



## HAMBURG ENERGY TRADING

# General Terms and Conditions of Sale

### 1. General, Scope of Application

1.1 These General Terms and Conditions of Sale (Terms and Conditions) shall apply to all business relationships with our customers. The Terms and Conditions shall apply only if the customer is an entrepreneur, a public-law legal entity or a special public fund.

1.2 The Terms and Conditions shall apply in particular to agreements regarding the sale and/or supply of movable assets, in particular mineral oil products and lubricants of all types (hereinafter also: "Merchandise"). The prevailing version of the Terms and Conditions shall apply as a framework agreement also to future agreements regarding the sale and/or supply of Merchandise with the same customer without our having to refer to them in each individual case; we shall inform the customer without undue delay of amendments to our Terms and Conditions.

1.3 Our Terms and Conditions shall apply exclusively. Any general terms and conditions of the customer which diverge therefrom, are contrary hereto or supplementary shall only become part of this agreement if we have expressly consented thereto. This requirement to grant consent definitely applies, for example, if, having knowledge of the general terms and conditions of the customer, we agree to make the delivery to the customer without reservation.

1.4 Any individual agreements made with the customer in an individual case (including collateral agreements, additions and amendments) shall have priority over these Terms and Conditions. For the content of such agreements to be definitive they must be in writing or have been confirmed in writing by us.

1.5 Important legal declarations and notifications to be made to us by the customer after conclusion of the agreement (e.g. deadlines, reports of defects, declaration of rescission or price reduction) must be in writing to be valid.

### 2. Conclusion of Agreement

2.1 Our offers are non-binding and without obligation.

2.2 When the customer orders Merchandise this is considered to be a binding contractual offer. We can accept this offer either in writing (e.g. by order confirmation), orally or by delivering the Merchandise to the customer.

### 3. Delivery Dates and Delay in Delivery

3.1 The delivery date is agreed individually or stipulated by us when we accept the order.

3.2 If we are unable to observe binding delivery dates for reasons for which we are not responsible (non-availability of service) we will inform the customer thereof without undue delay and at the same time, inform it of the presumed new delivery date. If the service is not available within the new delivery deadline we are entitled to rescind the agreement in whole or in part; we will reimburse the customer for any consideration already provided without undue delay. The untimely delivery by our supplier is considered to be a case of the non-availability of the service for which we are not responsible.

3.3 In the case of delay we shall only be liable for intent or gross negligence. Our liability shall be

restricted in amount to the value of the Merchandise affected by the delay; the value of such Merchandise is set out in our invoice.

### 4. Delivery, Passage of Risk, Acceptance, Default in Acceptance

4.1 Delivery shall be ex warehouse which is also the place of performance. At the request and cost of the customer the Merchandise shall be sent to another final destination, in particular to a vessel (sales shipment). Unless agreed otherwise, we are entitled to decide ourselves how the Merchandise will be shipped.

4.2 The risk of accidental loss and accidental deterioration of the Merchandise shall pass to the customer at the latest upon handover. However, in the case of a sales shipment the risk of accidental loss and accidental deterioration of the Merchandise and the risk of delay shall transfer to the carrier as soon as the Merchandise is dispatched. If acceptance is agreed, the risk shall pass to the customer when acceptance has been effected. If the customer is in default with acceptance handover is considered to be an equivalent.

4.3 If the customer is in default with acceptance, if it fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible we are entitled to demand reimbursement for any ensuing damage including additional expenditure (e.g. warehousing costs).

### 5. Prices, Payment Conditions, Customs Duties and Taxes

5.1 If not agreed otherwise in an individual case, the prices which are current at the time of conclusion of the agreement shall apply. The customer shall bear any customs duties, fees, taxes or other public charges.

5.2 The purchase price is due for payment when the invoice has been issued and on delivery or acceptance of the Merchandise.

5.3 The customer is only entitled to set-off or retention in as far as its claim is final and absolute or undisputed.

5.4 If it becomes evident once the agreement has been concluded that our claim to the purchase price is jeopardised by the customer being unable to provide performance (e.g. by applying for commencement of insolvency proceedings) we may refuse to perform and, if appropriate, after having set a deadline, are entitled to rescind the agreement.

5.5 The customer undertakes to use Merchandise delivered duty and tax unpaid (in particular mineral oil products or lubricants for seagoing vessels) exclusively in accordance with the prevailing customs and tax laws. The customer shall exempt us from all taxes, customs duties or fines which arise from or in connection with a breach of this obligation.

### 6. Reservation of Title

6.1 We reserve title in the Merchandise sold until all our current and future claims from the purchase agreement and any ongoing business relationship (secured claims) have been paid up in full.

6.2 If the customer breaches the agreement, in particular if the customer does not pay the purchase

price due, we are entitled to rescind the agreement and to demand return of the Merchandise on grounds of reservation of title and rescission.

6.3 The customer is authorised to process the Merchandise which is subject to the reservation of title in the due and proper course of business. In this event the reservation of title shall also cover the full value of products which are manufactured by mixing, processing or combining our Merchandise. If Merchandise is processed, mixed or combined with the merchandise of third parties and the ownership right of the latter still exists we shall acquire co-title in such processed, mixed or combined Merchandise in proportion to the invoice value. In other respects the same shall apply to the processed product as to the Merchandise delivered subject to the reservation of title.

### 7. Customer's Claims regarding Defects

7.1 The basis for any claim regarding defects is the agreement concluded regarding the quality of the Merchandise and the quantity thereof.

7.2 All claims and rights owing to and in connection with defects are contingent upon the customer having satisfied its statutory duties to inspect and object. If a defect is discovered during an investigation or later we shall be provided with written notification thereof without undue delay. In order to comply with the duties of inspection and objection the Merchandise which consists of mineral oil products or lubricants must be inspected before use, consumption or being mixed with other merchandise and if necessary, defects must be reported in writing without undue delay, at the latest before the expiry of 14 days. If the customer fails to carry out a due and proper inspection and/or make an objection any liability owing to a defect is ruled out.

7.3 The calibration devices of our tanker or those of our suppliers are definitive for determining the quantity of Merchandise delivered. The customer may acquire appropriate sample kits from us in order to inspect mineral oil products and lubricants. In order to comply with the inspection duty with respect to mineral oil products and lubricants verifiable samples must be inspected which are taken when the Merchandise is shipped and before the customer's tanks are filled. The samples shall be sealed. If an objection is made about a defect, we must be offered a sealed (stored) sample; otherwise the objection shall be considered invalid.

7.4 If the Merchandise delivered is defective the customer may choose as subsequent remedy either elimination of the defect (improvement) or supply of merchandise free of defects (substitute delivery). If the merchandise is a mineral oil product or lubricant only substitute delivery can be demanded as a subsequent remedy.

7.5 Before we provide any subsequent remedy owed, we are entitled to demand that the customer pay the purchase price.

7.6 The customer must give us the time and opportunity required for the subsequent remedy owed, in particular, provide us with the merchandise about which complaint has been made for inspection purposes. In the case of substitute delivery the customer must return the faulty merchandise to us at

its own cost. Subsequent remedy does not include the removal/drainage of the defective merchandise.

7.7 We shall bear the expenditure incurred to inspect and provide subsequent remedy, in particular transport, travel, work and material costs (not: removal and installation costs or costs for drainage) if there is indeed a defect. However, if a demand from the customer to remedy defects turns out to be unjustified we can demand that the customer reimburse the costs incurred hereby.

7.8 If Merchandise, in particular mineral oil products or lubricants, is combined or mixed with other merchandise all defect claims shall lapse.

7.9 Claims of the customer to compensation or reimbursement of expenditure exist only pursuant to 8. and are otherwise ruled out.

### 8. Other Liability

8.1 We are only liable, irrespective of legal reason, to pay compensation or reimburse expenditure in the event of intent or gross negligence. In the event of simple negligence we are liable only for damage arising from culpable injury to life, body or health.

8.2 In as far as we are liable our liability is restricted in amount to double the value of the Merchandise. The value of the Merchandise is set out in our invoice. This limited liability does not apply if our corporate bodies have acted with intent or if we are responsible for negligent injury to life, limb or health.

8.3 When the Merchandise, in particular mineral oil products and lubricants, is delivered the customer shall avoid pollution risks, in particular to vessels, their load, the waters and the environment. The customer shall assume responsibility for the due and proper assumption of the Merchandise, in particular on board ship. The customer shall indemnify us from all damages and adverse effects arising from a breach of this obligation.

### 9. Limitation Period

9.1 All claims, irrespective of their legal grounds (with the exception of those claims under the Product Liability Act (*Produkthaftungsgesetz*) and claims on the grounds of intentional acts by corporate bodies) shall be statute-barred after one year.

9.2 The limitation period shall begin at the latest on delivery of the Merchandise or on the date on which the Merchandise should have been delivered.

### 10. Choice of Law and Jurisdiction

10.1 The law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on the International Sale of Goods (CISG), shall apply to these Terms and Conditions and all legal relationships between us and the customer.

10.2 Exclusive and also international place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Hamburg. However, we also have the right to file claims at the general place of jurisdiction of the customer.

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