

Liquid Energy Trading Company LLC - Standard Terms of Sale and Delivery

1. All sales are subject to the following terms and conditions in the following order of priority:
 - a) the terms and conditions contained in the original, signed contract document,
 - b) the standard terms of sale and delivery set out below, and
 - c) the standard form contracts and terms of supply incorporated in the original, signed contract document.
2. These Standard Terms of Sale and Delivery take precedence over any terms of purchase that may conflict with them, irrespective of when we receive said terms of purchase.
3. In cases where the contracted goods are subject to Swiss import tariffs, we can handle the necessary customs clearance procedures locally in Switzerland.
4. The contract price is inclusive of any contributions owed under the Swiss Act on Agriculture for financing measures for the promotion of quality and marketability of produce or similar levies, eliminating any further claims on the part of the Purchaser for reimbursement of said levies.
5. This contract of sale is concluded subject to the condition that the Purchaser's credit standing at the time of conclusion will continue undiminished. Therefore, if following conclusion of this contract we learn of any unfavourable information about and/or any deterioration in the financial position of the Purchaser and/or any other circumstances indicating that it is no longer prudent to grant the Purchaser credit without security, then we shall have the right to request that the Purchaser pay in advance of delivery or furnish appropriate security. If the Purchaser fails to comply with such a request within the period for compliance stipulated by ourselves, then we shall have the right, exercisable immediately and without any further grace period, to rescind all outstanding contracts or contract rates, or seek damages for non-performance.
6. We shall have the same rights if the Purchaser is in default of payment under this or any other contract with us. If the Purchaser is in default of payment, then we shall have the right to withhold all further deliveries under this or other contracts until the Purchaser meets its contractual obligations and/or makes advance payment or furnishes security, and our doing so shall not in any way entitle the Purchaser to rescind the contract or seek damages; and we shall also have the right to require the Purchaser to return all unpaid goods at the cost and expense of the Purchaser.
7. The Purchaser is in default of payment if it fails to make a payment on or before a due date for payment. If the Purchaser is in default of payment, we shall have the right to charge default interest at the usual bank interest rate as from the first day of default.
8. If a direct debit, bill of exchange or cheque is dishonoured fully or in part, if some other claim receivable against the Purchaser is not paid by the due date, or if the customer ceases making payments, then all our claims receivable against the Purchaser outstanding at that time shall automatically become due and payable immediately, including claims receivable for which the Purchaser has issued a bill of exchange or a cheque or cheques.
9. If the Purchaser ceases making payments, if a bill of exchange or cheque issued by the Purchaser is protested, or if circumstances tantamount to this should arise, then we shall have the right to partially or fully rescind some or all outstanding contracts or seek damages for non-performance. In such cases we shall be under no obligation to allow any further grace periods. Furthermore, we shall be at liberty to choose which of the aforementioned remedies to exercise in respect of each contract.
10. We reserve the right to correct any typographical errors or mistakes made at the time of contracting and/or to challenge all legal obligations resulting there from at the time of contracting.
11. We shall retain title to goods supplied to the Purchaser hereunder until payment has been made in full on all claims receivable due to us, including future claims receivable, against the Purchaser arising out of the business relationship between us and the Purchaser. If goods are supplied to the Purchaser on account, then the above-mentioned reservation of title shall function as security for the balance owing at any given time.
12. Any treatment or processing of goods subject to the above reservation of title ("reserved goods") shall at all times be undertaken for us as manufacturer and on our behalf without, however, giving rise to any obligations against us. Accordingly, we reserve title to any new product resulting from said treatment or processing irrespective of the time and degree of treatment or processing. We hereby offer to transfer to the Purchaser title to the reserved goods and the new products, provided that said title shall not pass to the Purchaser until the final outstanding claim receivable against the Purchaser has been settled. If reserved goods are processed together with other goods not the property of the Purchaser, then we shall have shared title to the resulting new product on a *pro rata* basis in the same proportion as the value of the reserved goods to the value of the other goods. In the event that, despite the above provisions, the Purchaser by treatment or processing acquires title or shared title to our reserved goods, the Purchaser hereby – that is, at the time of conclusion of this contract – transfers to us title or shared title respectively to said goods effective as from the time when the Purchaser acquires title or shared title and shall from that time on hold the goods as bailee for us. The Purchaser hereby assigns to us any claims for return of goods that it may have against third-party owners. Said goods shall be deemed to be reserved goods as defined by these provisions.
13. In the event that the goods supplied by us to the Purchaser are mixed or combined with other goods, the Purchaser hereby assigns to us its title and shared-title rights to the resulting mixed inventory or new product and shall hold the same as bailee for us. The Purchaser hereby assigns to us any claims for return of goods that it may have against third-party owners
14. The Purchaser is authorised to resell the goods to which we have title or shared title in the ordinary course of its business in return for payment in cash or security by way of reservation of title. The Purchaser may not give the goods in pledge or grant mortgages over them. The Purchaser hereby assigns to us at the time of concluding this contract all claims receivable it may have against customers as a result of the resale of the goods, irrespective of whether said resale takes place before or after the above-mentioned processing, mixing etc., together with all ancillary rights and any claims for compensation the Purchaser may have against any credit insurance provider. If we have only shared title to resold goods, or if the Purchaser resells the reserved goods together with other goods not owned by us – irrespective of condition – at an all-inclusive price, then the Purchaser hereby assigns to us that portion of its claim to the proceeds of the sale which equals the amount which we invoiced the Purchaser for the relevant component of the goods.
15. The Purchaser is authorised to collect the claims receivable it has assigned to us. We reserve the right to revoke this authorisation if the Purchaser fails to meet its contractual obligations to us.
16. The Purchaser shall grant us access to the goods at all times, shall on request by us make the goods clearly and readily identifiable as being our property and shall furnish all information that we request. If the Purchaser is in default of payment, then it shall on request by us notify its customers that its claims against them have been assigned to us.
17. In the event that the Purchaser receives bills of exchange or cheques from its customers by way of payment for the resale of reserved goods, the Purchaser hereby assigns to us its claims receivable against its customers under said bills of exchange or cheques to the extent that the amounts so assigned shall equal the amounts of the underlying claims receivable from the resale that the Purchaser has assigned to us under clause 14 hereof. The Purchaser hereby assigns ownership of the bill of exchange or cheque certificates to us and shall keep them on our behalf as bailee.
18. The Purchaser shall safeguard our rights and notify us via telex/telegraph without delay if third parties seek to access or obtain goods to which we have title or shared title or seek to access or obtain claims receivable that the customer has assigned to us.
19. On request by the Purchaser, the Vendor shall release the securities (collateral) furnished by the Purchaser to the extent that the total securities held exceed the value of the claims secured by more than 30%. In such cases, the Purchaser has the right to determine the order of priority for releasing securities.
20. We have the right to set off all claims receivable, including claims under bills of exchange, owed by the Purchaser to us, our affiliates or subsidiaries against all claims receivable owed now or in the future to the Purchaser by us, our affiliates or subsidiaries, irrespective of whether said claims receivable have different ages or due dates. No waivers of set-off rights agreed between the parties shall apply in the event of the Purchaser's insolvency.
21. The Purchaser may not exercise or pursue rights of set-off, rights to withhold payment, or other rights as a defence against our claims for payment of the purchase price unless said rights are based on undisputed or final and unappealable counterclaims against us. We will accept cheques and bills of exchange, including renewable bills, only on the basis that the Purchaser remains liable under the original debt until payment is made on the cheque or bill of exchange. The same shall apply if a bill of exchange is transferred for the purpose of discounting of own acceptances. All payments on our part that are furnished by way of a returned bill of exchange bearing our signature for the purpose of offsetting against the Purchaser's claims shall not constitute payment of said claims until the Purchaser has honoured the bill and we are released from all liability under said bill.
22. The place for performance of the Purchaser's payment obligations is our head office or that of the bank nominated by us. The date on which a payment is credited without reservation to our account is dispositive of whether or not that payment has been made by the due date.
23. References by us to dimensions, weights and quality of goods are tendered with the utmost care as indications of the nature and condition of the goods in question but do not constitute binding warranties or representations unless they are designated as such expressly or by agreed-upon terms in standard form contracts.
24. If the Purchaser seeks damages against us based on intentional acts or omissions, gross negligence or culpable breach of a material contractual obligation, then any liability we may have shall be determined in accordance with the relevant statutes. With the exception of intentional acts or omissions by our authorised representatives or vicarious agents, any liability in such cases shall be limited to foreseeable, typical losses. This limitation of liability shall also apply to the extent that the Purchaser is entitled to claim damages in lieu of specific performance. This does not affect liability for culpable injury to life or limb. Save and except as provided herein above, we hereby exclude all liability for damage, loss or injury.
25. If any provisions of this contract should be or become invalid or unenforceable, then that provision shall be severed and the remaining provisions shall remain valid and enforceable. In such cases, the relevant statutory provision or rule shall be substituted for the invalid or unenforceable provision.

Juli 2008