

# General Sales Terms and Delivery Conditions of MABANAFT Deutschland GmbH & Co. KG (as at: July 2015)

## 1. Scope

- (a) Unless agreed otherwise, only these General Sales Terms and Delivery Conditions shall apply to all current and future deliveries or performances of Mabanaf Deutschland GmbH & Co. KG (Vendor). Terms and conditions of Buyer are hereby expressly rejected.
- (b) The invalidity of one or more of the following clauses or of individual contractual agreements does not affect the validity of the remaining clauses.

## 2. Quality, quantities

- (a) Vendor will only deliver products of average quality. The quality of the products is determined by the description in the sales and purchase contract. In case the description is missing in the sales and purchase contract, the quality determination in the sales confirmation and subsequently in the delivery note applies. Quality features of samples or examples, analysis details or specifications are only meant to be quality descriptions insofar as these are agreed in writing.
- (b) Quantities are determined by weighing or measuring at the point of departure (refinery, storage facility etc.). In case of delivery in a tank truck the quantity displayed at its measuring device is binding.

## 3. Transfer of risk

- (a) The risk of accidental destruction and accidental deterioration of the goods passes on to Buyer upon delivery of the goods. For contracts of sale involving the carriage of goods, the risks pass on upon handover to the carrier, transport agents or other person nominated to accomplish the delivery.
- (b) The risk passes also on to Buyer if he is in default with the acceptance of the goods.

## 4. Delivery schedules and deadlines, problems with delivery

- (a) Vendor's delivery schedules are approximate schedules.
- (b) Vendor is not responsible for force majeure, the smooth progression of production and transport, or for any other circumstances beyond his control. Also industrial actions including strikes or lawfully lockouts in the Vendor's business or its suppliers' business are regarded as force majeure.
- (c) In the cases listed in 4. (b) Vendor is entitled to deliver with a corresponding delay. In case of a constant force majeure exceeding a time period of 4 weeks Vendor and Buyer each have the right to withdraw from the contract if the delivery is not carried out within a grace period set by the Buyer after the exceeding of 4 weeks. Reciprocal claims for damages don't arise in such a case.
- (d) The omission of deliveries and services from Vendor's suppliers or the destruction of goods exempts Vendor from his duty of performance and delivery, if the Vendor of no fault of his own and despite a congruent hedging transaction doesn't deliver or doesn't timely receive goods from his suppliers for more than 4 weeks. Buyer's damage claims are excluded within the limits of the following regulations under number 8. Vendor needs to inform the Buyer immediately about the incorrect or delayed delivery of his own suppliers. Vendor is obliged to assign his claims against the suppliers on request to Buyer.

## 5. Acceptance

- (a) If Buyer is fully or partly in default with the acceptance of the goods, Vendor can place the corresponding quantities in storage at Buyer's costs. After fixing a deadline Vendor can fully or partly withdraw from the contract and demand compensation instead of payment.
- (b) Buyer guarantees that the fueling, transport and storage equipment used for delivery are in perfect condition and are operated according to all public and civil law safety requirements.
- (c) If collecting the goods, Buyer is responsible to ensure that the applicable legal requirements and instructions of the collection location are observed.

## 6. Prices

- (a) Unless otherwise agreed, the prices are exclusive of VAT, energy tax, customs and contributions to the German National Petroleum Stockpiling Agency (Erdölbevorratungsverband) or similar fees. Discharge and other costs incurred in addition to the charge, even in case of carriage free delivery are to be borne by Buyer.
- (b) In case of water carriage surcharges due to high or low tide, ice drift or other reasons beyond Vendor's control are to be borne by Buyer. This also applies for demurrage caused by exceeding the permitted discharge time. Steam for discharge purposes and hoses necessary to unload the goods or other equipment are to be provided by Buyer at his expense.
- (c) In case any costs changes in transport costs, stock - or handling fees or changes caused by additional, higher or lower taxes or fees on the goods or changes of the Vendor's purchase costs due to state action in any supplying country, after the conclusion of the contract, prices are to be adjusted accordingly. In case of any price increase of more than 3% according to this, the Buyer is entitled to rescind from the contract. The rescission has to be exercised in writing towards the Vendor within 7 days after the information about the price increase.

## 7. Defects

- (a) In case of a defect Vendor can choose, either to repair or replace the goods. If the repair or replacement fails, Buyer can generally choose to demand a reduction of the purchase price or withdraw from the contract. In case of slight defects, however, Buyer is not entitled to withdraw from the contract.
- (b) Buyer is obliged to examine the goods forthwith after delivery and inform Vendor immediately in the case of detecting any defects. If any defect appears subsequently (concealed defect) it must be reported forthwith after its discovery. The goods must be unmix / distinguishable and at least one liter or one kilogram of the respective goods or in case of wood pellets at least three kilogram must be sampled in the presence of a Vendor's representative or by an expert appointed by Vendor.
- (c) Buyer shall secure Vendor's rights towards the transport agents (e.g. haulers) and shall immediately take the steps necessary to secure evidence.

## 8. Liability

- (a) Vendor's liability is excluded in cases of slight negligence.
- (b) The above mentioned liability restriction does not apply in the event of Buyer's claims deriving from product liability or an injury of life, limb or health attributable to Vendor. Also the liability restriction does not apply if essential contractual obligations (obligations whose compliance is essential for a duly accomplishment of the contract and on whose compliance the Buyer regularly confides or is allowed to confide) are breached. In this case the liability is only limited to foreseeable and typical damages.
- (c) These liability regulations apply as well to breaches of obligations by the Vendor's legitimate representatives, agents or assistants and their private liability.

## 9. Transport, Storage

- (a) If containers (such as tank rail cars are provided on a loan or rental basis, Buyer shall be liable until return to address determined by Vendor. The containers may only be used for the goods which have been supplied by Vendor.

- (b) Buyer is obliged to empty containers immediately and to send them back carriage free and at no charge to the return-address. Rent for tank rail cars is calculated from the date of filling to the date of return of the rail cars to determined return station at respective daily fees, if not expressly agreed otherwise.
- (c) Even in case of a contractually agreed rent-free transport and return transport, the customary daily fees in the line of business do apply if the return period is exceeded.
- (d) In case of incomplete emptying no refund is granted for remaining residues. Emptying and cleaning costs are to be borne by Buyer.
- (e) In case of delivery in containers of Buyer the Vendor is not obligated to examine their suitability and cleanliness. Buyer is responsible for any contaminations due to unclean containers.

## 10. Payments, assignment, offsetting, retention

- (a) Payments of the purchase price are due immediately or within the agreed payment terms. The payment date is specified on the invoice.
- (b) The value date must not exceed the due date. Discounts or other deductions are not permitted. Bank drafts and checks are only accepted according to separate agreements; the payment is only considered accomplished when it is no longer subject to any kind of reclamation and finally cashed. If the direct debit payment procedure according to SEPA is agreed the pre-notification period is shortened to one day.
- (c) If payment date is exceeded, Vendor is without giving further notice entitled to charge interest of 9 percentage points above the base rate besides exercising his legal rights.
- (d) Vendor can unilaterally demand immediate payment before maturity for all open invoices if Buyer has not satisfied the agreed payment terms for previous deliveries, if Buyer's solvency is uncertain or if the agreed credit line is exceeded. In the above mentioned cases, Vendor is also entitled to fully or partly withdraw from the contract after giving notice and to demand compensation instead of performance.
- (e) Buyer is not entitled to assign claims against Vendor without Vendor's written consent.
- (f) Buyer can only offset claims which are undisputed, legally binding or ready for a court's decision. Vendor also reserves the right to offset Buyer's claims against those claims of Vendor's affiliated companies (in particular, his parent, sister and subsidiary companies), due to Buyer.
- (g) Buyer can only assert rights of retention resulting out of the same contractual relationship for undisputed, legally binding, or ready for a court's decision.

## 11. Retention of title

- (a) The goods remain Vendor's property until final payment. This applies until full payment from Buyer of all due receivables resulting out of the mutual business relationship with the Vendor.
- (b) Buyer must safeguard the goods with due care and attention. Buyer shall inform Vendor forthwith about enforcements by third parties or other influences on the property and, if applicable, shall take measures to secure same.
- (c) Buyer is allowed to resell the goods in normal business as long as he properly fulfils his obligations towards Vendor. Besides the cases of § 354a HGB the resale is not permissible if a prohibition of assignment is agreed with Buyer's customer. Buyer assigns all receivables and rights deriving from the sale to Vendor. If Buyer accepts this demand in a current account relationship existing with his customer, the amount of the gross invoice in the current account demand is assigned; after successful balancing, it shall be replaced by the acknowledged balance, which is also assigned.
- (d) Vendor authorizes Buyer, subject to the revocation for good reason, to collect the assigned receivables in the course of normal business. Buyer is obliged to immediately forward received amounts to Vendor. Vendor can demand Buyer to disclose the assigned receivables and their debtors as well as to forward him all necessary information and the respective documents for collecting the receivables by himself plus to announce the assignment to the debtors.
- (e) If the goods are mixed with any third party goods, Vendor will alone or jointly own the new goods in the ratio of the gross invoice value of the goods subject to retention of title to the other goods. If the goods are mixed with other goods of Buyer, Vendor will be entitled to the co-ownership of the mixed goods in the ratio of the other goods to the goods subject to the retention of title, which are kept for Vendor by Buyer.
- (f) Insofar as the value of securities exceeds Vendor's total demands by more than 20%, Vendor will release the corresponding securities upon request from Buyer. The realizable value or nominal value of the receivables shall be the basis for the valuation of securities.

## 12. Expiration

Buyer's claims, especially emerging from guarantees and of compensation, will prescribe one year after delivery of the goods. This restriction does not apply in cases of Vendor's bad faith, purpose and gross negligence. Also this restriction does not apply if Vendor culpably injures life, limb or health.

## 13. Fiscal warranty of the Buyer

- (a) Buyer warrants to Vendor an irrevocable guarantee that both Buyer as well as subsequent purchasers will not breach any tax and / or disposal provisions, that are to be followed when tax-exempt or tax-privileged products are delivered upon Buyer's permit or general permission.
- (b) Buyer has to follow the respective current effective procedure regulations and time limits for excise movements under duty suspension. The Buyer has to inform the Vendor immediately if he changes the energy product's destination or if he splits the goods during the movement under duty suspension. In these cases Buyer is obliged to secure that the fiscal consignee duly receives all necessary information to be able to properly end the movement under duty suspension. These regulations also apply for changes of the destination or splitting of the goods carried out by a customer of the Buyer during the movement of energy products under duty suspension.
- (c) For VAT-exempt deliveries (Buyer's pick up) at all loading points within the European Union Buyer guarantees that the goods supplied are carried to a Member State other than the one of the loading point.
- (d) In case of warranty Buyer is obliged to indemnify and hold Vendor harmless from all claims of third parties, in particular tax claims, customs duties, other fiscal dues and tax penalties to the full extent on first demand. Buyer must also indemnify and hold Vendor harmless from all costs arising from claiming legal remedies.

## 14. Miscellaneous

- (a) If the Buyer is a merchant or a body corporate organized under public law the place of performance for the delivery is the seat of the Vendor's sales department. Place of payments and other performances of Buyer is the seat of Vendor.
  - (a) If the Buyer is a merchant or a body corporate organized under public law, the exclusive place of jurisdiction in case of any law suit against the Vendor is Hamburg. In cases of any Vendor's law suit the place of jurisdiction is subject to Vendor's choice either Hamburg or the place of jurisdiction applicable to the Buyer's seat.
- (c) The law of the Federal Republic of Germany shall apply except for the regulations of its international private law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded. Where applicable, the current version of INCOTERMS shall apply.