

# General Terms and Conditions of Sales and Supply as of January 2013

[www.cremeroleo.de](http://www.cremeroleo.de) [global@cremer.de](mailto:global@cremer.de)



## 1. General Terms

These General Terms and Conditions of Sale are binding for all contracts. Buyer's Purchasing Terms and Conditions are hereby rejected and considered null and void, even if no express objection is being made by CREMER OLEO GmbH & Co. KG ("CREMER OLEO") when the order is confirmed. These terms and conditions also apply to all future contracts with the Buyer, even if this is not expressly agreed upon again. Those incoterms of the International Chamber of Commerce in force at the time of the conclusion of the contract shall be of application thereto. Offers by CREMER OLEO shall not be binding and subject to their written confirmation. It is in any case subject to written confirmation by CREMER OLEO upon receipt of Buyer's order. All supplementary agreements and amendments to the contract must be made in writing to be valid. The delivery will be deemed to take place when the goods are delivered to the Buyer at the place of performance. Place of performance for CREMER OLEO's deliveries shall be the location of the works or warehouse from which CREMER OLEO delivers, for payments it shall be Hamburg, Germany. In these terms and conditions the headings are for reference only and will not affect their interpretation.

## 2. Time Limits

Working days as stipulated by these terms and conditions are the weekdays Monday to Friday with the exception of the public holidays in the Federal Republic of Germany as well as 24th and 31st December. The day of conclusion of the contract or, where applicable, the day upon receipt of any notice stipulating a time limit, shall not be included in the computation of the relevant period of time or deadline. Any declarations which are subject to time limits must reach the recipient not later than 4 p.m. CET on the final day prior to expiry of the time limit.

## 3. Weight

CREMER OLEO shall be entitled to deliver with a tolerance of 2% more or less of the contracted quantity, or 5% more or less if an "approximate" quantity has been contracted. At time of delivery or part delivery of the goods, CREMER OLEO shall be obliged to give notice of any deviation from the contract quantity. Performance of the contract shall be based on the weight established by weighing or measuring at dispatch. Both parties or their authorized representatives shall be entitled to participate in the weighing or any measurement procedures. Axle weighing is not permitted.

## 4. Performance of Contractual Quantity

If a particular quantity, limited by two figures (from - up to), has been agreed upon, the mean quantity shall be the basis of contractual performance.

## 5. Quality

In the case of sale according to sample, the goods must, on average, correspond to the appearance and the analysis data of the purchase sample. If the goods are sold "subject approval of sample" an agreement shall be made as to when the Buyer must give his final decision. If the Buyer fails to give due notice to CREMER OLEO within the stipulated time limit, the sample shall be deemed to have been approved. In the case of "retel quel" transactions, the Buyer shall be obliged to accept the goods irrespective of their quality provided that the delivered goods are in accordance with the description as specified in the contract. In principal the examination or testing of the goods by the Buyer shall be subject to prior written agreement. Should there be no such agreement or should Buyer fail to comply with such agreement within the time stipulated therein, the goods shall be considered in accordance with the contract terms as soon as they leave the works and/ or warehouse. Even in the absence of any special agreement, goods of sound and merchantable quality are to be supplied at all times.

## 6. Prices and Taxes

Quotations are given in Euro (€), if not otherwise stated. Prices quoted cover normal unhindered transportation or shipment. In the event of the sale of non-customs cleared goods, all costs incurred in connection with customs clearance shall be for Buyer's account.

## 7. Payments

All payments payable to CREMER OLEO under the contract will become due without deduction immediately on delivery of the goods unless otherwise agreed in writing. If Buyer fails to pay CREMER OLEO any amount due pursuant to the contract, CREMER OLEO reserves the right to charge interest from the due date for payment at an annual rate of 8 % above the base lending rate. § 353 HGB (German Commercial Code) remains unaffected from this. Buyer's failure to effect payment against any delivery within the terms of the contract or receipt of any unfavourable information concerning Buyer's financial standing, including any change in Buyer's credit rating (Coface), and/ or concerning problems with the transfer of payments will entitle CREMER OLEO to either demand from Buyer security in CREMER OLEO's choice without delay or demand immediate payment or to cancel any undelivered contract or part thereof and/ or to postpone delivery. Buyer shall generally have no right to set-off or to withhold payments of any amount payable under the contract to CREMER OLEO due to any claim. Buyer is only entitled to set-off or withhold payments when his claim is either undisputed or has come into force. CREMER OLEO may set-off any claim by Buyer against its own claims against the Buyer resulting from any transactions between Buyer and CREMER OLEO. The provisions of this clause 7 shall apply accordingly for claims by the CREMER OLEO branch offices or affiliated companies.

## 8. Delivery

Delivery dates stated by CREMER OLEO shall be approximate and not binding on CREMER OLEO. All contracts are sold under the condition that Suppliers are delivering the goods as contractually agreed with CREMER OLEO. If any administrative confirmations, foreign exchange permits and/ other official approvals are necessary these will have no bearing on the contract and it is Buyer's duty to obtain them and bear the costs. If the contract stipulates "delivery", CREMER OLEO shall determine the date of delivery or, where applicable, collection of the goods within the period specified in the contract. The Buyer is to be notified of the date of delivery at least five (5) working days in advance, to be calculated from the day following such date of notice. If the contract stipulates "buyer's call", the Buyer shall determine the date of delivery within the period specified in the contract. He must give CREMER OLEO notice of the date of collection at least five (5) working days in advance. Where the contract stipulates either "delivery" or "collection" of the goods pursuant to "buyer's call", the term "immediately" shall mean three (3) working days and the term "prompt" ten (10) working days as from, but not including, the date of conclusion of the contract. For contracts with agreement "successive delivery" or "successive collection" the delivery or collection of the contracted quantity is to be made by approximately equal quantities during the period specified for such delivery or collection. Each part delivery shall be considered as a separate contract. In case of any failure to comply with the date of delivery or collection CREMER OLEO shall be entitled to either insist on performance, or cancel that part of the contract which is yet to be performed or claim damages for non-performance, provided that any extension of the time limit for performance has expired. In stipulating any such period of extension, not less than three (3) working days must be allowed in respect of an "immediate" delivery date and at least six (6) working days where other periods of delivery have been agreed. A period of extension is not necessary where fixed-date transactions have been concluded. Contracts shall be considered void if neither contracting party has given a notice of reminder to the other within one month following the expiry of the stipulated date of delivery or collection. Settlement of any payments due shall be made on the basis of the market price in force on the last working day of the month following the expiry of the delivery period. Any differences are to be refunded.

## 9. Force Majeure

CREMER OLEO shall not be responsible for delays in shipment of the goods or any part thereof occasioned by an Act of God, riot or commotion, combination of workmen, breakdown of machinery, strikes, lock-outs, fire, bans on exports or imports or any other cause comprehended in the terms "force majeure". CREMER OLEO shall have the option to extend the time of fulfillment until the delivery will be possible. Notice of any cause of "force majeure" is to be given to the Buyer as soon as it becomes known. In the event that such a cause of "force majeure" continues for a period of more than 30 days following the expiry date of delivery or collection as stipulated in the contract, both CREMER OLEO and the Buyer shall be entitled to give written notice of cancellation of the contract within seven (7) working days following thereafter. In case of prohibition of export, blockade or hostilities or in case of any executive or legislative act executed by and/or on behalf of the government of the country of origin or the territory where the port or ports of shipment named herein is/ are situated restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this contract. CREMER OLEO shall be entitled either to extend the delivery until the prohibition or restriction has ended or to cancel the whole or parts of the contract if the prohibition or restriction is not only temporary. Buyer shall refund CREMER OLEO for any extra charges arising in connection with such delays. Buyer shall, if necessary, arrange that the period of validity of the respective banker's credit instructions, letters of credit, import licences, foreign exchange permits and other relevant documents will be extended accordingly. Buyer shall not be entitled to claim compensation from CREMER OLEO in any of the above mentioned events. Claims based on § 285 para. 1 BGB (German Civil Code) remain unaffected from this limitation.

## 10. Retention of Title

All goods delivered shall remain CREMER OLEO's property and shall not pass on to Buyer until all claims against the Buyer arising from the mutual business relationship are settled (hereinafter referred to as goods supplied or delivered under retention of title). Any conditional, qualified or future claims and ancillary rights are included. Until the complete payment Buyer shall keep the goods as CREMER OLEO's trustee and shall neither pledge them nor secure these goods in favour of third parties. Where a current account exists, the retention of title shall operate as security for the balance owing to CREMER OLEO at the time in question. The Buyer is authorized to resell the goods delivered under retention of title within the normal course of his business, provided that such resale is also made under retention of title. The Buyer shall only be permitted to resell the goods supplied under retention of title or subject them to any transformation, processing or admixture on condition that he keeps detailed records of the whereabouts of such goods at any particular time with specification of the quantities and values involved. In case of any default he shall be obliged to present to CREMER OLEO satisfactory evidence of the above at his own expense. In case of outstanding payments CREMER OLEO has to consent to any combination, mixing, processing or transformation of the goods delivered under retention of title in writing. Processing or transformation of the goods delivered under retention of title is always carried out for CREMER OLEO as manufacturer without any liabilities arising from it for CREMER OLEO. Should the goods delivered under retention of title be combined or mixed by Buyer with other goods not belonging to CREMER OLEO, CREMER OLEO shall have title or joint title to the resultant product in proportion to the value of the goods supplied. If CREMER OLEO's ownership expires due to combining or mixing Buyer shall already, at this time, assign to CREMER OLEO title or joint title to the new product in proportion to the value of the goods supplied. The new products shall be deemed to be goods in which title is retained on behalf of CREMER OLEO as defined in this clause 10 in proportion to the value of the goods supplied. The value of the goods delivered under retention of title shall be defined as the purchase price invoiced by CREMER OLEO to the Buyer, this definition, also applying hereinafter. Any outstanding claims by Buyer resulting from resale of the goods, to which CREMER OLEO holds any title, are assigned to CREMER OLEO until all outstanding payments between Buyer and CREMER OLEO have been settled. In case goods delivered under retention of title are themselves, irrespective of their condition, resold by the Buyer together with other goods not belonging to CREMER OLEO for a total price, the assignment of the Buyer's claim by virtue of such resale, which has already been executed by virtue of the foregoing, shall be limited to that amount which CREMER OLEO has charged to the Buyer for those goods originally supplied by him under retention of title. In the event that the Buyer receives drafts (including bills of exchange) or cheques from his customers by virtue of such resale, he herewith assigns to CREMER OLEO those claims and ancillary rights accruing to him from such drafts or cheques in the amount of the debt arising from the resale transaction which has already been assigned to CREMER OLEO in accordance with this clause 10. In case Buyer's property is seized or otherwise becomes subject to third party rights Buyer shall inform CREMER OLEO immediately. If the value of such securities exceeds CREMER OLEO's claims by more than 20 %, CREMER OLEO will, upon Buyer's request, surrender securities at their option equivalent to the exceeding value. In case these provisions should not be effective in Buyer's domicile or in the country where the goods are located, the appropriate securities according to the laws of the Federal Republic of Germany will be considered agreed upon between the parties. If the cooperation of Buyer is necessary for the establishment of such rights, Buyer is obliged, at his own expense, to take all measures for the establishment and preservation of such rights upon CREMER OLEO's request. Title to the drafts and/or cheques concerned is herewith assigned to CREMER OLEO by the Buyer who shall hold in trust such drafts or cheques on behalf of CREMER OLEO. The Buyer shall be authorized to collect the assigned claims until such authorization is revoked. In the event of such revocation, the Buyer shall, at the request of CREMER OLEO, furnish any information required by the latter and give due notification to his customers of the transfer of the rights of claim involved and hand over any relevant cheques and drafts issued by his customers to CREMER OLEO.

## 11. Assignment

CREMER OLEO reserves the right to assign this contract or any part thereof to any of its affiliated companies. The Buyer may receive on request a full list of CREMER OLEO's affiliated companies. Buyer shall not be entitled to assign this contract or any part of it without prior written consent by CREMER OLEO.

## 12. Claims

The receipt of defective goods must be reported to CREMER OLEO immediately in writing at the latest five (5) working days after delivery. The Buyer has to examine goods upon receipt without delay; concealed defects must be reported within three (3) working days after their discovery. After an agreed acceptance has taken place, any complaint about defects which should have been discovered in the course of the acceptance procedures is excluded. The Buyer has to alert CREMER OLEO to promptly examine any objected goods, in particular these shall be made available to CREMER OLEO on request and at CREMER OLEO's cost. In case of unjustified objection CREMER OLEO shall be entitled to impose the costs arising from this objection to the Buyer. CREMER OLEO's liability is limited either to remedy the defective goods or to replace them. The right of substitute delivery is only given in cases where the goods are returned in their original shipping package(s). In addition to this Buyer has neither the right to claim compensation of whatever nature, except the rights stated in clause 12. CREMER OLEO alternatively, considering Buyer's interests, has the right to reduce the sales price or to take back the goods and refund the sales price. Buyer has no right to rescind the contract or return the goods without CREMER OLEO's specific written consent. This limitation of liability shall also apply to goods replaced in accordance with this provision. In case the subsequent performance should fail the Buyer may ask for a reduction of the purchase price or withdraw from the contract. CREMER OLEO's liability for any defect or contractual claim resulting from the delivery of the goods automatically expires one year after the date of delivery. Buyer's rights to recourse against CREMER OLEO under § 478 BGB (German Civil Code) are restricted to the legal limitations of the claims based on defects brought by third parties against the Buyer and always provided that the Buyer has complied with his obligation to notify CREMER OLEO defects immediately pursuant to § 377 HGB (German Commercial Code). Under no circumstances are claims admissible if the goods have been put into production or have been transported from the original place of destination unless independent sealed samples are available for the final ascertainment of quality. The parties shall be entitled to participate at sampling.

## 13. General liability

CREMER OLEO's liability for whatsoever reason is limited to damages caused by willful misconduct or gross negligence on behalf of CREMER OLEO, its executives or vicarious agents. CREMER OLEO shall not be liable under any circumstances for any indirect or consequential loss or damage of whatever kind. In the event of being at fault for violating essential contract obligations CREMER OLEO, its executives or vicarious agents shall be, except in the case of intent or gross negligence, only liable for foreseeable, contract specific typical damages. In no event shall the amount of CREMER OLEO's liability respectively the commercial equivalent of such liability exceed the invoice amount of the delivery in dispute. Any liability restrictions in this General Terms and Conditions shall not apply in case of harm to life, physical injury or harm to health. The liability for claims based on the German Product Liability Act or any other coercive Acts remain unaffected from any restrictions.

## 14. Applicable Law

The laws of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the Sale of Goods (CISG) of 11 April 1980 shall not apply.

## 15. Court of Arbitration

If a dispute arising out of or in connection with this contract and its execution cannot be settled between the parties in an amicable way, the same shall be submitted to an Arbitration Tribunal according to the rules and regulations of the GROFOR, the German Association of Wholesale Traders in Oils, Fats and Oil Raw Materials (Registered Association) for a final and binding judgment. The location of the arbitration shall be Hamburg, Germany. The Buyer, including states, companies owned by states and public entities herewith expressly confirms that he will submit to this arbitration clause. Buyer must send his consent to this arbitration clause as integral part of any contract with the Seller to CREMER OLEO in written. The effectiveness of the total contract or other provisions of the General Terms and Conditions of Sale are not affected thereby. They are effective at the time of the conclusion of the contract.

## 16. Supplementary Clause

In the event that any individual clauses of these terms and conditions are, or shall become, invalid, this shall not affect the validity of the remaining clauses. An invalid clause shall be deemed to have been replaced by such provision which is legally valid and corresponds nearest to the legal and economic purpose of the clause originally deemed invalid.