

BERNHARD WIDEMANN BODENSEE-KELTEREI GMBH
Delivery and Payment Terms

A) General Terms

We exclusively provide and supply on the basis of our below delivery and payment terms. These terms are also valid for all future commercial operations with the buyer. Our delivery and payment terms are considered to be accepted by the buyer, unless the buyer objects them immediately. We object divergent purchasing conditions from buyer's side. This objection is also valid, if we execute the provision or supply for the buyer without any reservation, even though we might be aware of contradictory or divergent delivery and payment terms from buyer's side.

B) Prices

Our quoted prices are subject to confirm.

C) Deposit for Empties

For the empties, i.e. bottles, crates, palettes, tank containers, kegs etc. delivered together with the goods, a deposit is charged according our currently valid price lists and will be invoiced together with the goods.

If the empties are returned to us without any damages or permutation within 3 months after date of invoice, the corresponding amount of deposit will be refunded. Damaged or permuted empties will not be accepted and the deposit will not be refunded in this case. After expiry of this delay, we reserve the right to refuse the return and refund of the empties – deposit already paid to us for these empties remains in our accounts, unpaid deposit amounts for these empties will fall due for payment immediately. Furthermore, we are allowed to demand the complete replacement costs in case of damages, destruction or non-return of the empties delivered with the goods within the delay of 3 months after date of invoice; paid deposit will be deducted from this amount. The same legal consequences come into effect for all current orders from this buyer, if it is observable, that a deterioration of the financial situation, inability to pay or delayed or incorrect payment of a draft occurs; in this case, any written or oral agreement with the buyer about payment of deposit, deposit payment dates and deposit refund will become invalid. However, the object of deposit remains our property in all circumstances.

The buyer assigns to us all claims against his customer regarding the return of empties or the payment of compensation for lost, destroyed, damaged or permuted empties up to the amount of our claims for the payment of deposit. We accept this assignment. The buyer has the obligation to inform us about the whereabouts of the empties and a possible claim for compensation for the empties; furthermore he has to inform his customer of the assignment of his claims to us on our request.

If the replacement costs for the empties delivered with the goods change, we will be allowed to change the amounts of deposit accordingly even for existing orders. If the amounts of deposit are reduced, we will only be bound to refund the former, higher amounts of deposit for the return of empties within 3 months after date of invoice. If major difficulties occur to provide us with new empties through our suppliers, in our discretion we will be allowed to increase the amounts of deposit in an appropriate extent in order to assure the return of empties. If further costs for the return of empties arise for us, the buyer has to pay for those. A charge of EUR 1.10/km for the entire necessary route and a wage of EUR 55.00 per hour for the driver will be due, each plus statutory value added tax, unless the buyer does proof minor damage in the individual case.

D) Deliveries in Consecution

In case of conclusion of a contract for delivery in consecution the particularly agreed purchasing commitment is valid even for perishable goods. If the purchasing commitment is not fulfilled by the buyer, we are allowed to send the goods of the contract to the buyer against payment of the invoice at his expense, to provide the goods for pick-up against payment of the invoice or, according to our free choice, to resign from the whole contract.

Unless otherwise agreed, deliveries in consecution commence on 1st October and expire on 30th September of the following year. A possibly agreed volume discount applies exclusively in case the buyer completely takes over the goods of the corresponding frame contract and pays the complete invoice within the agreed delay. We will issue a credit note in order to refund the agreed volume discount to the customer. This discount will become void, if the buyer violates the contract or if we declare the cancellation of an order or the whole contract with the buyer due to the behaviour of the buyer.

If we violate our delivery commitment, the buyer may concede to us an appropriate additional time of at least 8 working days to give us the opportunity to fulfil our commitment. Saturday is not to be considered as working day in this case. After expiry of this extended delay, the buyer is allowed to assert his claims for necessary damages that might have occurred through our delayed delivery; these damages have to be proven by the buyer.

E) Right of Cancellation

If we get disadvantageous creditworthiness related information about the buyer or the current or future buyer's ability to pay seems doubtful to us, we are allowed to request payment in advance or a secured payment guarantee according to our choice. If the buyer does not comply with this request, after 3 days of delay conceded by us, we are allowed to cancel the contract without any entitlement for damages for the buyer in this regard. Furthermore we are allowed to cancel the contract without any entitlement for damages for the buyer, if drafts presented by the buyer are not submitted as agreed or not on time or are not paid in full irrespective of legal basis.

The right of cancellation can be exercised in any case regarding parts of a contract or all contracts for several contracts in effect or for the frame contract.

F) Payment

Our invoices are due for payment net cash immediately after receipt of the goods, unless otherwise agreed in writing. The buyer is delayed in payment without the necessity of a reminder, if the payment of the invoice is not effected within 30 days after receipt of the goods. In this case, the buyer as a commercial owes us an interest for delay on the overdue amount of 8% above the base rate of the European Central Bank. The claim for higher damage for delay is reserved explicitly. The invoiced deposit for empties is due for payment simultaneously with the payment for the goods, although the return of the empties might be intended.

If we allow a cash discount on the basis of a special agreement, this discount only applies for net value of the goods – without value added tax and deposit.

The right of retention or set-off by the buyer against our claims is not permitted, unless the counterclaim of the buyer is uncontested or established by legal force. A query on quantity or quality is not a justified cause to retain the whole or a part of the amount of invoice. Payments to us shall only be effective, if they are made directly on our bank account or to a lawyer employed by us.

The handover of cheques shall not be considered as payment, cheques will only be accepted on account of performance. Employees or agents are not authorised to receive payments without written power to collect. In case of deterioration of assets, inability to pay or delayed payment of drafts on buyer's side, all agreed payment terms will become void for all orders and all outstanding amounts of the buyer will fall due immediately, especially claims for payments of drafts can be asserted before their expiry date for immediate payment.

G) Quantities and Weights

For ready-to-sell packages, the corresponding standards and directives for minimum capacities and tolerances apply. In case of delivery of the goods in tank trucks, the weight or the quantity determined at the time of loading applies; in case of goods traded on the basis of volume, it is left to our discretion to take into consideration the litre measures officially engraved in the drum or the net weight in relation to the specific weight of the goods in order to determine the quantity. In case of ready-to-sell packages, a packing list or loading list is added to the delivery and the buyer has to check the delivered quantity before unloading by means of these lists. If discrepancies appear during unloading, these discrepancies have to be observed and attested immediately through railway office in case of railway delivery or towards the driver in case of truck delivery.

If the buyer fails to observe the discrepancies immediately, subsequent claims regarding these deficiencies will not be accepted. Damages occurred by or during transportation do not justify a rejection of the goods towards the seller; those damages have to be attested according to the regulation of quantity check as described above.

H) Quality and Queries

For the quality of the supplied goods, the corresponding standards and directives apply, unless otherwise agreed in writing. Queries on quality can only be taken into consideration by us on the following conditions:

- a) in case of tank truck delivery before unloading and immediately towards our driver,
- b) in case of delivery of other goods and delivery of goods in ready-to-sell packaging any queries have to be made in writing within 3 days after receipt. Fax notice will be sufficient.

In order to avoid demurrage or stall fee, even rejected goods have to be unloaded without delay; however those goods shall not be processed or resold until receipt of our instructions. The buyer has to follow our instructions immediately; any damage caused by disregard of our instructions is to be borne exclusively by the buyer.

In case of deficiencies of the packaging or the goods occurring during storage of goods in ready-to-sell packaging on buyer's site, these deficiencies will only be taken into consideration within a delay of 30 days after date of invoice, if notified to us in writing during this delay. Deficiencies of previous supplies cannot be accepted in this case.

Possible short deliveries of less than 5% of the respective delivery extent will not be considered as deficiencies, so they cannot be objected and have to be accepted by the buyer. In any case of quality queries, the possibility to verify the deficiencies has to be given to us or to a person authorised by us.

In case of delivery of bulk goods, the risk of fermentation during transportation or from the time of provision of the goods at our site will be borne by the buyer in its entirety. Any liability from our side and any claim deriving from it will be excluded in this case explicitly. Only those properties explicitly confirmed by us will be considered as warranted properties.

I) Delivery Time

Incidents occurred without anybody's fault, no matter whether they occur at our site or concern our sub suppliers or auxiliary persons (e. g. railway, mail, forwarder etc.), that make impossible or essentially complicate the delivery or transportation of the goods, allow us to cancel the contract or to postpone the due date of delivery until the removal of the obstacles without any compensation for the buyer. Especially, the following events are counted among these obstacles: measures by public authorities, missing of important raw, auxiliary or operating materials, power or water cut-off, non-supply of packaging material, transportation difficulties, walkout, lockouts, operational disturbance etc.

J) Passing of Risk

Risk is to be borne by the buyer from the time the goods leave our warehouse even in case of agreed free carriage delivery. If the dispatch of the goods is delayed due to acting of the buyer, risk is to be borne by the buyer from the time of readiness for dispatch of the goods. The risk for packaging material is to be borne by the buyer until the material has been returned to our warehouse.

Dispatch and packaging is made according to professional standards and due diligence, however without any binding force for us.

K) Acceptance and Performance

Delivered goods shall be considered as free from defects, if short delivery is not superior to 5% of delivery extent, and have to be accepted by the consignee. Partial deliveries are allowed. Delivery shall also be considered as fulfilled, if the goods are ready for dispatch and the buyer has been informed accordingly, provided that this complies with the agreed delivery terms.

L) Retention of Title

The goods delivered by us remain our property until all payments have been fully settled, even though the goods may have been processed. However, the buyer has the right to dispose of the goods within due course of business. The buyer shall assign to us any right and claim he acquires against his buyer through reselling the goods until the buyer's payment to us has been fully settled. We accept these assignments. In case of loss of property, property rights are replaced by legal claim for compensation. Any other disposal, especially pledging, transfer by way of security or handover of the goods by way of barter, is not allowed as long as justified claims from our side persist. The buyer has to inform us any garnishment of our goods executed by a third party immediately. Inspection of the delivered goods with retention of title shall be allowed to us or to a person authorised by us at any time.

M) Assignment

If assignments of claims are effected to us through the general terms and conditions of the buyer, we will accept them on account of performance.

N) Place of Performance and Place of Venue

Place of Performance for the rights and duties deriving from the contract of sale is Bermatingen, place of venue according to competence is the local court (Amtsgericht) Überlingen (B) or the regional court (Landgericht) Konstanz, place of venue for legal actions in draft and cheque matters as well as in matters regarding international legal relations is founded at the responsible court for Bermatingen.

O) Final Clause

Exclusively domestic German law shall apply. Exclusively the German wording of the contract of the order confirmation or order shall apply. The application of United Nations Convention on Contracts for the International Sale of Goods shall be excluded.