

General Terms and Conditions of Sale and Delivery of Verbio SE

Last updated: February 2024

1. Exclusive validity of our terms and conditions

(a) For all contracts concluded by Verbio SE or its affiliated companies within the meaning of §§ 15 et seq. of the German Stock Corporation Act (AktG) with Buyers for the sale and delivery of goods, the following terms and conditions as well as the individual INCOTERMS® in their current version, to which specific reference is made in the relevant passages, shall apply exclusively. We do not recognise deviating terms and conditions of the Buyer unless we have expressly agreed to their validity in writing. Our terms and conditions shall also apply if we carry out the delivery to the Buyer without reservation in the knowledge of the Buyer's terms and conditions that conflict with or deviate from our terms and conditions.

(b) We only conclude contracts with entrepreneurs, legal entities under public law or a special fund under public law within the meaning of Section 31(1) of the German Civil Code (BGB).

2. Conclusion of Contract and Transfer of Risk

(a) The characteristics specified by us determine the qualities of our goods in accordance with §434 (2) BGB. These characteristics take precedence over the objective requirements, which is agreed in accordance with §434 (3) BGB. The specified quality is not considered a guarantee of quality according to §444 BGB, unless such a guarantee is expressly declared by us in writing. The same applies to the information on the shelf life of our goods.

(b) For the determination of the quantity in accordance with the contract, the quantity determined by weighing or measuring at the dispatch point shall be decisive. In the case of deliveries in tankers or tank wagons, the quantity indicated by its measuring device or determined by the weighing note of the dispatch point is decisive.

(c) In the case of bioethanol, the standard density of 0.789 (L 20 degrees Celsius) shall be used for the conversion from (l) to (cbm). In the case of biodiesel, the standard density of 0.883 (L 15 degrees Celsius) is used for the conversion from (l) to (cbm).

(d) The goods are sold without the rights under the CO2 certification. The rights arising from a CO2 certification remain with us even after the sale and handover or delivery of the goods.

(e) The purchase contract is concluded between the Buyer and the specific Verbio company operating the plant exclusively for Verbio products. The conclusion of the contract is done through our order confirmation, which we send in text form.

3. Collection, transport and transfer of risk of the goods

(a) Unless otherwise stated in the order confirmation, we are obliged to hand over the goods "ex works". The current Incoterms® applicable at the time of conclusion of the contract apply. The goods are to be picked up by the Buyer at the agreed plant or warehouse at his own expense. We make the goods available to the Buyer ready for collection.

(b) As a matter of principle, we do not deliver the goods to the Buyer. Delivery of the goods to the Buyer will only take place after a separate agreement, which must be drawn up in text form. In such a separate agreement, the route and method of shipment are to be agreed.

(c) If the transport to the Buyer by a third party has been agreed, the risk is transferred to the Buyer with our handover of the goods to the third party. In this case, we are not liable for the transport. In the case of transport by third parties or when the goods are picked up by the Buyer, we are not responsible for changes and deterioration of the goods during transport or due to improper storage. Further information is regulated under Section 5 "Delivery and Costs".

(d) In the case of self-collection, the risk shall pass to the Buyer as soon as the goods have been made available by us ex works from the agreed plant or warehouse within a reasonable period of time on the agreed date (ex works within the meaning of EXW- INCOTERMS® 2020). This also applies if we have agreed with the Buyer to take over the transport of the goods to another location. In this case, a shipping debt is deemed to have been agreed and we are therefore not liable for an accidental deterioration or accidental loss of the goods during transport.

(e) If the Buyer does not take delivery of the goods in time, we have the right to withdraw from the contract without setting a grace period. Nothing else shall only apply in the event that the Buyer immediately informs us that the Buyer is prevented from acceptance through no fault of its own.

(f) We are entitled to withdraw from the contract if, despite exercising all necessary care, we have not received delivery of a necessary component through no fault of our own. We will inform the Buyer of this immediately. In this case, the Buyer also has the right to withdraw. In the event of justified withdrawal, we will immediately refund to the Buyer the payments previously made uselessly, insofar as we have no right to offset. The Buyer is not entitled to any further claims for damages.

(g) If the failure to comply with deadlines for the provision of the goods is due to force majeure, we will notify the Buyer immediately after becoming aware of it. We are not responsible for the delay or impossibility caused by such an event. During the duration of the force majeure event, we are released from our obligation to perform. For the purposes of this contract, force majeure means any unforeseeable event or such events which, even if foreseeable, are beyond our control and whose effects on the performance of the contract cannot be prevented by reasonable efforts. This includes, but is not limited to, war (declared or not), war-like condition, riot, revolution, rebellion, military or civil coup, insurrection, tumult, riots, blockade, embargo, government order, sabotage, strikes, slow strikes, lockouts, epidemics, pandemics, fires, severe weather in the magnitude of a disaster (e.g. floods, storm surges, typhoon, hurricane), earthquakes, landslides, lightning strikes, general material shortages, shipwreck, lack of port and unloading capacity, serious transport accidents, rejection or reproduction of important plant components, as well as machine breakdown for reasons beyond the control of the contractor, insofar as the latter leads to an extension of delivery times. In the event of a justified withdrawal or termination, we will immediately refund all advance payments to the Buyer, provided that there is no right of set-off. Otherwise, we will refund the corresponding balance.

(h) As soon as the force majeure event has ended, we will indicate to the Buyer that the goods will be made available for collection, delivery to the transporter or for transport by us, as agreed. The Buyer can reject the goods in writing within four (4) days (rejection period) if they have become useless for him in the meantime and he can prove this to us. Here, too, in the event of a justified withdrawal or termination, we will immediately refund all advance payments to the Buyer, insofar as there is no right of set-off. Otherwise, we will refund the corresponding balance.

(i) If the Buyer allows the deadline for collection (collection period) to pass, we will set a reasonable grace period for the Buyer, after the fruitless expiry of which we are entitled to withdraw or terminate; we make this declaration to the Buyer in text form.

(j) If we will no longer be able to provide the goods in the future for reasons for which we are not responsible, we will notify the Buyer immediately. In this case, we have the right to withdraw from a supply contract or to terminate a long-term purchase agreement for good cause. The Buyer has the same rights.

(k) Claims for damages by the Buyer are excluded in the aforementioned cases.

4. Prices

(a) Unless otherwise agreed, the prices are "ex-work" excluding all taxes and duties, such as VAT and energy tax, customs duties and clearance fees.

(b) If, after the conclusion of the contract, the transport or similar ancillary costs (e.g. storage and handling costs, tolls or road user charges) increase, or if the goods are burdened with additional or higher taxes or duties, or if our purchase costs increase due to government measures, the price to be paid will increase accordingly. We will inform the Buyer of this immediately and provide the relevant evidence.

(c) In the event of the shipping debt agreed in section 3(d), the Buyer shall bear all further costs arising in the course of transport. We are not liable for this and will not make any advance payments without an express agreement.

5. Delivery and Costs

(a) If delivery of the goods has been agreed separately in accordance with section 3(b), we shall notify the Buyer of a date for delivery after the conclusion of the contract. For a delivery date requested by the Buyer, the Buyer has to ensure that an agreement with us has been concluded at least in text form in good time. In the event that we have agreed with the Buyer on a regular delivery, the agreed or longer delivery times are binding. If we are unable to meet the agreed delivery time, we will inform the Buyer immediately.

(b) In the event of a complaint to transport agents (e.g. freight forwarders), the Buyer must protect our rights and take the necessary steps to preserve evidence immediately.

(c) We are not obliged to take out transport insurance.

(d) Cost of unloading and other costs incurred in connection with unloading or loading shall always be borne by the Buyer, even in the case of agreed carriage-free delivery. In the case of ship transports, surcharges based on reasons beyond our control, such as high or low water, ice conditions, etc., are borne by the Buyer. Costs incurred as a result of exceeding the required unloading time are always to be borne by the Buyer. In the case of rail shipping, demurrage fees for delayed unloading are at the expense of the Buyer. Steam for unloading purposes as well as the equipment necessary for unloading the cargo shall be provided by the Buyer at its own expense.

6. Obligation to give notice and warranty

(a) The Buyer must inspect the goods immediately after delivery. Obvious defects must be reported to us immediately, usually within three (3) days of delivery of the goods in text form. In order to meet the deadline, it is sufficient to send the notification in good time within the deadline. Defects that occur later must be described in as much detail as possible by the Buyer in text form. If the Buyer reports a defect that does not exist according to our inspection, and the Buyer was aware of the non-existence of the defect at the time of notification or was mistaken about it due to negligence, the Buyer must compensate us for the damage caused.

(b) As far as reasonable, the goods are to be kept available to us for inspection by the Buyer in the condition of receipt and, in particular, not mixed. If this is not done, the goods are deemed to have been approved. If this is not reasonable for the Buyer, he will prove this to us.

(c) The limitation period for claims for defects is twelve months from the transfer of risk.

(d) In all other respects, the statutory rights of liability for defects shall apply.

7. Liability

(a) We shall be liable without limitation for damages in the event of injury to life, limb or health as well as in all cases of intent and gross negligence, in the event of fraudulent concealment of a defect and in all other matters regulated by law. This also applies to our legal representatives and vicarious agents.

(b) Insofar as material contractual obligations are concerned, our liability in the event of slight negligence is limited to the foreseeable damage typical of the contract. Essential contractual obligations are those that protect legal positions that are essential to the contract and that the contract is specifically intended to grant according to its content and purpose; Furthermore, those contractual obligations are essential, the fulfilment of which is essential for the proper execution of the contract in the first place and on the observance of which the parties have relied and may rely. In the event of a breach of insignificant contractual obligations, liability for slightly negligent breaches of duty is excluded.

8. Tax Guarantee – Buyer's Declaration

(a) The Buyer provides us with an irrevocable guarantee that both the Buyer will not violate any tax and/or disposition provisions that must be observed in the delivery of tax-exempt or tax-privileged products in connection with delivery on the Buyer's permit or on general permission.

(b) In the case of VAT-exempt delivery (collection case) at all loading locations in the EU, the Buyer guarantees and confirms to us that the delivery item will be brought to a member state other than that of the place of loading.

(c) In the event of a warranty claim, the Buyer undertakes to indemnify us against all claims of third parties, in particular against all taxes, customs duties and other levies and tax penalties triggered to the full extent upon first demand, which it incurs in connection with the filing of legal remedies.

(d) In the case of non-complete emptying, no compensation will be granted for remaining residues. Emptying and cleaning costs are at the expense of the Buyer.

9. Packing/Transportation

(a) The Buyer is liable for all packings (e.g. tank wagons) provided by us until they are returned to the return address determined by us. The packings may only be used to store the goods delivered by us.

(b) The Buyer is obliged to immediately empty the packings and return them to the specified address free of charge. Unless expressly agreed otherwise in writing, tank wagon rental is charged from the day of filling until the wagons arrive back at the prescribed receiving station at the respective daily rentals.

(c) If rent-free outward and return transport has been agreed, the Buyer shall pay the respective daily rents customary in the industry if the return period is exceeded.

(d) In the case of non-complete emptying, no compensation will be granted for remaining residues. Emptying and cleaning costs are at the expense of the Buyer.

(e) In the case of delivery in the Buyer's packaging, we are not obliged to check it for suitability and cleanliness. Contamination as a result of unclean packaging is at the expense of the Buyer. We reserve the right to refuse unclean packings and refuse loading.

(f) As part of the self-collection, the Buyer warrants that only vehicles with adequate transport insurance will be used. The Buyer shall ensure that all technical requirements necessary for the transport and proper and smooth loading and unloading of the goods in question are present with the vehicle. In this context, we refer to the requirements of DGUV Regulation 70 – Vehicles (formerly: BGV D29). We shall not be liable for defective or faulty technical equipment.

For biodiesel, pharmaceutical glycerol, high-boiling fatty acid, crude oil and fatty acid, additional requirements apply to trucks: safety railings, loading only possible from above via dome covers. In addition, the current "Specific requirements for HGVs and tank wagons", available at: <https://www.verbio.de/en/sales-terms-and-delivery-conditions/>, applies to us. If the transported goods are dangerous goods, the Buyer guarantees compliance with the relevant dangerous goods regulations, in particular GGVSee, GGVSEB, ADR.

10. Payments

(a) Unless otherwise stated in the order confirmation, the purchase price is due for payment net (without deduction) within ten (10) days of the invoice date. The legal rules regarding the consequences of late payment apply.

(b) We will only accept payments to the bank account officially announced by us as a permissible method of payment (performance effect). It is the Buyer's responsibility to verify this bank details by consulting us. We will always notify the Buyer of any changes to bank details via official letters and expect appropriate verification in this case as well. Deviating information about the account details on invoices is invalid without the steps mentioned above.

(c) On the due date, the payment amount must be available in value. The deduction of cash discount requires a special written agreement.

(d) If the payment deadline is exceeded, we are entitled to charge interest in the amount of nine (9) percentage points above the base interest rate and a lump sum of EUR 40 without further reminder. We reserve the right to assert further damage caused by delay.

(e) We may require early payment if the Buyer has not complied with agreed payment terms for previous deliveries, the Buyer's solvency is in question or the agreed credit limit is exceeded. We are entitled to withdraw from the contract in whole or in part after a deadline has been set.

(f) The Buyer may only offset against undisputed counterclaims that have been acknowledged by us or have been legally established. The Buyer is only entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship. We are also entitled to offset such claims that the companies affiliated with us are entitled to against the Buyer. Upon request, we will disclose the companies associated with us.

11. Retention of Title

(a) We retain ownership of the goods until all claims arising from the ongoing business relationship have been fully settled. Prior to the transfer of ownership of the goods subject to retention of title, pledging or transfer of title by way of security is not permitted.

(b) The Buyer may resell the goods in the ordinary course of business. In this case, the Buyer assigns to us all claims in the amount of the invoice amount that the Buyer accrues from the resale; we accept the assignment. The sale is inadmissible, except in the cases of §354a HGB, provided that a prohibition of assignment is agreed with the customer of the Buyer. If the buyer includes this receivable in an existing current account relationship with its customer, the current account receivable is assigned in the amount of the gross invoice amount; once the netting has taken its place, it is replaced by the recognised balance, which is also assigned. The Buyer remains entitled to collect the claim even after the assignment.

(c) This does not affect our authority to collect the debt ourselves. However, we undertake not to collect the receivable as long as the Buyer fulfils its payment obligations from the proceeds received, does not default on payment and, in particular, does not file an application for the opening of composition or insolvency proceedings or as long as there is a suspension of payment. If this is the case, we may require the Buyer to notify us of the assigned claims and their debtors, to provide all the information required for collection, to hand over the relevant documents and to notify the debtor (third party) of the assignment.

(d) If the goods subject to retention of title are combined and mixed, we acquire co-ownership of the new item in the ratio of the gross invoice value of the goods subject to retention of title to the other items processed at the time of processing.

(e) We undertake to release the collateral to which we are entitled, at the request of the Buyer, to the extent that the realisable value of our collateral exceeds the receivables to be secured by more than 10%; it is up to us to select the collateral to be released.

12. Place of performance and choice of law

(a) Unless otherwise stated in the order confirmation, the place of performance shall be the permanent establishment of the plant producing the goods. The contractual obligation is to be fulfilled by us exclusively with the goods from the specific Verbio company operating the plant. This shall also apply in the case of a separate supply agreements pursuant to section 3(b).

(b) The place of jurisdiction is Leipzig.

(c) German law shall apply to all contracts. The provisions of the UN Convention on Contracts for the International Sale of Goods expressly do not apply.

(d) Should individually provisions of these terms and conditions be void or ineffective in whole or in part, the validity of the remaining provisions shall remain unaffected.

(e) Without prejudice to any other provisions, the Parties shall mutually comply with national data protection laws and the General Data Protection Regulation (GDPR) EU-2016/679. The contracting parties use personal data exclusively for the purpose of fulfilling the contract. They shall ensure that all employees, subcontractors and other persons whom they use to perform the contract comply with these legal obligations for the protection of personal data.

13. Corporate Responsibility Obligations / Compliance Standards

(a) It is of utmost importance to us that we work with the Buyer to counteract any form of corruption. The contracting parties mutually assure each other of compliance with applicable anti-corruption requirements.

(b) As soon as the Buyer becomes aware of violations of compliance standards in his sphere that affect our contractual relationship, the Buyer will inform us immediately. This also applies to violations of national or international anti-corruption laws. In the event of violations by the Buyer, the continuation of cooperation requires that information on remedial measures taken is communicated immediately and that a concept with a timetable for remedying the violation is sent.

(c) To the extent that the contractual relationship affects the United States of America, the parties mutually agree to comply with the provisions of the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act (UKBA).

(d) Violations of compliance standards by the Buyer may constitute serious, important grounds for termination of the contractual relationship. Therefore, in this case, we have the right to terminate the contract without notice.