



General terms of delivery and orders for the supply and the performance of services for company owners according to § 14 German civil code (Customers) of
WALTER RAU
NEUSSER OEL UND FETT AKTIENGESELLSCHAFT

1. Scope	4.2	All agreements, ancillary agreements, guarantees and amendments to the agreement must be in written form. This also applies to waivers of the agreement for written form itself. Verbal ancillary agreements are null and void.
1.1 The following terms apply exclusively to our business relationship with our customers, also to information and consultation.		
1.2 If our General terms of delivery and orders are implemented for business with the Customer, they apply to all other business relationships between the Customer and us if nothing to the contrary has been agreed upon in writing. The terms of purchase of the Customer only apply if and to the extent that we recognise them in writing. In particular, our silence regarding deviating provisions of this type is not to be considered recognition or approval, also not for future agreements.	4.3	The assumption of a procurement risk does not solely lie in our obligation to deliver a certain item determined by type.
	4.4	In the event of call orders or Customer-related delays in acceptance, we are entitled to acquire the material or the merchandise for the entire order and to produce the entire order quantity immediately. As a result, any change requests by the Customer can no longer be considered after the order is placed unless this has been explicitly agreed upon in writing.
1.3 Our General terms of delivery and orders apply instead of any terms of purchase of the Customer even if they stipulate that acceptance of the order constitutes unconditional acceptance of the terms of purchase. By accepting our order confirmation, the Customer expressly recognises that it waves any of its legal objections derived from its terms of purchase.	4.5	The Customer must inform us in writing in a timely manner before the agreement is concluded regarding special requirements for the merchandise.
	4.6	If acceptance of the merchandise or shipping is delayed for a reason which is the fault of the Customer, if the Customer does not make a shipping order by the end of the delivery period or if the Customer is culpable in not meeting its call obligation, we are entitled to choose to demand the immediate payment of the purchase price or to withdraw from the agreement or to reject performance and to demand compensation instead of the entire performance regardless of other or more extensive rights after a 14-day grace period has been provided and expires. Specification of the grace period must be in writing. We must again refer to the rights from this clause contained therein. In the event of a demand for compensation for damages, the damages to be paid are at least 5% of the net delivery price. The right is reserved to prove another amount of damage or the non-occurrence of damages.
2. Information, consultation		
2.1 Information and consultation regarding our merchandise are provided exclusively based on our previous experience. We only assume a binding consultation obligation to the Customer in the event of a consultation agreement agreed upon in writing.		
2.2 The recipes supplied by the Customer, i.e. the values and specifications indicated by the Customer, are used by us as the basis for the manufacture of the merchandise. We do not have an independent testing obligation to determine if the merchandise can be used for the purpose desired by the Customer.		
2.3 A guarantee is only considered accepted by us if we have identified a characteristic as "guaranteed".	4.7	The customer agrees to take the delivery of the blanket order quantity within the specified time and of the correct quantity according to the months of delivery and the partial delivery quantities as stipulated in the blanket order contract. Should the shipping or the collection of the goods – or also of the partial delivery quantity which is due in one delivery month – be delayed on request of the customer or due to reasons for which the customer is liable, then we are entitled to store the goods at the sole risk of the customer starting from the date the goods should have been shipped or should have been collected by the customer. In addition, we are also entitled to bill the customer with a flat rate of 10.00 EUR per ton per month or part thereof – with a maximum, however, of up to 5.0% of the contract amount – for the storage costs as well as for the holding and the financing costs caused by the storage as far as we do not demand reimbursement of the actual proven costs. The enforcement of further rights shall remain unaffected by the charging of the aforementioned flat rate costs. Both parties reserve the right to prove that different, or no, costs have incurred for storage.
3. Merchandise samples		
If an agreement is concluded, we shall provide the Customer with a sample of the ordered merchandise before the manufacture of the complete merchandise. We shall carry out the subsequent manufacture of the entire ordered merchandise only following inspection and confirmation by the Customer.		
4. Conclusion of the agreement, Scope of delivery, Acceptance, Procurement risk		
4.1 Our offers are subject to change. They are invitations to make orders. An agreement is only constituted – also with on-going business transactions – if we confirm an order by the Customer in writing (also by fax or email). Our order confirmation is decisive for the contents of the delivery agreement.		

- 4.8 Furthermore, we are entitled to make other use of the merchandise which is the subject matter of the agreement after this period expires and to deliver again to the Customer in a reasonable period of time.
- 4.9 In the event of a delivery order or call which is delayed due to the Customer, we are entitled to postpone the delivery for the same period of time as the backorder plus a reasonable merchandise planning period of up to two weeks.
- 5. Delivery, Delivery time, Delay in delivery**
- 5.1 Binding delivery dates and period must be agreed upon explicitly and in writing. We shall make our best effort to meet non-binding or approximate (approx., roughly, etc.) delivery dates and periods.
- 5.2 The delivery periods begin with the access of our order confirmation with the Customer but not before all details have been explained with the execution of the order and all other prerequisites to be met by the Customer have been met. This also applies to delivery dates. If the Customer has requested changes after an order has been made, a new delivery period begins with our confirmation of the change.
- 5.3 Deliveries before the delivery period are permissible by special arrangement in individual cases. The delivery date confirmed in writing is considered the delivery date. If several contracts are in force for identical merchandise, we are entitled to determine the order in which the contracts are performed.
- Interest in our service does not apply only if we do not supply major parts or with a delay if no other written agreement has been made.
- 5.4 Delivery occurs - if not otherwise agreed upon - for long-term contracts with a merchandise call-off as well as for individual agreements within the agreed upon delivery period of our choice.
- 5.5 If the delivery period encompasses several months, we are entitled to carry out the delivery in approximately the same instalments if no agreement to the contrary has been made.
- 5.6 A delivery time desired by the Customer on the desired delivery date is recorded in our written delivery confirmation to the Customer. This hereby does not imply a binding promise that this delivery time will be met. However, we shall make an effort to meet the delivery time. In the event of temporary delays, we shall inform the Customer in a timely manner. We shall always deliver the ordered merchandise in the period from 6:00 a.m. to 10:00 p.m.
- 5.7 If the Customer does not create a shipping order after notification by us that the merchandise was properly manufactured within five workdays or does not pick up the merchandise from us within five workdays, at any time we can either choose to cancel the agreement after a grace period, to be measured according to clause 5.9, expires without success or to withdraw from the non-performed portion or to demand damages instead of performance or immediate payment in exchange for the provision of the bill of delivery or a bill of delivery issued by a warehouse keeper.
- 5.8 If the Buyer shows culpability in not making a shipping order for transactions on call by the end of the delivery period agreed upon, we are entitled to the rights described in clause 5.7 following expiration of the delivery period.
- 5.9 The grace periods to be provided according to clauses 5.7 and 5.8 are at least five days and a maximum of fourteen days.
- 5.10 If the Customer does not accept the merchandise despite a violation of rights, we are entitled to determine the scope of damages, among other ways through the self-help sale to third parties or price setting. If a threatened self-help sale cannot be carried out in the appropriate form or time, the right to a self-help sale shall remain in effect. Damages are determined through price setting. The first workday following the expiration of the grace period is considered to be the reporting date for price setting.
- 5.11 Delivery can also occur at locations different from those specified in the agreement with a mutual offset of any differences in freight costs.
- 5.12 We can provide merchandise of equal value at any time unless the delivery of our own merchandise has been explicitly agreed upon.
- 5.13 If we are delayed in providing a delivery, the Customer must first provide a reasonable grace period for performance. If this period expires without success, the Customer can assert the rights stipulated under the respective requirements of §§ 280, 281, 284, 286, 323 German civil code. Damage claims due to a breach of obligations - for whatever reason - only apply according to the regulations in clause 16.
- 5.14 If we have not performed the service within the period specified in the agreement or within a contractually stipulated period of time, the Customer can only cancel the agreement if it has associated its interest in performance with timely delivery.
- 5.15 In the event of delayed delivery by us due to malicious intent or grossly negligent conduct which is our fault, the Customer is entitled to compensation for damages which can be proven to have resulted from the delay. If, in an exceptional case, the Customer has made a claim due to slight negligence, this is limited according to the amount to 0.5% for each full week of the delay, in total at most 5% of the order value.
- 5.16 We are not in payment arrears if the Customer is delayed in the performance of obligations to us, including those from other agreements.
- 5.17 If the means of transport provided by the Customer is not available - if it has been agreed upon - we are not obligated to deliver. However, we are entitled to arrange for the delivery with our own or rented means of transport with an executable shipping order or a call order. In this case as well, the merchandise is to travel at the risk of the Customer.
- 6. Loading, transport, obligations of the Customer**
- 6.1 The Customer has the right to be present or to be represented during loading to determine weight or to collect samples.
- 6.2 We reserve the right to select the transport route and the means of transport. However, we shall make an effort to take Customer requests into account regarding the shipment type and the shipment route; added costs which result - also with agreed upon freight-free-loading, are at the expense of the Customer. If the shipment is delayed at the request or by the fault of the Customer, we will warehouse the merchandise at the expense and risk of the Customer. In this case, the ready-to-deliver notice is equivalent to shipping.

6.3 The merchandise travels at the risk of the Customer – if not explicitly agreed upon otherwise.

6.4 If the merchandise is accepted with means of transport provided by the Customer (e.g. tankers), acceptance of the merchandise is to be performed in the work time performed by us as quickly as possible, as made possible by our operating conditions, if necessary even in a second or third work shift without the need for us to assume existing added costs for the Customer due to overtime etc. If an appropriate acceptance is not possible with the Customer's own team in accordance with the operating conditions, we shall make an effort to provide professional workers at the expense of the Customer.

6.5 If the merchandise is accepted on behalf of the Customer by a third party (shipping company, transport or shipping agent), the orders issued and/or bills of lading generated in blank or warehouse receipts are to be surrendered to us on request.

6.6 If the sale according to our order confirmation is "fot....." or "from our factory" or "free on lorry", the Customer is solely responsible to ensure that means of transport (lorry, ship) without restrictions is provided for the transport material. The means of transport is only considered suitable if it meets all requirements during loading, during the entire transport process and during unloading which must be followed and complied with according to the statutory or other relevant regulations - particularly the requirements of the relevant professional association and in particular the relevant foodstuff regulations (e.g. LMTV).

This notwithstanding, we are entitled to reject a means of transport which appears unsuitable to us based on our own best judgement.

6.7 If delivery in tankers (e.g. lorry) of the Customer has been agreed upon, loading is only to be performed if the following prerequisites have been met alternatively:

- a) The tanker is cleaned in our tanker cleaning plant before loading.
- b) The tanker was cleaned in a third-party cleaning plant and then sealed. The proof of cleaning can be provided by submitting a cleaning certificate which is commercially available.
- c) The Customer's tanker was not cleaned following loading but sealed after this merchandise was unloaded. The proof of permissible loading by us is to be provided by the Customer with a "load-on certificate".

We are not obligated to provide shipment if these prerequisites are not met.

6.8 If the tankers provided by the Customer required for shipping are not available, we are not obligated to deliver but are entitled to carry out this delivery using our own or rented tankers at the expense of the Customer taking into account the prerequisites in clause 6.7.

7. Weight

7.1 We can exceed or fall below the agreed upon quantity for the stipulated delivery price by 5%.

7.2 Exclusively the weight determined at the plant is decisive.

8. Collection of samples

8.1 Samples are collected at the request of the Customer and/or on our part only at the site of the delivery plant.

8.2 At the latest during the call-up of the merchandise, if the Customer wishes to collect the samples with us itself or by a representative it is to name at the same time. If this information is not provided, the sample collection can be carried out by a sworn sample collector designated by a representative of one of the relevant statutory professional associations of industry and commerce. The costs of collecting the samples are to be assumed by the Customer.

8.3 The Customer can waive a sample collection and an inspection of the merchandise.

9. Transport in containers

Containers (e.g. barrels, containers) are provided to the Buyer in exchange for an agreed upon rental fee. The containers are to be returned at least one month after receipt of the merchandise by the Customer freight-free to the location we shall specify. In the event of a late return, the Customer must pay the agreed upon rental fee for each new month that the return does not occur. Three months after receipt of the merchandise by the Customer, we are entitled to refuse the return of the container and to request the re-purchase value of the transferred container from the Customer as compensation for damages.

The Customer is liable in each case for the loss, damage and/or contamination of the container.

10. Quality

If no other agreement has been made, the merchandise is considered to be of a typical commercial composition, specifically in terms of purity and integrity.

11. Reservation of the right for supply from third-party suppliers, *force majeure* and other hindrances.

11.1 If we do not receive a delivery or service from our third-party suppliers or if the delivery or service is received incorrectly or not on time for reasons beyond our control or if instances of *force majeure* occur, we shall inform our customers in writing in a timely manner. In this instance, we are entitled to delay the delivery for the duration of the hindrance or to cancel the agreement in full or in part due to the non-performable portion if we have not met our preceding obligation to provide and have not assumed the procurement risk. Equivalent to *force majeure* are strikes, lock-outs, interventions of authorities, energy and raw material scarcity, transport bottlenecks and operational hindrances for which we are not responsible, such as fire, water and mechanical damages and all other hindrances for which we could not be made culpable with an objective analysis.

11.2 If a delivery date or a delivery period has been agreed upon with binding effect and the agreed upon delivery date or the agreed upon delivery period is exceeded due to the circumstances in 11.1, the Customer is entitled to cancel the agreement following the expiration of a reasonable grace period due to a non-performed portion if it cannot be objectively expected to continue the agreement. More extensive claims by the Customer, particularly for damages, are excluded in this case.

- 12. Shipping and transfer of risk, Insurance**
- 12.1 If our order confirmation contains a clause listed in INCOTERMS (e.g. freight-free ex works etc.), the INCOTERMS in the relevant newest version apply unless something else has been listed in our order confirmation.
- 12.2 If nothing to the contrary has been agreed upon in writing, shipping by us is at the risk and expense of the Customer and from our factory.
- 12.3 The risk of the accidental loss or accidental deterioration of the merchandise to be delivered to the Customer, the shipping company, the freight agent or other enterprises intended to carry out the shipment, is to be transferred to the Customer at the latest, however, when the merchandise leaves our factory, the warehouse or the outlet.
- 12.3 If the shipment is delayed by the fact that we assert our right of retention due to complete or partial payment arrears of the Customer or for any other reason which is the fault of the Customer, the risk is transferred to the Customer from the date of the ready-to-ship notification at the latest.
- 12.4 For the takeover of the merchandise by the Customer or by a third party which it designates, the takeover times are to be coordinated with us ten days before the delivery date.
- 13. Notice of defects, Guarantee, Breach of obligations**
- 13.1 Recognisable defects are to be reported by the Customer to us in writing upon receipt of the merchandise, however within 12 days following performance of the service at the latest. The written defect notices must contain a detailed description of the defect. A notice which is not submitted in time or not in the correct form precludes any claim by the Customer due to a breach of obligations for poor performance.
- Before the merchandise which is the subject of a complaint is unloaded from our tankers and our shipping containers, we must be informed immediately so that we can involve our employees and/or experts or other third parties in the process. This only does not apply if we have explicitly waived this right in writing / by telex. If the Customer does not meet the aforementioned obligation or if it modifies or processes the merchandise which is the subject of a complaint or forwards it, claims of a breach of obligations due to poor performance are precluded.
- 13.2 If the merchandise is not delivered by us but instead by a transport company we have commissioned, recognisable defects must also be reported to the transport company and the acceptance of the defects can also be arranged by this company. The obligations from clause 13.1 also remain in effect. Notification which is not made on time thereby precludes any guarantee claim of the Customer.
- 13.3 Hidden defects must be indicated in writing immediately upon detection; however they must be reported within the expiration period indicated in clause 13.8. The written defect notices must contain a detailed description of the defect here as well. A notice which is not submitted in time or not in the correct form precludes any claim by the Customer due to a breach of obligations for poor performance. Other breaches of obligations are to be reported immediately prior to the assertion of other rights by the Customer with the provision of a reasonable remedy period.
- 13.4 The delivered merchandise is considered to be approved by the Customer under the terms of the agreement upon the processing, modification, combination or mixing with other materials. This applies by extension in the event that the merchandise is forwarded from the original destination. It is the Customer's responsibility to clarify any appropriate tests before processing begins in terms of purpose and methodology to determine whether the supplied merchandise is suitable for the modification, processing and other application purposes intended by the Customer.
- 13.5 If samples have been collected from the shipment at the delivery plant location in accordance with clause 8, they are considered in keeping with the terms of the agreement for an expert's report on the composition of the merchandise. If the Customer requires a test of such a sample, it must notify us of this in writing immediately. The test shall be performed by a neutral testing entity agreed upon between the parties or, in the event that no agreement can be reached within five days by a request of one party, by a neutral expert whom the president of the chamber of industry and commerce relevant to the delivery location shall appoint. Each party shall assume one half of the costs for the expert.
- 13.6 If a defect occurs, we can choose either a remedy for the defect at no charge or a replacement shipment - excluding a delivery regress in accordance with §§ 478, 479 German civil code. Here we are to be guaranteed two remedy attempts. We shall remedy defects which are the fault of the Customer itself and unjustified complaints on behalf of and at the expense of the Customer.
- 13.7 Cancellation of the agreement is precluded with the exception of liability for defects if the breach of obligations is not our fault.
- 13.8 We provide a warranty for a period of one year for provable defects, calculated from the start date of the statutory expiration period - if nothing to the contrary has been explicitly agreed upon - or an instance of § 478 German civil code (right of recourse) applies. The aforementioned abbreviation of the expiration period does not apply in the event of malicious intent and in the event of a risk to life, limb and health.
- 13.9 More extensive claims by the Customer due to or in conjunction with defects or the consequential harm from defects, for any reason whatsoever, only apply according to the provisions in clause 16 if they are not damage claims resulting from a warranty which should protect the Customer against the risk of such consequential harm from defects. In this instance as well, we are only liable for typical and foreseeable damages.
- 13.10 Our liability and the resulting liability is precluded if defects and the resulting damages cannot be proven to be based on our defective merchandise. In particular, the warranty and liability are precluded for the consequences of erroneous or natural use of the merchandise if the consequences of physical, chemical or electrolytic effects on the merchandise do not correspond to the intended average standard effects.
- 13.11 Claims for defects do not apply to only minor deviations from the stipulated or other composition or usability of the merchandise.
- 13.12 Our liability according to clause 16 shall remain unaffected. A reversal of the burden of proof is not associated with the aforementioned provisions.

- 13.13 Customer claims for expenses, particularly transport, travel, work and material costs required for the purposes of post-performance are precluded if the costs increase because the delivered merchandise has been subsequently delivered to another location different from the agreed upon delivery location. This does not apply in the event of delivery regress according to §§ 478, 479 German civil code and in the event of malicious intent or intentional damages.
- 13.14 Any regress claims by the Customer in the event of a further sale of the merchandise apply to us only to the extent to which the Customer has not made any agreements with its Buyer which go beyond the scope of the statutory defect claims.
- 13.15 The recognition of violations of regulations by us must always be in written form.
- 14. Prices, terms of payment, pleas of uncertainty**
- 14.1 All prices are always in EURO including packaging, plus freight and other minimum quantity supplements from the delivery plant or warehouse, plus VAT, to be borne by the Customer in the respective amount prescribed by law.
- 14.2 Services which are not an integral part of the stipulated scope of the agreement are listed based on our respective applicable general price lists in the absence of an agreement to the contrary.
- 14.3 We are entitled to increase the rate of compensation unilaterally to a reasonable extent (§ 315 German civil code) in the event of an increase in material procurement, packaging, delivery or production costs, taxes (particularly also import and export duties), wage and ancillary wage costs as well as energy costs and the costs from environmental regulations in terms of the conclusion of the agreement if more than two months have passed between the conclusion of the agreement and delivery. An increase in the aforementioned sense is precluded if the cost increase for the factors indicated is compensated for by a cost reduction for other indicated factors in terms of the total cost burden for the delivery.
- 14.4 Our invoices are payable (without discount) within 30 days following conclusion of the agreement and the invoice date, regardless of the date of receipt of the merchandise. However, we are also entitled to request payment step-by-step in exchange for payment. If a discount amount was agreed upon, this shall be calculated from the net amount and is only permissible if all other older obligations over 30 days can be met through the business relationship with the Customer.
- 14.5 We are also entitled to first credit payments for older debts of the Customer despite terms of the Customer which indicate otherwise. If costs and interest have already occurred, we are entitled to first credit the payment to the costs, then to the interest, then to the principal service.
- 14.6 The Customer is in arrears of payment within 31 days following a warning in the event of a delivery obligation on our part or within 31 days following a ready-to-deliver notice by us in the event of delivery ex works.
- 14.7 When payment arrears occur, interest on the balance due in the amount of 8% above the respective basic interest rate is charged. Proof and a claim of higher damage by us are permitted.
- 14.8 Furthermore, in the event of payment arrears on the part of the Customer, we are entitled to retain deliveries or services based on all agreements with Customer until the complete satisfaction of claims. The Customer can avoid this right of retention by ordering a directly enforceable and unlimited surety from a major German bank or a municipal bank which is affiliated with the asset collateral fund, in the amount of all payments due.
- 14.9 The payment date is considered the date of the receipt of funds by us or a credit to our account. The right to assert damage claims beyond this scope is reserved. Otherwise, a delay in the performance of a claim causes all other claims from us which result from the business relationship to be payable immediately.
- 14.10 If the terms of payment are not met or circumstances are recognised or are recognisable which, in our judgement can constitute justifiable doubt in the creditworthiness of the Customer according to our obligatory due diligence as a salesman and also those facts which existed upon conclusion of the agreement but of which we were aware or had to be aware, we are entitled to suspend further work to on-going orders or delivery - regardless of more extensive legal rights - and also to demand advance payments for pending deliveries or the provision of reasonable securities and to cancel the agreement following expiration of a reasonable grace period without success - regardless of other legal rights. The Customer is obligated to provide us with compensation due to damage resulting from non-performance of the agreement.
- 14.11 If payments are deferred and they are made later than agreed, interest shall be charged for the deferment period in the amount of 8% above the basic interest rate when the deferment plea if made, without a notice of default being required.
- 14.12 The Customer only has a right of retention or right of offset only in terms of those counter claims which are not disputed or determined to be legally valid unless the counter-claim is based on a breach of major contractual obligations. A right of retention can only be exercised by the Customer to the extent that its counter-claim is based on the same contractual relationship.
- 15. Right of ownership**
- 15.1 We reserve the ownership to all merchandise which we have delivered (hereinafter referred to collectively as a "conditional commodity") until all of our claims with the Customer from the business relationship have been met, including all claims which result in the future from agreements concluded later. This also applies to a balance in our favour if individual or all claims by us have been added to an on-going invoice (account current) and the balance has been applied.
- 15.2 The Customer must insure the conditional commodity sufficiently for fire and theft. Claims against the insurance company from damage claim resulting from a conditional commodity are hereby already assigned to us in the amount of the value of the conditional commodity.
- 15.3 The Customer is entitled to re-sell the delivered merchandise in usual business transactions. It is not permitted to make other dispositions, particularly to pledge the conditional commodity nor offer it as collateral. If the conditional commodity is not paid for immediately upon further sale by the third-party buyer, the Customer is only entitled to a further sale with retention of ownership. The entitlement to a further

- sale of the conditional commodity immediately becomes invalid if the Customer discontinues its payment or is in payment arrears to us. This also applies if the Customer is affiliated with a corporation and/or one of the circumstances indicated in the previous clause applies to the parent or the controlling company.
- 15.4 The Customer hereby transfers all claims and securities and ancillary rights to us which it has obtained from or in conjunction with the further sale or the conditional commodity against the end consumer or against third parties. It may not make any agreement with its buyers which exclude or negatively affect our rights in any way or invalidate an advance assignment of the claim. In the event of the sale of the conditional commodity with other items, the claim against the third-party buyer in the amount of the delivery price agreed upon between us and the Customer if the amounts from the invoice cannot be determined for the individual merchandise.
- 15.5 The Customer is entitled to collect funds from a claim assigned to us until our revocation of this right which can occur at any time. Upon our request, it is obligated to provide us with the information and documents which are required for the collection of the assigned claims and, if we do not do this ourselves, to inform its buyers of an assignment to us immediately.
- 15.6 If the Customer adds the funds from claims from the further sale of conditional commodities to an existing account current relationship with its buyers, it shall assign a final balance which is recognised to be in its favour in the amount of the sum which corresponds to the total amount of the claim used for the account current relationship from the further sale of our conditional commodity.
- 15.7 If the Customer has already transferred claims from the further sale of the merchandise which has been delivered or is to be delivered to third parties, particularly due to genuine or non-genuine factorings or has made other agreements due to which our current or future security rights are negatively affected according to clause 15, it must inform us of this immediately. In the event of non-genuine factorings, we are entitled to cancel the agreement and to request the surrender of previously delivered merchandise; this also applies in the event of a genuine factoring if the Customer cannot freely dispose of the purchase price of the claim with the factor according to the agreement.
- 15.8 In the event of conduct not in keeping with the terms of the agreement, particularly in the event of payment arrears, we are entitled to reclaim the conditional commodity - without having to cancel the agreement; in this case, the Customer is immediately obligated to surrender the merchandise if it is responsible for more than a minor breach of obligations. We may enter the business premises of the Customer at any time to determine the inventory of the merchandise delivered by us. With the return of the conditional commodity, cancellation of the agreement is only warranted if this is expressly declared in writing or compulsory legal provisions require this. The Customer must inform us in writing immediately of the interventions of third parties on the conditional commodity or claims transferred to us.
- 15.9 If the value of the collateral existing according to the aforementioned provisions exceeds the collateralised claims by more than 10%, we are entitled to release collateral of our choice upon request of the Customer.
- 15.10 The modification and processing of the conditional commodity for us as the manufacturer in terms of § 950 German civil code, but without obligating us. If the conditional commodity is processed or inseparably connected with other items not belonging to us, we acquire co-ownership of the new material in the ratio of the invoice value of our merchandise to the invoice values of the other processed or combined items. If our merchandise is combined with other transportable items into one uniform item, which is to be considered a main item, the Customer is to transfer the co-ownership to us with the same ratio. The Customer shall grant ownership or co-ownership to us at no charge. The resulting co-ownership rights are considered to be a conditional commodity. Upon our request, the Customer is obligated at all times to provide information to track our ownership and co-ownership rights.
- 16. Exclusion and limitation of liability**
- 16.1 We are not liable, particularly for claims of the Customer for damages, for any legal reason whatsoever, particularly in the event of a breach of obligations resulting from the contractual obligation and from non-allowed actions. This aforementioned exclusion of liability does not apply if liability is mandatorily imposed by law, particularly:
- for one's own breach of obligations through malicious intent or gross negligence or the breach of obligations due to malicious intent or gross negligence for legal representatives or vicarious agents;
 - for the breach of major contractual obligations and in the event of inability to perform and a major breach of contract;
 - if, in the event of a breach of other obligations in terms of § 241 para. 2 German civil code (BGB), the our service can no longer be considered feasible for the Customer;
 - in the event of a risk to life, limb and health also by legal representatives or vicarious agents;
 - if we have accepted a warranty for the composition of our merchandise or the successful completion of a service or have assumed a procurement risk;
 - and liability according to the Product liability law (Produkthaftungsgesetz).
- "Major breaches of contract" are those obligations which protect legal positions of the Customer which are considered major to the agreement and which the agreement must protect for the Customer in terms of its content and purpose; furthermore, those contractual obligations which are considered major are those of which proper execution of the agreement only make performance possible and in the compliance with which the Customer has regularly trusted and may show trust.
- 16.2 In other cases, we are liable for all damage claims directed to us or for the reimbursement of expenses resulting from this contractual relationship due to a voluntary breach of obligations, for any legal reason whatsoever, but not in the event of slight negligence.
- 16.3 We are only liable for typical and foreseeable damages in the event of the aforementioned liability according to clause 16.2 and liability without culpability, particularly with an initial inability to perform and deficiencies in title.

16.4 Liability from the assumption of a procurement risk only applies if we have expressly assumed the procurement risk based on a written agreement.

16.5 Liability for indirect damages and the consequences of damages is precluded if we have not committed a major breach of contract or if we, our managing employees or vicarious agents are accused of malicious intent or a major breach of contract.

16.6 Our liability based on the amount of damages is limited to the total to the amount of coverage of our business liability insurance with the exception of malicious intent and gross negligence and otherwise legally binding, compulsory and deviating amounts of liability

Upon request of the Customer, we can provide a copy of this insurance policy at no charge regarding this coverage.

In the event of a release of the insurer from the obligation to perform obligations (e.g. by breaches of obligations on our part, annual maximum amount etc.), in terms of our service we are obligated to guarantee the Customer only a maximum amount of € 250.000.00 but with the exception of malicious actions and due to legally binding, compulsory and deviating amounts of liability. The aforementioned maximum liability does not apply in the event of malicious intent, wilful intent or a risk to life, limb and health.

More extensive liability is precluded.

16.7 The exclusions of liability or limitations to liability in accordance with the aforementioned clauses 16.2-16.6 apply to the same extent in terms of managing and non-managing employees and other vicarious agents and our sub-contractors.

16.8 A reversal of the burden of proof is not associated with the aforementioned provisions.

17. Inner-European community movement of goods (sales tax identification number)

17.1 The Customer shall ensure the correctness of its sales tax identification number which it is to provide to us immediately upon conclusion of the agreement without request. It is obligated to report any change in its name, address and company and its sales tax identification number both to us and to the domestic tax authority which is relevant to the Customer. If a delivery is considered taxable due to deficiencies in the information regarding the name, company address or the sales tax identification number, the Customer is to reimburse any tax which is payable to us due to these circumstances.

17.2 If dual taxation results - acquisition tax in the purchasing company, sales tax in Germany, the buyer shall reimburse the excessive tax, i.e. sales tax not due to an acquisition cost obligation with a waiver of a plea of impoverishment.

18. Place of performance, jurisdiction and applicable law

18.1 The place of performance for all contractual obligations is Neuss. The exclusive jurisdiction for all disputes is Düsseldorf. However, we are also entitled to initiate legal proceedings against the Customer at its general place of jurisdiction.

18.2 The law of the Federal Republic of Germany applies exclusively to all legal relationships, particularly with

exclusion of the UN convention on contract for the international sale of goods (CISG).

19. Initiation of insolvency proceedings, suspension of payment

19.1 In the event of an application to initiate insolvency proceedings on the Customer or its suspension of payment not based on rights of retention or other rights, we are entitled to cancel the agreement at any time or to make delivery of the merchandise contingent on the previous performance of the payment obligation. If the delivery of the merchandise has already occurred, the purchase price is immediately due in the aforementioned cases. We are also entitled to request the return of the merchandise in the aforementioned cases and to retain it until complete payment of the purchase price.

19.2 Upon suspension of payment by the Customer or if the Customer files an insolvency application, the Customer is no longer entitled to the sale, processing, combination or blending of the conditional commodity (see clause 15.1). In this case, it must carry out the immediate separate storage and marking of the conditional commodity to which we are entitled from pledged claims due to the delivery of merchandise and which the Customer receives and to keep it in trust.

20. Severability clause

If a current or a future provision of these rules should be invalid/void in full or in part or not be performable for reasons other than those set forth in §§ 305-310 of the German civil code (BGB), the validity of the remaining provisions of this agreement shall remain unaffected.

This also applies if a lacuna results following conclusion of the agreement which must be supplemented. The parties shall replace the invalid/void/non-performable provision or lacuna which must be filled with a valid provision which takes into account the invalid/void/non-performable provision and the overall content of the agreement in terms of its legal and financial content. The provision of (partial invalidity) § 139 German civil code (BGB) is expressly excluded.

Notice:

In accordance with the provisions of the Federal data protection law (Bundesdatenschutzgesetz), we wish to indicate the fact that our accounting is performed via an electronic data processing system and we also save data obtained due to our business relationship with the Customer in this regard.

Neuss, February 2013

