

# General technical purchasing and order conditions of Bunge Deutschland GmbH

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(As of June 2018)

## 1. Scope, General

1.1 The following General Terms and Conditions of Purchase (GCP) apply to all contracts concluded by Bunge Deutschland GmbH (hereinafter referred to as "Bunge") according to which the contractual partner (hereinafter referred to as "seller") provides technical supplies or services.

1.2 The Terms and Conditions apply exclusively. Divergent, conflicting or supplementary General Terms and Conditions of the seller shall only become part of the contract if and to the extent that Bunge has expressly agreed to them in writing. Bunge's AEB and the consent requirement will also apply if Bunge unconditionally accepts the Seller's delivery or service in the knowledge of Seller's divergent, conflicting or additional clauses.

1.3 The GCPs also apply to similar future contracts with the seller, without having to refer again to the GCP.

1.4 Rights that Bunge is entitled to according to the statutory provisions beyond these General Terms and Conditions of Purchase remain unaffected.

## 2. Form

Legally binding unilateral statements and announcements of the seller relating to the contractual relationship between him and Bunge have to be delivered in written form, meaning in writing or text form (for example letter, fax, e-mail). Statutory form regulations as well as further proofs, in particular with doubts of the legitimization of the declarant, remain untouched.

## 3. Conclusion of contract

3.1 Offers must be submitted to Bunge in writing (digital form or fax is sufficient) and are free of charge. The seller has to treat the offer confidentially. The seller is bound to his offer, as far as no period of validity has been agreed, from the receipt of the offer by Bunge Deutschland GmbH for four weeks. A contract is only concluded if the acceptance of the offer by Bunge GmbH is declared in writing (digital form or fax is sufficient). Silence is not considered approval or acceptance of the offer.

3.2 Orders from Bunge, which are not merely an acceptance of an offer, must be confirmed or rejected by the Seller immediately in writing (digital form or fax suffice). In the case in which the seller is silent on the order, it is considered accepted.

3.3 Specifications, drawings, descriptions and other documents also provided by Bunge are always part of an order. Inconsistencies between the order and the attached documents must be reported by the seller to Bunge immediately.

3.4 Even after the conclusion of the contract, Bunge may demand changes to the goods or performance, if this is reasonable for the seller. In the event of these changes, the two contracting parties must take into account the effects, in particular with regard to any additional or reduced costs as well as the delivery or service deadlines.

## **4. Performance, delivery, place of performance**

4.1 The agreed delivery dates and deadlines are binding. If the delivery time is not specified in the order or at the time of conclusion of the contract, it shall not exceed four weeks from the conclusion of the contract. Delivery dates are only considered to have been met if the required documentation (for example, technical shipping or inspection documentation) has been received.

4.2 The seller is obliged to inform Bunge immediately and specifying the reasons for expected delivery delays.

4.3 Premature deliveries do not affect the originally agreed due dates. If the premature delivery is carried out without the expressed consent of Bunge, it may require additional costs incurred by the seller replaced and is not obliged to accept the goods.

4.4 The delivery / performance of partial quantities is not permitted if Bunge has not expressly agreed to this in writing.

4.5 In the event of delays in delivery, in particular also in the event of exceeding of interim or partial deliveries, Bunge shall be entitled, without prejudice to further claims, to withdraw from the contract after granting a reasonable grace period.

4.6 The delivery is made "DDP" (Incoterms 2010) to the place named in the order. If no place of destination has been indicated and nothing else has been agreed, the delivery shall be made to the registered office of Bunge (Bonadiesstrasse 3-5, 68169 Mannheim). The place of destination is the place of performance for the deliveries and services and any subsequent performance (debt to be discharged at creditor's domicile).

4.7 The seller is not entitled to have the service owed by him performed by third parties (such as subcontractors) without the prior written consent of Bunge.

## **5. Default, contractual penalty**

5.1 If the seller fails to deliver at all or within the agreed delivery time or if he is in default, the rights of Bunge shall be governed by the statutory provisions. The regulations on the contractual penalty remain unaffected.

5.2 In the event of a delay in delivery, the seller may only invoke the absence of necessary documents to be supplied by Bunge if he has requested them in due time. The delivery time will be extended appropriately in such a case.

5.3 If the seller is in default, Bunge may demand a lump-sum compensation of the delay damage amounting to 1% of the net price per completed calendar week from the seller, but no more than 5% of the net price of the delayed delivered goods. The seller reserves the proof that no or significantly less damage has occurred. Bunge reserves the right to assert further claims.

## **6. Transfer of risk and default of acceptance**

6.1 If the delivery involves assembly, commissioning, acceptance or the like, the risk is transferred to Bunge once it has been completed. Incidentally, the statutory provisions of the contract of employment law shall apply accordingly in the event of acceptance.

6.2 The statutory provisions apply to the occurrence of default of acceptance. The seller must offer his services explicitly. This also applies in the event that a specific operation or co-operation by Bunge is agreed at a specific or determinable calendar time. If the contract relates to an unacceptable item to be produced by the seller (individual production), then he is entitled to rights which go beyond § 304 BGB only if Bunge was obliged to co-operate and the failure to cooperate is to blame.

## 7. Prices, invoices, payment methods, offsetting

7.1 Prices stated in the order are fixed prices. All prices include statutory sales tax, if this is not shown separately. The price shown includes all services and ancillary services of the seller (such as fitting, installation) as well as ancillary costs (for example, proper packaging, transportation including any insurance).

7.2 Payment of the agreed price shall be made after complete and correct delivery and service (including any agreed assembly, commissioning, acceptance procedures or the like) as well as receipt of a proper invoice within 30 calendar days. If Bunge pays within 14 calendar days, Seller will grant a 3% discount on the net amount of the invoice.

7.3 In the case of bank transfers, a payment is deemed to have been made on time if the transfer order from Bunge is received by the Bank before the end of the payment period. Any transfer charges made by the bank of Bunge will be borne by the Bunge itself, any other charges connected with the payment will be borne by the seller.

7.4 The place of payment for the payment obligations of Bunge is Mannheim.

7.5 The seller has the right to offset only with legally established or undisputed counterclaims.

## 8. Defects, warranty claims, warranties

8.1 Bunge's warranty rights are governed by the statutory provisions on material and legal defects as well as other breaches of duty, unless otherwise stated below.

8.2 The seller warrants that the delivery or service is free of material and legal defects, the latest state of the art, follows the relevant national and European legal provisions and corresponds to the regulations and directives of authorities, professional associations and trade associations as well as those handed over by Bunge Specification. The seller warrants in particular that the goods have the agreed quality at the time of transfer of risk. An agreement on the condition also applies to the product descriptions, which - in particular by designation or reference in the order - have become the subject of the contract or have been included in the contract. It makes no difference if the product descriptions are made by Bunge, the seller or the manufacturer.

8.3 If, in individual cases, deviations from the specification, the information in the order or the otherwise agreed condition are necessary or expedient, or should there be objections to the type of execution desired by Bunge, the seller is obliged to point this out immediately. If the contractually agreed costs of the contract change, Bunge and / or the seller is entitled to demand a corresponding adjustment of the remuneration due to the seller.

8.4 The expenses necessary for the examination of a possible deficiency shall be borne by the seller.

8.5 If the seller fails to meet his supplementary performance obligations within a reasonable period set by Bunge, Bunge can remedy the defect itself and demand reimbursement of expenses from the seller.

8.6 In addition, Bunge shall be entitled to the statutory reduction, cancellation and damage claims in the event of material or legal defects.

## 9. Complaints

The statutory provisions (§§ 377, 381 HGB) apply to commercial duty to investigate and to give notice of defects, provided that the obligation to inspect is limited to defects that openly become apparent during an incoming goods inspection under external inspection including the delivery documents or during quality control in the Sampling procedures are recognizable. Insofar as acceptance has been agreed, there is no obligation to complain. It also depends on the extent to which an investigation, taking into account the circumstances of the individual case in the ordinary course of business, is feasible. The obligation to object for defects discovered later remains unaffected. Without prejudice to the obligation to inspect, the complaint (notice of defect) shall in any case be deemed prompt and timely, if it is notified within 5 working days from discovery or in the case of obvious defects, from the transfer of risk. The period is also respected by verbal and telephone complaints.

## 10. Limitation Period

The limitation period for claims for defects is 36 months from the transfer of risk, unless the application of the statutory provisions in individual cases leads to a longer limitation period. Insofar as acceptance has been agreed, the period of limitation begins after the acceptance has been carried out. In addition, claims resulting from defects of title do not become statute-barred as long as the third party can still assert the right against Bunge.

## 11. Quality Assurance

11.1 The seller is obliged to maintain, carry out and document a quality assurance system which is suitable in terms of type and scope and up-to-date with the latest scientific and technical knowledge. With regard to the delivered goods, the seller grants access to the entire documentation of the quality assurance system on request and leaves copies to Bunge to the required extent.

11.2 In addition, Seller ensures the existence of the approvals and qualifications required for the manufacture and acceptance of the item of the order, which are prescribed according to the legal regulations, technical regulations, regulations of the acceptance organizations, relevant standards and order conditions. He is obliged to maintain it for the entire order processing time and to prove it at any time. Bunge must be notified in good time before expiry or withdrawal of such authorizations.

## 12. Secrecy

12.1 The seller is obliged to keep all confidential information from the cooperation, including pre- and post-contractual correspondence, in a strictly confidential manner and to use it exclusively to fulfill the contractual relationship, unless they are generally known or legally obtained by third parties. Confidential information includes, but is not limited to, the request and quote, technical data, purchase quantities, prices, product and product development information, R & D, all company data and all work materials. The documents provided must be returned to Bunge upon request after completion of requests or after completion of deliveries. Employees who are asked by the seller to prepare the offer and / or the execution of the order, must be obliged to the appropriate secrecy.

12.2 If the seller realizes that information to be kept secret has been transferred to the unauthorized possession of a third party or if a document to be kept secret has been lost, he must immediately inform Bunge thereof.

12.3 The seller may only point out the business relationship with Bunge with the prior written consent.

12.4 The confidentiality obligations shall continue to apply even after termination of the contractual relationship for another 5 years.

## 13. Retention of title

13.1 The transfer of the goods to Bunge is unconditionally and without consideration for the payment of the purchase price.

13.2 If Bunge accepts in individual cases deviating from a conditional purchase price payment on the transfer of certain goods, the retention of title of the seller expires at the latest with purchase price payment for the specific goods. Bunge is also authorized in the ordinary course of business prior to the purchase price payment for the resale of the goods under advance assignment of the resulting claim.

13.3 In addition, all other forms of retention of title are excluded; in particular, the extended or extended retention of title is inadmissible.

13.4 Substances, tools, materials, models, samples and other documents and objects provided to the Seller as part of the contractual relationship shall be kept separate at the expense of the Seller and adequately insured against loss and destruction unless they are processed. Processing, mixing or combination of such items is done for Bunge.

## 14. Prohibition of assignment

The seller is not entitled to assign his claims from the contractual relationship to third parties.

## 15. Insurance

during the entire delivery or order relationship, meaning up to the expiration of the limitation period of all claims, which can result from the contractual relationship, the seller is obliged to maintain a liability insurance, also for product liability damages including the callback risk, with sufficient cover for personal, property and financial damages at own expense and has to submit requested proof to Bunge over this upon request. If the seller does not have the corresponding insurance cover or if he refuses to provide the evidence after setting a reasonable period of grace, Bunge is entitled to withdraw and may demand compensation from the seller for the damage incurred. Bunge's claims against the seller are not limited to the sums insured.

## 16. Spare parts

16.1 The seller is obliged to keep spare parts for the goods purchased from the Bunge for a period of at least ten years after delivery.

16.2 If the seller intends to discontinue or discontinue the production of spare parts for the delivered products, he is obliged to inform Bunge in good time prior to the discontinuation or before the end of the purchase. This also applies if the deadline mentioned in clause 15.1 has already expired.

## 17. Privacy

The seller undertakes to comply with data protection regulations, in particular the Federal Data Protection Act and the General Data Protection Regulation. Employees of the seller are familiarized with the requirements of the data protection regulations and obliged by him to comply with the statutory provisions.

## 18. Intellectual property rights, intellectual property

18.1 The seller must ensure that the goods delivered by him do not infringe any third-party property rights or the intellectual property of third parties. In particular, he guarantees that no patents, licenses, utility models, designs, trademarks or copyrights are infringed.

18.2 The seller is obliged to indemnify Bunge against all claims that third parties may claim against Bunge due to infringement of intellectual property rights or copyright according to paragraph 18.1. The seller also bears all costs incurred by Bunge in this regard. This also applies to lawyer and court costs.

18.3 Bunge is entitled, at the expense of the seller, to obtain permits from the authorized third party, which are required for the use of the goods or services for the contractually agreed purpose.

18.4 Goods that are not part of the Seller's standard offer and that have been manufactured on the basis of Bunge's instructions or according to their drawings or technical specifications, may not be offered, sold, delivered or made known to third parties without the prior written consent of Bunge. Protective inventions created by the seller during the execution of the order are the property of Bunge.

18.5 Legal claims beyond or in addition to these regulations, e.g. from legal liability, remain unaffected.

## 19. Security, services

19.1 If employees or agents of the Seller operate on the premises of Bunge, the Seller shall ensure that they comply with the applicable safety and accident prevention regulations as well as the fire protection regulations and the factory regulations issued by the company. The seller constantly informs his employees or agents about these regulations.

19.2 If the seller does not help immediately, at the latest within three days after a written warning or if repeated serious violations of these regulations occur, Bunge is entitled to immediate, extraordinary termination of the contract.

19.3 If services, such as assembly, service, etc., are performed for Bunge, by the Seller, its employees or its agents, they must be performed by authorized and qualified personnel in sufficient numbers. Bunge is entitled to reject unsuitable personnel.

19.4 Damages and costs resulting from non-compliance with these regulations will be reimbursed by the seller.

## **20. Waste disposal**

20.1 The statutory provisions of the Waste Management Act are binding for the seller, this applies in particular to the return of packaging materials. In the case of Construction, the seller is obliged to dispose of his own waste (especially cables, iron parts, wood, rubble, and packaging materials).

20.2 The costs of disposing of waste disposed of by Bunge by derogation from paragraph 20.1 above shall be borne by the seller.

## **21. Other**

21.1 For all disputes arising out of or in connection with the contract, the exclusive place of jurisdiction shall be the place of business of Bunge or, at its option, the place of business of the seller.

21.2 The law of the Federal Republic of Germany shall apply exclusively to the exclusion of international private law and the Uniform International Sales Convention (CISG). This also applies in the case of cross-border deliveries / services to Bunge.