

General terms and conditions of sale and delivery of Brenntag Schweizerhall Inc.

As at: September 2023

Definitions

Terms and Conditions of Sale: The following general terms and conditions of sale and delivery
BSH: Brenntag Schweizerhall Inc., Basel
Customer: A person to whom BSH delivers products on the basis of a contract
Product(s): Goods offered for sale by BSH and goods to be delivered on the basis of a contract with a customer
Incoterms: ICC official rules for the interpretation of trade terms, version prevailing at the date of the contractual relationship

1. Scope of application

These Terms and Conditions of Sale shall apply exclusively to the contractual relationship between BSH and its customers inasmuch as the individual contracts do not expressly and in writing contain agreements to the contrary.
No terms and conditions of sale that deviate from, contradict or supplement these Terms and Conditions of Sale, or other general terms and conditions declared applicable by the customer, shall apply unless BSH has confirmed these in writing.

2. Offers, conclusion of contract

All offers made by BSH are non-binding. Only orders confirmed in writing to the customer by means of letter, fax or e-mail (Order Confirmation) shall be binding on BSH. The written Order Confirmation shall be inspected by the customer immediately upon receipt and any deviations from the original order shall be notified in writing by the customer to BSH without delay. Unless notified otherwise by the customer without delay, BSH Order Confirmations shall be deemed correct and shall govern exclusively the delivery of products by BSH.
Confirmations of receipt of orders, generated electronically or otherwise, shall not be deemed to be BSH Order Confirmations unless they are expressly identified as such.

3. Prices

Unless agreed otherwise expressly and in writing, all BSH prices shall be deemed to apply FREE CARRIER (FCA) pursuant to Incoterms, exclusive of the applicable statutory value added tax (VAT).
Unless agreed otherwise in writing, all prices shall be deemed to be in Swiss francs (CHF) and shall be payable in Swiss francs by the customer to BSH.
All price information is based on the prevailing price factors at the time of concluding the contract (exchange rates, prices for raw materials, supply prices, transport costs, energy costs, taxes, customs duties, etc.). Substantial changes in the cost factors beyond the control of BSH shall entitle BSH to withdraw from the contract up until the time of delivery or to present a new offer to the customer. A change in any cost factor shall be deemed to be substantial if it increases by more than 3% after the contract has been concluded.
All deliveries of goods subject to ADR (dangerous goods) shall attract an ADR surcharge.
The HVF (heavy vehicle fee) shall be invoiced separately for piece goods deliveries. The minimum amount for an order shall be CHF 500, exclusive of VAT and of VOC taxes. Orders that are smaller than the minimum order amount shall attract a surcharge equal to the difference.

4. Delivery periods and risk assumption

Non-delivery of products by the pre-supplier shall entitle BSH to withdraw from the contract up until the time of delivery or to present a new offer to the customer. Unless agreed otherwise expressly and in writing, all BSH deliveries shall be FREE CARRIER (FCA) pursuant to Incoterms. With the loading of the goods on the carrier, the risk of accidental loss or product deterioration shall be transferred to the customer and the product shall be transported at the expense and risk of the customer.
Unless agreed otherwise expressly and in writing, all delivery dates are non-binding. In the event of a delivery delay, the customer shall issue BSH with a reminder. Any additional outlay for providing products at short notice and further surcharges for special deliveries will be invoiced to the customer on a time and material basis.
Products that are not collected by the carrier commissioned by the customer in accordance with the delivery deadline shall attract a surcharge on a time and material basis (storage costs, handling costs, etc.) effective from the third day after the collection date.

5. Force majeure

Delays, stoppages and/or impediments rendering performance impossible of BSH deliveries and services in the event of force majeure shall not be deemed a breach of contract on the part of BSH for the duration of the impairment plus a reasonable transition period after cessation thereof. Force majeure are deemed to include all unforeseeable events of a material or legal nature through which the performance of a contract is restricted or rendered impossible and which are not caused by BSH. Force majeure are deemed to include the following in particular: unforeseen operational impairments, traffic impairments, dispatch impairments, delivery impairments, natural disasters, fire, epidemics, energy shortages, raw material shortages, production material shortages, labor shortages, strikes, lockouts, governmental instructions and orders. In the event of force majeure, BSH shall inform the customer without delay as far as possible of the impairment and the anticipated duration of the service interruption.
Should only a portion of a delivery be delayed or impeded by force majeure, then BSH undertakes to deliver the remainder of the delivery not affected by the impairment and the customer undertakes to take acceptance of such delivery.
In the event of the performance of a contract being delayed or impeded for a period exceeding four months due to force majeure, or if performance of a contract is untenable for one of the parties due to force majeure, either contracting party shall be entitled to rescind the contract. In the event of a contract being rescinded, each party shall return without delay all goods and payments received from the other party.

6. Condition of products/warranty

Products offered by BSH are described in the company's specifications; BSH shall make these specifications available upon request to the customer. The customer's order shall serve as confirmation that the customer is familiar with the ordered products and their specifications.

Unless agreed otherwise expressly and in writing, BSH shall deliver the products in the condition and quality as described in the specifications. In the absence of a description in the specifications, the generally accepted standards for the product in question shall apply. Public or verbal statements by BSH or third parties shall not be deemed as product specifications for BSH products.

The dispatch weight at BSH shall apply for the performance of contracts and the issuing of invoices. The dispatch weight shall apply for road and rail transportation. BSH shall be entitled to deviate from the contractual weight by 5% (overweight or underweight). Such deviation shall not be deemed as a breach of contract.

7. Inspection and acceptance by the customer

The customer shall inspect the delivered products immediately upon receipt, before use or further processing, and give written notice of any defects. Notification of defects must be given not later than five working days after receipt of the product by the customer. In addition to the notice of defects, the customer shall also provide BSH with all information and documentation needed to identify the product and defects. BSH shall be entitled to inspect the product in question at the customer or to request a third party to inspect the product and to take samples of the product in question.

8. Warranty and limitation of liability

BSH warrants that the products it delivers are free from defects. A defect shall be deemed to be any deviation from the specifications or – if available – the product information provided in the Order Confirmation (inter alia, chemical composition, concentration and purity). In the absence of such data, the generally accepted standards for the product in question shall apply.
BSH does not undertake any warranty or liability for the suitability of its products in a specific application or a specific processing outcome. Technical advice provided by BSH is offered in good faith but shall not be binding. Possible commercial rights of third parties must be observed.

In the event of defects in a delivered product, BSH shall, at its choice, be entitled

- i) either to take back the defective product and replace it with a product free of defect;
- ii) or to eliminate the defect;
- iii) or to replace the reduced value of the product for the customer inasmuch as the defective product is suitable for the application intended by the customer.

In all cases and in the event of delivery delays that are the responsibility of BSH, liability is limited to the invoiced value of the product. In particular, all liability is excluded for secondary or indirect damages, loss of earnings by the customer or third parties and other resulting damages caused by BSH, inasmuch as this is legally admissible. In addition, BSH disclaims all liability for support persons it involves in the performance of its responsibilities.

9. Default of acceptance

If the customer is in default of taking acceptance of ordered products, BSH shall be entitled at its choice to waive subsequent delivery or, after the third day following the collection deadline, levy a surcharge on a time and material basis (storage costs, handling costs, etc.). If BSH waives subsequent delivery, it shall be entitled to claim compensation for its damages arising from the non-delivery or to rescind the contract.

10. Payment by customer

Unless specifically agreed otherwise in writing, all invoices issued by BSH shall be payable net within 30 days of receipt of the invoice by the customer.
Payment due dates must also be adhered to even if delivery to the customer or collection of the goods by the customer is delayed for any reason beyond the control of BSH.
If the customer is in arrears of payment or if for any reasons BSH has reason to fear that the customer will not pay in full or on time, then BSH shall be entitled to make the delivery of the ordered goods conditional on payment in advance or the lodging of security.
If the customer is in arrears of payment, dunning charges of max. CHF45.00 will be charged and interest of 6% for late payment will be charged.

11. Assignment

The assignment of customer rights towards BSH to third parties shall require the written approval of BSH.

12. Loaned packaging and demurrage fees

Reusable packaging remains the property of BSH. It must be returned in a fit state and completely empty, in compliance with written and verbal instructions. All reusable packaging, whatever its nature, is subject to invoicing either by a deposit amount or as a rental. Returnable packaging is invoiced with the chemical products delivered. The deposit rights are returned after the return of the packaging concerned in a proper state and completely empty. Loaned packaging is made available to customers free of charge for a period of 30 calendar days. Tank cars are not covered by this 30 day exemption from payment. In their case the period of gratuity is 10 days. Over and above the periods of gratuity a daily charge will apply, and will be billed to the customer at regular intervals. It is strictly forbidden to use loaned packaging for personal use without the prior approval of BSH.

Packaging accessories such as pallets, standardised Euro pallets and frames are usually exchanged without charge. Intercommunity trade goods can only be taken back free of charge in Switzerland when they meet the EPAL qualitative conditions. Incoming and outgoing quantities are recorded in a pallet account and costed at regular intervals. Packaging accessories which are not exchanged are billed to the customer.

13. Place of performance/applicable law/jurisdiction

The place of performance for the delivery of products and payment is the registered office of BSH.

These Terms and Conditions of Sale and all contracts between BSH and its customers are subject exclusively to Swiss law.

Any dispute arising between BSH and a customer shall be submitted exclusively for judgment to the competent court at the registered head office of BSH in the canton of Basel-Stadt, Switzerland.