



# General Sales and Delivery Terms of Oxbow Carbon & Minerals Germany GmbH

## Section 1 Applicability

(1) All deliveries and services of Seller are exclusively subject to the following terms and conditions, unless expressly agreed otherwise.

(2) Seller is not bound by any conflicting provisions that differ from or supplement the following terms and conditions, unless Seller has expressly consented to the applicability of such provisions in writing. The following provisions also apply if Seller renders performance with full knowledge of conflicting or different terms and conditions of Purchaser without any reservation of rights, or if Seller makes reference to any document containing or referencing the business terms of Purchaser or those of a third party.

## Section 2 Offer and Acceptance, Prices

(1) All offers of Seller are non-binding and subject to change. Only when Purchaser places an order is there a binding offer, which may then be accepted by Seller within 10 days from receipt by written acceptance letter or order confirmation or by delivery of the goods, unless acceptance may under ordinary circumstances reasonably still be expected after a longer time period.

(2) If on the date performance is rendered the price has increased as a result of any change in the market price, customs fees, taxes or other dues, or as a result of the prices charged by third parties associated for performance of the contract, the increased price shall apply. If the increased price differs from the agreed price by 20% or more, Purchaser shall have the right to rescind the agreement. The right of rescission must be exercised promptly upon notification of the increased price.

(3) Unless provided otherwise, all prices are due without deduction and delivery is ex works.

(4) It shall be sufficient for goods to be in approximate conformity with specifications regarding the quality and condition of goods, as well as with samples, analysis data and other specifications, unless exact conformity is required for use of the goods for the contractually contemplated purpose. Such specifications shall not be construed as warranties of quality, but rather as a description or identification of delivery or performance.

(5) Seller reserves all claim, title and interest, including copyrights, in and to all calculations and other documentation, including all documentation designated as "confidential." Purchaser shall not disclose such documentation to any third parties except with the prior written consent of Seller.

## Section 3 Delivery, Transfer of Risk

(1) Unless provided otherwise, goods shall be delivered to the designated place of delivery at Purchaser's cost. The route and means of shipping shall be selected by Seller in the exercise of reasonable business judgment. Unless otherwise agreed, goods shall be shipped without insurance coverage.

(2) Shipping costs shall include, without limitation, customs fees and similar dues, loading costs, the costs any shipping insurance coverage procured at Purchaser's request, and the shipping charges as such.

(3) Irrespective of the Parties' agreement on shipping insurance, the risk of accidental loss or deterioration shall transfer to Purchaser at the time the goods are delivered to the carrier, shipping company or other person or institution selected for shipment of the goods. The foregoing provision shall also apply if the goods are shipped to the customer in vehicles owned by Seller.

(4) If the Parties have agreed on delivery in installments over a certain time period, deliveries shall be accepted at regular intervals over the time period for delivery, unless expressly agreed otherwise.

(5) Once Purchaser receives notice from Seller that the goods are ready for shipment, Purchaser must promptly order the goods from Seller. If Purchaser fails to do so or if delivery installments are not ordered on the agreed dates or, if no dates have been agreed upon, are not ordered at regular intervals over the time period for delivery, Seller shall have the right to ship the goods at the cost and risk of Purchaser or, at Seller's own option and in the exercise of reasonable business judgment, store such goods and immediately charge Purchaser for such goods. The risk of loss shall transfer upon notification that the goods are ready for shipment.

#### **Section 4 Time Period for Delivery, Rescission for Non-Delivery from Suppliers**

(1) All time periods for delivery and delivery dates are approximations only, unless confirmed as binding by Seller in writing.

(2) In the event that a delivery to Seller from a third-party supplier is missing, incorrect, non-conforming or untimely, Seller shall have the right to rescind the agreement in whole or in part. In such case, Seller shall have the right to render partial performance to the extent reasonable.

(3) In the event of any force majeure, labor disputes, government actions, disruptions of transportation, lack of timely delivery from suppliers, or any other unforeseeable circumstances beyond the control Seller, or any business interruptions not due to the fault of Seller, Seller shall have the right to postpone delivery by the duration of the disruptive circumstances. In the event that Seller is prevented from rendering performance on a long-term basis or performance has become impossible, Seller may instead rescind the agreement in whole or in part.

(4) If conversion, transfer or forward sale of the contract currency is impaired or made impossible under normal conditions, Seller may for the duration of such disruption postpone delivery. In the event that impairment is long-term or not only temporary nature, Seller may instead rescind the agreement in whole or in part.

(5) If Seller fails to render performance as agreed, Purchaser may set a reasonable grace period for performance and, if delivery is not made within such grace period, rescind the agreement. Any claims for damages are excluded, unless actions or omissions of Seller or its legal

representatives or agents were intentional or grossly negligent, or Seller or its legal representatives or agents have caused harm to life, limb or health.

### **Section 5 Weights and Analyses**

Goods shall be weighed and sampled prior to shipment. Unless expressly provided otherwise, the weight and analysis certificates of Seller shall be binding.

### **Section 6 Notice of Defect, Warranty**

(1) Purchaser shall provide Seller with written notice of any Visible defects without undue delay, however no later than 10 calendar days from delivery or performance. Seller shall also be provided with prompt notice of any hidden defects without undue delay, in any event not later than 10 calendar days from the date of discovery. The foregoing provision shall also apply if delivery is made in installments.

(2) Upon receipt of a notice of defect, Seller shall have the right to inspect and test the allegedly defective goods.

(3) Defective goods shall be returned to Seller and will be replaced with non-defective goods. In lieu hereof, Seller may also indemnify Purchaser for the reduced value of the goods.

(4) If replacement fails on two separate occasions or Seller is unable to replace defective goods within a reasonable time period, Purchaser shall have the right to demand a reduction of the purchase price or, at Purchaser's option, to rescind the agreement.

### **Section 7 Exclusion and Limitation of Liability**

(1) Unless provided otherwise in the foregoing provisions, Seller's liability for breach of contract and torts shall be limited to cases involving intentional or grossly negligent actions or omissions. This limitation of liability shall not apply in cases involving harm to life, limb or health caused by Purchaser, liability for any breach of Seller's material rights and obligations, or to indemnity for default damages (Civil Code § 286); in such cases, Seller shall be liable for any degree of culpability.

(2) To the extent that Seller is, in principle, liable for damages under subsection 1, such liability shall be limited to damages which are reasonably foreseeable by Seller on the date the agreement is executed or which, taking into consideration the circumstances that Seller knew or reasonably should have known, Seller would have foreseen, had Seller exercised reasonable care. Moreover, indirect and consequential damages resulting from defects of delivered goods shall be compensated only if such damages are typically to be expected assuming the goods are used as intended.

(3) The foregoing exclusion of liability shall also apply to any ordinary negligence by Seller's authorized agents (*Erfüllungsgehilfen*).

(4) To the extent that liability for damages not involving harm to Purchaser's life, limb or health and caused by ordinary negligence is not excluded, such claims shall be subject to a limitation period

of one year from accrual of the claim or, in the event of claims for damages based upon defects, from delivery of the goods.

(5) To the extent that Seller's liability for damages is excluded or limited, such exclusion and limitation shall also apply to any personal liability for damages of Seller's employees, staff, representatives and agents (*Erfüllungsgehilfen*).

## **Section 8 Payments**

(1) All payments shall be made in accordance with the terms and conditions agreed upon by the Parties. All payment periods shall be calculated as of the invoice date. Unless agreed otherwise, invoices shall be due and payable within 30 days from the invoice date.

(2) Checks and drafts or accepted for conditional credit only. Drafts will not be accepted unless expressly agreed by the Parties. All costs of drafts and discounts shall be paid by Purchaser.

(3) Seller may rescind the agreement if Purchaser has provided any incorrect or incomplete information about circumstances related to Purchaser's credit standing. In lieu of rescission, Seller may also make delivery conditional upon prior payment. The same shall apply if Seller discovers circumstances after execution of the agreement which tend to substantially reduce Purchaser's credit standing and which jeopardize payment of outstanding claims by Seller under the agreement, as soon as a reasonable grace period for payment set by Seller has expired without receipt of payment.

(4) Purchaser shall have no right to offset any counterclaims against Seller's claims unless such counterclaims are undisputed or have been established by a final and conclusive court judgment. Purchaser shall have no right to withhold payment based upon any counterclaims, unless such counterclaims arise from the same transaction and are undisputed or have been established by a final and conclusive court judgment.

(5) Notwithstanding German Civil Code (*BGB*) § 195, the limitation period for Seller's claims for payment shall be five years. The limitation period shall begin to run as provided in German Civil Code (*BGB*) § 199.

## **Section 9 Default Interest, Payment Default**

(1) In the event of Purchaser's payment default, Purchaser shall be liable for default interest in the amount of 5% per annum. Seller's right to seek additional damages for payment default shall remain unaffected thereby.

(2) Seller shall have no obligation to make deliveries under any ongoing contracts until full payment of all outstanding invoice amounts, including accrued interest and any costs.

(3) If Purchaser has provided any incorrect or incomplete information about circumstances related to Purchaser's credit standing, or Seller subsequently discovers that achievement of the contractual purpose is jeopardized as a result of Purchaser's lack of adequate solvency, Seller shall have the right to make all outstanding liabilities of Purchaser due and payable immediately after a reasonable grace period for payment has expired without receipt of payment.

(4) In the event of Purchaser's payment default, Purchaser is liable for the costs of past due notices and any legal action, including all measures necessary in connection therewith (e.g., collection of information, retainer of collection agency).

## **Section 10 Reservation of Title**

(1) Seller reserves title to all delivered goods until all claims for payment accruing to Seller in connection with the business relationship with Purchaser, including accrued interest and any costs and expenses, have been paid in full. For current accounts, the reservation of title shall secure Seller's claim for payment of the outstanding balance.

(2) Purchaser shall hold the goods in bailment for Seller without consideration. The goods and any goods taking their place and subject to the reservation of title in accordance with this clause shall hereinafter be referred to as the "secured goods."

(3) The Parties hereby agree that if secured goods are processed by Purchaser, the secured goods shall be processed in the name and for the account of Seller as the manufacturer and that Seller shall immediately acquire ownership or -- if materials of several owners are processed or the value of the processed product is greater than the value of the secured goods -- co-ownership (fractional ownership interest) of the newly created product based upon the proportion of the invoice value of the secured goods to the total value of the newly created goods. To the extent that no such ownership is acquired by Seller, Purchaser hereby transfers to Seller as security Purchaser's future ownership interest or -- in the above proportion -- co-ownership interest in such newly created goods. To the extent that secured goods are combined or inseparably intermingled with any other goods to create a single product and one of the other goods is considered the key component, Seller hereby transfers to Purchaser, if the key component is owned by Seller, a co-ownership interest in the single product in the proportion defined in sentence 1 above.

(4) Purchaser may process and sell secured goods in the ordinary course of business. Purchaser hereby assigns to Seller, in the amount of Seller's claims for payment of the purchase price, all claims resulting from a resale of secured goods, including any collateral for such claims. In the event that secured goods are sold together with other goods not owned by Seller, the foregoing assignment of claims from resale shall be valid in the amount of the value of the secured goods. If Purchaser sells secured goods which have been processed together with other goods not owned by Seller, the assignment shall be valid in the amount of Seller's co-ownership interest.

(5) The same shall apply to any other claims that take the place of secured goods or otherwise accrue with respect to secured goods, e.g., insurance claims or tort claims resulting from loss or destruction of secured goods.

(6) Seller hereby authorizes Purchaser to collect assigned claims in Purchaser's own name and for the account of Seller unless and until such authorization is revoked. The authorization to collect assigned claims may be revoked by Seller only in the event of enforcement of the reservation of title. In the event of enforcement, Purchaser shall notify its buyers of the assignment to Seller and provide Seller with all information and documentation necessary for collection of the claims.

(7) Any right of Purchaser to pledge or assign secured goods as collateral is hereby excluded. If any third party attempts to gain access to secured goods, in particular by instituting attachment proceedings, Purchaser shall advise such third parties promptly of Seller's ownership interest and

inform Seller of such attempts in writing without undue delay, so as to enable Seller to enforce its ownership rights. In the event that the third party is unable to indemnify Seller for costs incurred in connection with such proceedings in or out of court, Purchaser shall be liable for such costs to Seller.

(8) Purchaser hereby irrevocably permits Seller to enter Purchaser's offices, production facilities and warehouses at any time to take inventory of goods owned by Seller.

(9) Upon demand of Purchaser, Seller shall release secured goods or the items or claims taking the place of secured goods, to the extent that the value of such goods exceeds the amount of Seller's secured claims by more than 20%. The secured goods subject to release shall be selected by Seller.

(10) In the event that Seller rescinds the agreement based upon Purchaser's breach of contract -- including, without limitation, Purchaser's payment default -- (enforcement of reservation of title), Seller shall have the right to demand delivery of the secured goods. Enforcement of the reservation of title shall not be construed as a rescission of the agreement unless Seller provides express written notice of rescission.

#### **Section 11 Place of Performance, Jurisdiction, Governing Law**

(1) The place of performance for all obligations arising from this Agreement shall be Seller's registered office.

(2) Any disputes arising from or in connection with this Agreement, including disputes involving drafts or checks, shall be determined by a court of competent jurisdiction in Mannheim, Germany. In the alternative, Seller also has the option of filing suit against Purchaser in any court at the place of Purchaser's general place of jurisdiction. Any mandatory provisions of applicable law providing for exclusive jurisdiction shall remain unaffected by this clause.

(3) All agreements between the Parties shall be exclusively subject to German law. Applicability of the provisions of the UN Convention on Contracts for the International Sale of Goods is hereby excluded.

#### **Section 12 Miscellaneous**

(1) If any provision has been inadvertently omitted from the agreement or these General Terms and Conditions, the resulting gap shall be filled with such valid provision as most closely reflects what the Parties would, in consideration of the commercial intent and purpose of the agreement and the purpose of these General Terms and Conditions, have agreed upon, had they been aware of the omitted provision from the outset.

(2) The foregoing provision shall apply, *mutatis mutandis*, if any provision of these General Terms and Conditions is or becomes invalid.

**Notice:**

Purchaser hereby acknowledges that Seller stores data related to the agreement with Purchaser in accordance with Federal Data Protection Act (*BDSG*) § 28 for data processing purposes, and that Seller reserves the right to transfer such data to third parties (e.g., insurance companies) to the extent necessary for performance of the agreement

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