



## TERMS AND CONDITIONS OF SALE AND DELIVERY OF BAG (Version: 01.07.2023)

### 1. GENERAL

The following sale and delivery conditions apply to all contracts between BAG Ölmühle BetriebsgmbH ("BAG" or "seller") and a customer ("buyer") for the sale and delivery of goods from BAG. BAG is entitled to assign contractual rights and obligations to another company within the BAG group. The buyer accepts the sale and delivery conditions binding for all existing and future contracts. Any conflicting or additional conditions of the buyer or a broker that are not formally accepted in writing by BAG do not apply and shall not obligate BAG even if it does not expressly reject them. The content of the contract is determined by the written sales confirmation or BAG's contract, including the aforementioned and following conditions. The failure to countersign the sales confirmation or contract by the buyer does not affect the validity of the contract according to the sale confirmation/contract. Any agreements require a written confirmation by BAG, just like any amendments or additions to these conditions. In case of a contradiction between these conditions and special conditions mentioned in the written sales confirmation, the latter shall apply. If any of these conditions are or become invalid, the remaining contractual content shall be binding. The invalid part shall be replaced by an effective one that comes as close as possible to the economic result of the invalid conditions.

### 2. DELIVERY (PICKUP)

**2.1. Scope of Delivery Obligation.** Delivery times are only approximately agreed and will be met whenever possible. BAG is only obliged to deliver within the scope of existing capacities and considering shipping orders previously issued by other customers. The determination of the delivery time is in the choice of BAG. If the delivery time takes several months, unless otherwise agreed, the delivery will be made in approximately equal monthly rates. BAG is entitled to make partial deliveries. In case of partial deliveries, BAG is entitled to request payment of the proportional purchase price relating to the executed partial delivery. If there are multiple contracts between BAG and the buyer for the same products and the same delivery period, BAG is entitled to determine the order in which the contracts will be fulfilled. BAG may deliver goods equivalent to its product and the agreed quality at any time. The delivery may also be made from other places than specified in the contract, with any differences in freight costs being offset against each other.

**2.2. Delivery Time.** Deliveries are only made on business days, shall mean Monday to Friday, excluding statutory and customary public holidays at the place of loading. On the 1<sup>st</sup> of the respective month the goods are automatically ready for removal without a written confirmation by BAG. For contracts concluded within the current month, the goods are immediately available for dispatch. BAG is free to send the customer so-called "dispatch requests." The buyer must place an order for the goods at least 5 working days prior to the desired delivery/pickup date, considering the earliest available loading date according to BAG's price email or information provided by BAG.

**2.3. Grace Period and Non-Fulfillment.** If BAG and the buyer fail to reach an agreement on delivery dates, BAG has the right to set a grace period to the buyer. BAG has this right if the quantities have not been scheduled by the buyer by the 5th business day of a month,



or by the 3rd business day after contract conclusion for contracts concluded within the current month. For scheduled quantities that are not collected by the buyer on time can also be set a grace period, as well as for quantities where the delivery period has expired. A grace period must be at least 5 business days and must always be communicated in writing via fax or email. If a grace period or shipping order is received after 4:00 PM on a business day, for the purpose of setting the deadline, the grace period or shipping order is considered to be received on the next business day. After the grace period expires without success, BAG may, at its choice, either terminate the contract or its unfulfilled volumes and/or claim damages instead of performance. BAG also has the right to store the goods subject to the grace period at its own or a third party's warehouse at the buyer's expense and risk and demand immediate payment upon receiving a delivery note/storage certificate if BAG has announced the storage together with the grace period. Additionally, BAG may arrange the freight for the goods subject to the grace period itself and deliver the goods to the buyer. BAG is entitled to postpone the delivery as many business days as the buyer was in delay, plus a reasonable scheduling time. If BAG claims damages instead of performance, it may determine the damages, in particular through sales against or price determination by a third party (e.g., broker). The sales against must be carried out immediately after the grace period expires. If a threatened sales against is not carried out or not done properly or in a timely manner, the right to claim damages remains. BAG is also permitted to step in as a buyer itself. If damages are determined through price determination, the date of price determination is considered to be the first business day after the grace period expires. BAG must inform the buyer in writing (fax, email, etc.) of which right BAG intends to exercise no later than the first business day after the grace period expires; the announcement of the exercise of this right may be made before the grace period expires.

**2.4. Expiration of Contractual Claims.** A contract expires automatically if a written reminder / grace period for performance of the contract is not issued within 3 months after the expiration of the fulfillment period specified in the contract. If a reminder/grace period is issued within this timeframe and the party issuing the reminder does not exercise its contractual rights within 1 month after the reminder, the contract shall be considered expired without mutual compensation. The regulations of clauses 2.6 and 2.7 remain unaffected.

**2.5. Refusal of Delivery.** BAG is entitled to refuse the execution of the contract while preserving claims for damages if: a) After the conclusion of the contract, there is a significant deterioration in the buyer's financial situation or if BAG becomes aware of circumstances that jeopardize the claim for consideration, unless advance payment is made or payments are guaranteed in another way that ensures BAG's security (e.g., bank guarantees). b) The buyer is in delay with the acceptance or receipt of a delivery or with a payment under any contract concluded with BAG. c) The buyer's business is liquidated, transferred to a third party, relocated abroad, or undergoes any other legal form change, and legitimate doubts arise regarding the buyer's fulfillment of the contract due to the aforementioned changes, unless payment in advance is made, or payments are guaranteed as per a).

**2.6. Delays in Delivery.** BAG's aim is to meet the agreed delivery dates and times. However, BAG is released from complying with contractual delivery deadlines and, if applicable, from fulfilling the contract in accordance with the following regulations, to the extent that and as long as circumstances occur, either in the home country or abroad, which substantially impede



performance ("substantial impediment to performance"). This is the case when BAG is prevented or unreasonably impeded in the procurement of raw materials, processing, delivery or loading.

Substantial impediment to performance includes, in particular:

- Mobilization, acts of war, riots, civil war, blockades, strikes or strike-like measures, lockouts, demonstrations, factory occupations, sabotage, go-slows
- Adverse natural events such as ice, high/low water, hurricanes, cyclones, earthquakes, tidal waves, delay in and/or loss of harvest
- Significant impairment of the procurement opportunities for the foreign currency required for the payment of raw materials
- Loading or transport hindrances, delays, restrictions, suspensions
- Impediments caused by explosions, fires, total or partial destruction of manufacturing facilities or warehouses, machinery, and machine parts
- Machinery breakdown or other significant operational disruptions
- Consequences of an "energy crisis," fuel, auxiliary material, energy shortage
- Lack of employees due to illness, epidemics and lockdowns
- Non-delivery or non-contractual delivery of raw materials, machinery and machine parts, auxiliary materials, packaging materials to BAG
- Government measures or interventions by domestic or foreign authorities, such as export or import restrictions or bans, seizures, embargoes

The above-mentioned impeding circumstances do not include those caused by BAG's own fault. BAG promptly informs the buyer by fax or email of the reason and, if predictable, the expected duration of a substantial impediment to performance as soon as it becomes known.

**2.7. Consequences of delays in delivery.** In case of a substantial impediment to performance as defined in clause 2.6, BAG is entitled to (i) immediately withdraw from the contract without compensation or (ii) extend the agreed delivery period by the duration of the impediment performance hindrance and the time required to adjust production schedules as a consequence thereof by up 4 months (extension period). BAG shall inform the buyer immediately in writing. For contracts that involve different deliveries, the mentioned right of withdrawal only applies to those deliveries that were contractually scheduled during the impediment period. After expiry of the extension period, the contract may be rescinded at the request of either party. BAG shall be entitled to supply goods equivalent to those contractually agreed within the hindrance period.

### 3. LOADING

**3.1. Choice of Transportation and Transfer of Risk.** If the buyer has not made any specific arrangements, BAG shall be entitled to choose the route and means of transport for the goods, selecting the most economical option without any guarantee that the cheapest means of transport will be chosen in every case. The goods will travel in general uninsured at the buyer's expense and risk, unless otherwise agreed in the contract. The liability of BAG for improper packaging or loading ends upon the buyer's or a third party's acceptance of the goods without objection.

**3.2. Loading Times.** The loading of the goods shall be performed within the loading times specified by BAG. All costs arising from delays in loading, for which BAG is not responsible,



such as demurrage or transportation costs, shall be carried by the buyer. For further information and regulations, please see the "logistics information sheet" of BAG.

**3.3. Suitable means of transportation.** Unless otherwise agreed in the respective delivery conditions, it is the sole responsibility of the buyer to provide a suitable means of transport for the acceptance of the goods. The means of transport will be deemed suitable only if it meets all legal requirements or other regulations during loading, throughout the entire transportation, and during unloading (see BAG logistics information sheet). BAG is entitled to reject an apparently unsuitable means of transport and to organize delivery by third-party means of transport at the buyer's expense.

#### **4. QUALITY, WEIGHT, SAMPLING**

**4.1. Product Quality.** BAG delivers goods of merchantable quality. The delivered goods are natural products subject to biological variations. Deviations from the specified quality and/or content of the goods do not entitle the buyer to refuse acceptance. The goods must be accepted and paid in accordance with the contract. Claims regarding any potential decrease in value of the goods remain unaffected. Only the specifications of BAG and the invoicing conditions specified therein apply. The determination of the decrease in value is made by the arbitration tribunal if the parties fail to reach a mutual agreement.

**4.2. Permissible weight fluctuations.** The traded quantities shall be considered as minimum/maximum quantities. Additional quantities may be calculated in BAG's choice at either the contract price or the daily price or offset against other contracts of the same delivery period. The day of loading is decisive for determining the daily price. Weight ascertained at time of dispatch will be exclusively used for invoicing.

**4.3. Sampling.** Sampling shall only be performed at the place of loading by trained staff from BAG in the presence of the buyer's representative, such as the truck driver, who acknowledges the collected sample. The sample remains at BAG. If the buyer requests sampling by an expert sampler, the buyer shall notify BAG of this request latest when the loading date is placed. The costs of an expert sampler are carried by the ordered or instructed party. If samples have been taken by an expert sampler at the loading place, they are binding for determining the quality of the goods. In all other cases, the sample taken by BAG shall be conclusive.

#### **5. COMPLAINTS AND WARRANTY**

**5.1. Duty of inspection, notification and notice of defects.** The recipient shall carefully inspect the goods immediately prior to acceptance/acknowledgment. In the event of a claim, BAG shall immediately, but not later than 5 days after the acceptance of the goods, be notified in writing with a detailed statement of reasons.

Complaints:

##### Undesired Substances:

The buyer shall promptly notify BAG in writing, via fax or email, of any complaint regarding the contamination of the goods with prohibited or undesired substances after receiving the certificate of the first analysis. BAG has the right to order a second analysis immediately after receiving the first analysis certificate or arrange the analysis of its own retained sample. If there is a difference in the results of the first and second analyses, each party has the right to request a third analysis within 5 working days after the second analysis certificate is available.



The result of the analysis that is closest to the other analyses shall be binding. Legal obligations of the parties to report contamination or suspected contamination shall remain unaffected. Buyers' results will only be valid if the result is conducted by an accredited analysis institute.

## Content Values:

A final decision regarding complaints about the content of the goods is only permissible based on the sample taken in accordance with clause 4.3. The buyer must submit a complaint about the content with an analysis conducted by a recognized laboratory within 21 days after delivery. If the analysis shows a different content value than agreed, BAG has the right to analyse its own retained sample in another certified laboratory. The result of this analysis shall be recognized for the calculation of the remuneration. If the buyer has instructed an expert sampler, both the buyer and BAG shall analyse those samples. Only in this case, the average of the two analyses shall be decisive for the calculation of any remuneration. If a compensation is to be paid, the costs of all analyses for this content value shall be carried by BAG, otherwise by the buyer. No mutual analysis costs shall be charged in the case of in-house analysis. The content of moisture, natural foreign material and the structure of the meal are not independent reasons for a complaint, as long as they do not significantly influence the usability of the goods for the buyer. The samples shall be analysed in accredited analysis institutes.

The claimed goods must be retained in their transport containers on site to enable BAG to verify the justification of the complaint, unless BAG explicitly resigns this requirement and unless the buyer can ensure the completely separate storage of the claimed goods including non-processing.

Before the start of processing, the buyer shall determine whether the delivered goods are suitable for their intended purposes. If the buyer fails to fulfill the mentioned obligations or fails to do so properly, the goods shall be approved unless there are defects that were not recognizable with a proper inspection/check. If a defect that was initially not recognizable becomes apparent later, the buyer is obliged to notify BAG of this immediately, but not later than 5 days after the detection; otherwise, the goods shall also be approved regarding this complaint.

**5.2. Warranty.** In case of a justified complaint made in the correct form and within the specified deadline, BAG is entitled in the first instance to take back the insufficient goods and replace them with goods conforming to the sales contract. If BAG does not provide a replacement delivery or if it is unsuccessful, the buyer may reduce the purchase price or withdraw from the contract. These claims are subject to a limitation period of one year from the delivery of the goods. Once the goods have been started to be processed, mixed, or combined with other material, the delivered goods are deemed to have been approved by the buyer. Any warranty claims, in particular claims for damages, shall be excluded thereafter. This also applies with respect to reshipment of the goods from the original place of delivery.

## **6. LIABILITY**

**6.1. Compensation.** BAG is liable for damages in accordance with legal rights, but only if the damage is based on intent or gross negligence on the part of BAG. BAG is in no case liable for damages caused by vicarious agents. Except in cases of intent, BAG's liability is limited to direct loss or damage which was foreseeable at the time the sales contract was concluded up to a maximum amount equivalent to the purchase price agreed with BAG.





BAG's liability for loss or damage caused by delay is limited to a maximum of 5% of the purchase price agreed with BAG. Except in the case of intent, BAG's liability for indirect and consequential loss or damage (such as loss of profit) is excluded.

**6.2. Limitation Period.** All claims for damages against BAG, regardless of the legal basis, expire not later than one year after the goods have been delivered to the customer. Any shorter statutory limitation periods shall take precedence.

## 7. PRICES AND PAYMENT TERMS

**7.1. Prices and Taxes.** Price offers from BAG are generally non-binding and do not mean an obligation to accept orders. All agreed prices shall be exclusive of any taxes, meaning they are subject to the applicable value-added tax (VAT) and any other applicable taxes and charges. The buyer shall provide BAG with all necessary information and documents in time and completely to comply with all tax requirements.

**7.2. Price Adjustment.** In case of a significant change in production costs (such as material, labour, energy costs) after the conclusion of the contract, as well as in case of changes in import or export duties or other charges on goods or their raw materials, BAG is entitled to increase the price retroactively. The buyer is also responsible for any additional costs due to partial shipments, increased freight rates, and surcharges that have arisen after the conclusion of the contract.

**7.3. Payment.** BAG is entitled to request payment in advance for goods ready for delivery. Without prejudice to this agreed payment method, BAG may request payment in advance for the delivery if: a) There is a significant deterioration in the buyer's financial situation after the conclusion of the contract or BAG becomes aware of circumstances with reasonable doubts about the buyer's ability to pay unless payment is guaranteed in another secure manner (such as a bank guarantee). b) The buyer is in delay with the acceptance, receipt, or payment of a delivery. c) BAG's credit insurance does not cover the credit for the delivery of goods.

The withholding of payments or the offsetting of counterclaims by the buyer is only allowed if the counterclaims have been acknowledged writing by BAG or have been legally established. The payment amount must be made available to the seller on the due date in the specified currency. Cash discounts or other deductions are not permitted.

**7.4. Payment Delay.** If the buyer fails to make payment by the due date, he is automatically in delay without the need for a reminder, unless he promptly demonstrate that he is not responsible for the delayed payment. If the buyer is in delay with the acceptance of a delivery or with payment under this or any other contract with BAG, or if doubts arise regarding the buyer's ability or willingness to pay, or if the buyer revokes a direct debit authorized by BAG or allows it to be returned unpaid, BAG has the right, without prejudice to its other rights, to withdraw partially or entirely from individual or all outstanding contracts. The seller may demand immediate payment of all outstanding invoices ahead of time, if the buyer has failed to comply with agreed payment terms for previous deliveries, if the buyer's solvency is in question, if the agreed credit limit is exceeded, or if the buyer breaches any obligations arising from the retention of title (see clause 8). In the aforementioned cases, BAG is also entitled to withdraw from the contract, in whole or in part, after setting a deadline and to claim damages instead of performance. Setting a deadline is only required in the case of payment default, with a grace period of three business days, or 24 hours in case of revocation or non-payment of a direct debit.



The default interest rate is 9.2% above the respective base interest rate. If changes occur in the money or capital market that result in a general change in credit interest rates, BAG is entitled to adjust the agreed interest rate accordingly. BAG reserves the right to claim further damages. BAG`s representatives or employees are not permitted to collect any payments without specific written authorization.

## **8. RETENTION OF TITLE**

**8.1. Retention of title.** All delivered goods remain the property of BAG until the complete payment of the total outstanding amount. In case of seizure or any other claim on the delivered goods by third parties, the buyer is obligated to notify BAG immediately and to indicate the ownership rights of BAG.

**8.2. Further Processing.** In case of processing or blending the goods delivered by BAG with other material, BAG retains joint ownership of the resulting product in proportion to the value of the goods delivered by BAG compared to the value of the other processed goods at the time of processing or combination.

**8.3. Resale.** In case of a resale of goods under retention of title by the customer, the reserved ownership extends to the future proceeds or the purchase price claim from such transaction. In case of such resale, the buyer is obligated to promptly notify BAG and to keep the proceeds separate.

## **9. OFFICIAL INSTRUCTIONS**

If, after the conclusion of the individual contract, BAG is subjected to new obligations of any kind imposed by governmental or regulatory authorities that affect the contractual conditions, the consequences and additional costs shall become part of the contract and shall be regarded as having been agreed between the parties.

## **10. FINAL PROVISIONS**

The concluded contract shall be governed by Austrian law. The place of fulfilment for delivery and payment is 7540 Güssing, Austria. Any disputes arising out of or in connection with contracts falling under these general terms and conditions of sale and delivery shall be subject to the arbitration tribunal of the Agricultural Products Exchange in Vienna. The applicability of the UN Convention on the International Sale of Goods is excluded.