed delivery/acceptance period shall apply. If the seller does not meet his contractual obligations or does not meet them on time, the purchaser is entitled to withdraw from the contract after fruitless expiry of an adequate extension of time of generally five working days, which was granted to the seller - unless this is not necessary according to the statutory regulations - and/or to claim damages in place of performance.

(2) If the buyer claims damages in place of performance, he is entitled, but not obliged, to calculate the damages he incurred due to seller's non-performance by determining the price difference and requesting the price difference as well as the costs for such price determination from the seller. Annex I B of the Standard Conditions in German Grain Trade (SC) shall respectively apply to the determination of the price difference. The price determination is to be assigned to a broker who is admitted to a German grain or product exchange. The deadline for the price determination shall be the next business day following the expiry of the extension of time. If it is not necessary to grant an extension of time, e.g. in cases of short selling or seller's express refusal to perform, the effective date for price determination shall be the business day following the date of the event which is relevant for the non-performance, for instance the non-performance declaration.

(3) Rather than claiming damages in place of performance, the purchaser may arrange for a covering purchase to be made by a broker who is admitted to a German grain or product exchange, for the seller's account. The covering purchase has to be made within three business days after the extension of time has expired or non-performance has occurred. The regulations in Annex I A of the SC shall respectively apply.

(4) The seller is also entitled to the non-performance rights pursuant to paragraph (1) to (3). If the seller claims damages in place of performance, he is entitled, but not obliged, to calculate the damages he incurred as a result of non-performance by way of price difference determination pursuant to paragraph (2) above. Instead of damages in place of performance, the seller may also arrange for a self-help sale to be made by a broker who is admitted to a German grain or product exchange. In this regard, Annex I A of the SG shall again respectively apply.

(5) If delivery is hindered due to events for which the seller is not responsible, such as export or import bans or similar official measures, embargos, epidemics or acts of war (force majeure), the seller is entitled to extend the delivery period by the duration of the hindrance. The seller shall inform the buyer in writing of the reasons for the hindrance of the delivery immediately after they have become known to him and provide respective proof immediately upon buyer's request. If the contractual delivery period has to be extended by more than 30 calendar days, each contract party is entitled to withdraw from the contract within the first three business days after expiry of the 30-day deadline without mutual recompense. If none of the contract parties provides such a withdrawal declaration, the delivery period is extended by another 30 calendar days. Once this deadline has also expired, the contract is considered cancelled without mutual recompense.

(6) The following events are not considered cases of force majeure within the meaning of lit. (5): Measures which are officially ordered or limitations of feedstuff use due to lack of or limited marketability of the goods as well as production disturbances, machinery breakdown, averages and other hindrances which occur in seller's organizational and commercial scope of responsibility.

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4. Quality / Sampling

(1) Subject to further agreements, the delivered goods have to be customary and healthy and comply with all statutory and in particular feed law requirements. Official statements regarding the goods' lack of marketability are binding for the contract parties.

(2) The buyer is responsible for the taking of samples. This is done at the place of performance of the delivery or acceptance obligation and shall be carried out in accordance with section 34 of the regulations contained in the Standard Conditions of the Deutsche Getreidehandel (SC) as well as in the sample regulations printed in Annex II. Sampling in accordance with these regulations is accepted by the seller to be in proper form.

(3) With regard to traceability, additional samples have to be taken. Annex II of the SC shall apply to the sampling. These samples may be used to determine undesired/forbidden substances as well as contaminants, and claims resulting therefrom within the meaning of section 32 of the Standard Conditions. In case of loading/shipping by wagon or road vehicle, the taking of these samples has to be in accordance with lit. I to IV of annex II of the Deutsche Getreidehandel Standard Conditions. At least one sample of approx. 500 g has to be stored as a retention sample in a container which is impermeable to humidity and can be sealed mostly airtight (for instance Deba-Safe-bag), and which guarantees for the sample's identity and unaltered composition.

5. Undesired Substances / Concentrations / Complaints

(1) The 1st analysis is commissioned by the buyer within 5 business days following the sampling from an accredited analysis institute. The purchaser shall inform the buyer of a complaint with regard to the product immediately after receipt of the certificate for the first sample by telex.

(2) Each party has the right to request a subsequent analysis to be carried out by another accredited analysis institute within 5 business days after receipt of the first analysis certificate. Moreover, each party has the right to request a 3rd analysis within 5 business days after the second analysis certificate has been received, which is to be carried out by a third accredited analysis institute. The mean of those analyses which most closely match is binding for the parties, under reserve of section 4 para (1) sentence 2.

(3) If the goods turn out to be defective according to the result of the analysis/analyses pursuant to para (1) and (2) or according to the result of analyses which were officially ordered, the seller shall bear the costs for all analyses. If the goods turn out to be without defects, the buyer shall bear the costs for the analyses.

6. Warranty for Defects

If the goods delivered are defective, the purchaser is entitled to the warranty rights regulated in the following paragraphs, whereby paragraphs (1) to (4) regulate the general consequences of deviations in concentrations and other qualities, whereas paragraph (5) applies to the particular case that undesired/forbidden substances are detected in the goods.

(1) If the delivered goods deviate from the agreed nature and quality, but the depreciation does not exceed 5% of the contract price, the purchaser is entitled to request depreciation compensation from the seller. The depreciation amount shall be determined by a neutral commercial broker who is mutually determined by the parties. If the parties cannot agree on a neutral commercial broker within two business days, the broker may be determined upon buyer's request by the German grain or product exchange which is closest to the location where the goods are stored. The costs for determining the depreciation value shall be borne by the seller.

(2) If the depreciation amount which is determined exceeds 5% of the contract price, the buyer is entitled to claim that the goods are taken back and that the purchase price which was paid and the costs and interest resting on the goods is refunded, instead of asking for depreciation compensation.

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(3) A one-time replacement delivery of goods which are in accordance with the contract may be requested in addition to the right for the goods to be returned. In turn, the seller is entitled to a one-time replacement delivery for the goods to be taken back, unless it is unreasonable for the buyer to accept a replacement delivery in view of the particular circumstances of the individual case. If buyer or seller makes use of the right for a replacement delivery, the buyer shall provide to the seller the goods that were rejected so that they can be taken back. The seller has to effect the replacement delivery within 5 business days after the buyer has indicated that the goods to be returned are available, unless otherwise agreed.

(4) If the replacement delivery is not effected in due course pursuant to paragraph (3), the buyer is entitled to withdraw from the contract or to claim damages in place of performance pursuant to lit. 3 paragraph (2). The effective date shall be the last business day of the 5-day-deadline.

(5) In the event of buyer's claims due to undesired/forbidden substances as well as contaminants, the statutory regulations shall apply. If the seller is obliged to pay damages pursuant to the statutory regulations, he shall in particular compensate the buyer for damages incurred by the latter as a consequence of a statutory or officially ordered call-back of the defective goods or a product (feedstuff) which was made of the goods.

(6) Buyer's rights concerning defects shall become time-barred after two years. The statute of limitation shall start when the goods are delivered.

7. Payment

Payment of the purchase price is made on invoice and upon presentation of the respective delivery confirmation. The buyer has off-setting or retention rights to the statutory extent.

8. Applicable Law / Jurisdiction

The contract which is concluded is subject to German law and EU law. The United Nations Convention on Contracts for the International Sale of Goods is excluded. All disputes arising from the transaction as well as from other agreements entered into in this regard shall be decided before an arbitration court established at a German product exchange or before the court of law at buyer's address, according to buyer's choice. If the buyer requests a decision by the arbitration court, the constitution of the arbitration court and the proceeding are subject to the court's rules of arbitration. In case the seller intends to bring an action against the buyer, the buyer is obliged to exercise his right to choose between the court of law and the arbitration court upon seller's request prior to the proceeding within an adequate deadline set to him, which has to be at least three business days. If the buyer does not make a respective declaration within the deadline that was set, the right of choice pursuant to sentence 2 shall pass on to the seller. The seller has to make his choice immediately and inform the buyer in writing.

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