



# General Conditions of Sale and Delivery ("AVL") Shell Global Solutions Deutschland GmbH (effective date 05/2018)

The following provisions of articles 1 to 13 and the "Data Protection Notice" shall apply to all customers.

**1. General** (1) The following AVL shall apply to all goods and services provided by Shell Global Solutions Deutschland GmbH (hereinafter referred to as "Seller") now and in the future, in the absence of a written agreement to the contrary. Any changes to the AVL shall apply from the time that change is introduced. In the absence of a provision to the contrary in these AVL, the legal provisions shall apply. (2) Our offers shall be subject to confirmation. (3) Verbal ancillary agreements shall be valid only if confirmed by the Seller in writing. (4) The contract shall be governed exclusively by the Seller's AVL. No other conditions shall become terms of the contract, even if the Seller does not expressly contradict them.

**2. Quality** The Seller shall be bound to provide only products of ordinary type and quality. The written agreement in the contract of sale or the delivery note shall be authoritative with regards to the description and nature of the item purchased. Quality features of samples or specimens, analytical data and specifications shall be deemed information on the nature of the item purchased only if they are agreed in writing. The Seller gives no warranty with regards to the nature or durability of products.

**3. Prices** (1) If no price has been agreed upon for the goods, they shall be charged on the basis of the Seller's generally prevailing prices on the shipping date for the quantities and volumes delivered or accepted. In the absence of an agreement to the contrary, the prices quoted shall exclude value-added tax, which shall be charged separately at the applicable rate. (2) If more than four months elapse between conclusion of contract and delivery of the goods or provision of the service, or if the underlying contract is a continuous obligation, and if the goods sold or their primary and intermediate products or their raw materials are or become subject to petroleum taxes, duties or other fiscal charges, or if fiscal or freight charges included in the purchase price are increased, then the purchase price shall be changed by the same amount from the date such charge is introduced/changed, even if there is a fixed-price agreement. The same shall apply if the charge/increase applies only to goods of foreign origin. The Seller shall moreover have a right to increase prices accordingly if exceptional circumstances (e.g. load deficiency surcharges, express delivery surcharges) give rise to additional costs for supplying the delivery point or the reception point desired by the Buyer for the delivery, or a charge applying to the primary products or raw materials increases by more than 3%.

**4. Payment / default in payment / offsetting** (1) Purchase prices shall be due immediately. They shall be payable net cash on receipt. Payment periods granted or practised by the Seller may be revoked by the Seller at any time with reasonable notice. (2) In the event of failure to comply with the modes of payment applying between the parties, in the event of default in payment by the Buyer, or in the event of deterioration in the Buyer's financial circumstances, the Seller shall be entitled at its discretion to supply goods or services in whole or in part only against cash on delivery or appropriate security. (3) Bills or cheques shall be accepted only if agreed separately, and then only on

account of payment.

(4) Unless for mutually interdependent claims the Buyer may offset only uncontested claims or claims recognised by declaratory judgment.

**5. Reservation of ownership** (1) The Seller shall retain ownership of the goods it supplies until he has been paid in full.

(2) The goods subject to reservation of ownership shall be processed / treated for the Seller as manufacturer as defined in article 950 of the Civil Code (BGB) without creating any obligation for the Seller. If the goods supplied by the Seller are mixed, blended or combined with other objects, the Buyer hereby transfers to the Seller its rights of ownership or joint rights of ownership of the new item or the mixed or blended stock.

(3) The Buyer undertakes to keep the goods subject to reservation of ownership safe for the Seller free of charge with the due care and diligence of a prudent businessman, and to mark them accordingly.

(4) The Buyer shall be entitled to sell on the goods subject to reservation of ownership, and the items derived from processing them, in the proper course of business subject to reservation of ownership, as long as it is not in default. To secure the Seller's claim, the Buyer hereby assigns to the Seller all claims arising from the sale or from any other legal ground, including any current account demand for settlement, together with all subsidiary rights. If the goods subject to reservation of ownership are sold in the course of work performed, the assignment of future claims shall be valid only to the extent of twice the value of the processed goods subject to reservation of ownership. This shall be based on the prices of the Seller's most recent invoice, ignoring discounts, reductions, freight and packing costs and other expenses. The same shall apply for the assignment of any future claims of the Buyer against a third party if the latter acquires sole ownership of the new item in the event of processing.

(5) The Buyer shall be revocably authorized to collect the assigned claims in its own name. This collection authority may be revoked if the Buyer fails to honour its contractual payment obligations arising from the business relationship in respect of the Seller, or its financial position deteriorates. In this case the Seller may demand that the Buyer issue individual declarations of assignment disclosing the third-party debtors, notifying them of the assignment, and providing all documents necessary to collect this claim. The Seller shall moreover itself be entitled to notify the third-party debtors of the assignment.

(6) The Buyer shall not be entitled to pledge the goods subject to reservation of ownership, or to transfer ownership of them by way of security. It shall notify the Seller promptly in the case of pledging, attachment or other impairment of the goods.

(7) If the Buyer delays payment of the purchase price, or infringes provisions of this article 5, its right to own those goods subject to reservation of title on whose delivery the purchase price claim rests or to which the infringement relates shall lapse. It shall surrender them on demand temporarily until the purchase price has been paid in full, without the Seller having to withdraw from the contract.

(8) If the Buyer infringes the obligations agreed in article 5 clauses (3) and (7), the Seller shall be entitled to set a reasonable period of grace, and to withdraw from the contract if it expires without result.

(9) If the realisable value of the securities to which the Seller is entitled exceeds the total claim to be secured arising from the business relationship by more than 20%, and this is not just temporary, the Seller shall be obliged to transfer it back.

**6. Deliveries** (1) The Seller shall be obliged to provide only goods from its own production. The Seller may at its discretion supply goods it has bought additionally.

(2) If the Seller's own production is not sufficient to supply all customers, the Seller shall at its discretion be entitled to allocate the deliveries as a whole or in individual cases proportionally, taking account of the particular circumstances, instead of its rights arising from frustration.

(3) Goods and services shall be supplied ex works. The Seller reserves the right to select the delivery works or distribution warehouse.

(4) If delivery free of charge has been agreed, this shall be in tank wagons free to station and in road tanker/truck free of charge to the Buyer's address.

(5) The Seller shall use its customary methods to determine the quantities for billing purposes.

(6) The Buyer shall be liable to the Seller for complying with the customs or petroleum tax regulations applicable to it or its customers, and for procuring and complying with the necessary official approvals. If approvals are not granted or are withdrawn again, especially relating to customs and/or tax-advantaged delivery, the Seller shall be entitled to amend the purchase price accordingly.

(7) If the Seller undertakes the delivery, it shall be entitled to select the means and type of transportation in good faith.

(8) Information provided by the Seller in respect of delivery dates or input temperatures shall not be binding.

**7. Conveyances / (loan) containers** (1) Where the goods are transported or held in conveyances or containers provided by the Buyer, these conveyances or containers shall be supplied to the delivery point in good time, carriage and charges paid, in a clean state ready for filling. The Buyer shall be responsible for checking the suitability of the conveyance / container for the product and/or its transport. The Buyer shall determine the capacity of the tanks before delivery, and indicate the quantity to be dispensed. It shall be liable for the conveyances or containers and their measuring equipment being in a technically faultless condition compliant with legal requirements. The Seller shall not be obliged to check their suitability, cleanliness etc. There shall be no compensation for loss or damage due to the containers or their measuring equipment being in a defective state, arising from inaccurate or incorrect information of the Buyer, or caused by contamination or mixing. Any action initiated by the Seller in such cases shall not constitute acknowledgement of any obligation to pay compensation. The containers shall be dispatched at the Buyer's risk. The Buyer shall be liable for any damage to the loading equipment caused by its containers or conveyances, unless it can show that the loss or damage was caused by the Seller's negligence.

(2) Where conveyances, containers or tanks are provided by the Seller, the fees customarily charged by the Seller shall be payable. The Buyer shall be responsible for proper and careful treatment of all conveyances and/or containers the Seller provides to it or to a third party named by it. It shall be liable for any loss of or damage to conveyances or containers supplied or provided, and for any damage caused by the conveyance, the container or its contents, unless the Buyer can show that no blame attaches to it or to third parties nominated by it.

(3) The Buyer shall completely discharge and/or empty and return the conveyances / (loan) tanks / containers provided by the Seller. Failure to do so shall entitle the Seller to charge at least the customary market rent for the conveyance of the type concerned as compensation. Use other than for the agreed purposes shall not be permitted. In the event of loss or damage, the Buyer shall take the necessary action and make the necessary observations to protect any rights of redress against the carrier, and shall notify the Seller thereof immediately. In the case of tank wagons, the Buyer shall moreover be obliged to duly and properly discharge tank wagons immediately on arrival, and return them to the dispatch point. If delivery of the goods has been agreed carriage paid, their return shall be chargeable; otherwise, return shall be carriage paid to the point of dispatch. If the tank wagon is not handed over empty to the railway for the return trip within 48 hours of arrival at the Buyer's reception point (within 24 hours in the case of delivery in whole trains), the Buyer shall pay the Seller the customary tank wagon rental, even if the delayed return is not its fault. If the tank wagon arrives damaged at the reception point, the Buyer shall immediately arrange for all actions necessary to ascertain the damage (e.g. an incident report with the Railway), and notify the Seller.

(4) In the case of ships, transport surcharges for high or low water, ice drift or other reasons for which the Seller is not responsible shall be borne by the Buyer. This shall also apply to demurrage charges incurred by exceeding the required lay days. Steam for unloading purposes and the hoses necessary for unloading the goods shall be provided by the Buyer at its expense.

(5) The Buyer shall be responsible for complying with the legally stipulated safety precautions when discharging from road tankers / trucks (take-off equipment / receiving tank). If the goods are collected by the Buyer or its authorized representative, the rules and instructions regarding safety and systems of work declared for the Seller's particular location or its selected delivery point must also be complied with. The Seller shall be entitled to apply appropriate sanctions commensurate with the degree of fault to enforce compliance with these rules in the event of infringements, for example by refusing re-filling or even by permanent banning in the case of serious or repeated infringements. The Buyer shall be liable to the Seller for any loss or damage arising from non-compliance, unless it can show that it is not to blame.

**8. Collection** Purchased goods shall be collected immediately. If there is provision for part deliveries, collections shall be distributed evenly according to time and quantity.

**9. Liability** (1) Irrespective of any other claims of the Buyer arising from the same circumstances, the Seller shall be liable for damages only in the event of intentional or grossly negligent behaviour of its executive bodies, servants or vicarious agents. Its executive bodies, servants and vicarious agents shall also themselves be liable only for damages in cases of intent and gross negligence, notwithstanding other claims by the Buyer arising from the same circumstances. Clauses 1 and 2 shall not apply to loss or damage attributable to infringement of duties essential to implementation of the contract, performance of which the Buyer may therefore rely on.

(2) Indirect loss (such as lost profit) and consequential loss shall specifically not be compensated, unless it is based on deliberate or grossly negligent behaviour by the Seller's executive bodies, servants or vicarious agents.

(3) Damages payable by the Seller, if it is liable, shall be restricted to the typical loss that could be foreseen when the contract was concluded.

(4) The maximum damages payable by the Seller, if it is liable, shall be restricted to a sum corresponding to three times the value of the delivery.

(5) The limitations of liability under the above clauses 9 (1), (2) (3) and 9 (4) shall not apply in the case of injury to life, limb or health, to claims under the German product liability legislation (Produkthaftungsgesetz), to claims arising from guarantees undertaken by the Seller, or in cases in which the law forbids such limitations of liability.

**10. Prohibited Countries/ Export Control** (1) The Buyer shall not export, re-export, divert, trade, ship, import, transport, store, sell, deliver or re-deliver any of the Products to/in Iran, Sudan, Cuba, Syria, North Korea and Crimea Region (including Sevastopol) of Ukraine or any other countries as may be advised from time to time by the Seller's discretion.

(2) The Buyer shall not breach any applicable Export Control or Sanctions Restrictions (including any applicable trade or economic sanctions, export control, embargo or similar laws, regulations, rules, measures, restrictions, restricted or designated party lists, licences, orders, or requirements, in force from time to time, including without limit those of the E.U., Germany, the U.S. and the U.N.) or put Seller in breach of any applicable Export Control or Sanctions Restrictions.

#### **11. Anti-bribery / Anti-money laundering**

(1) Each Party agrees and undertakes to the other that, in connection with this Agreement, it is knowledgeable about and will comply with all laws, regulations, rules and requirements relating to anti-bribery or anti-money laundering applicable to its performance of this Agreement.

(2) Buyer represents and warrants to Seller that its payments to Seller shall not constitute the proceeds of crime in contravention of anti-money laundering laws.

(3) Seller may terminate this Agreement immediately upon written notice to the Buyer, if in its reasonable judgment supported by credible evidence, the Buyer is in breach of any of the provisions of this clause and has failed to provide information demonstrating such compliance.

(4) Only the customer shall pay the invoice from Shell. No party other than the customer shall pay the invoice without the prior consent of Shell.

**12. Termination for good cause** Both parties shall have the right of extraordinary termination for good cause. Repeated infringement of material contractual obligations despite repeated prior warning, delay in payment, filing for or institution of insolvency proceedings in respect of the other party, or attachment of claims arising herefrom shall in particular constitute good cause. Both contracting parties undertake to immediately inform the other contracting party of any application for insolvency proceedings.

**13. Legal relationship between Seller and Buyer** The legal relationship between the Seller and the Buyer shall be governed by the current version of the Seller's AVL, the current version of which can be accessed on [www.shell.de/avl](http://www.shell.de/avl).

**14. Assignment** The Seller shall be entitled to transfer at any time its rights and duties, especially those arising from contracts, to an associated company as defined by the German Stock Corporation Act (Aktiengesetz), and to third parties as suitable as the Seller to perform the contract.

The following additional provisions shall apply only to entrepreneurs or to business people if expressly determined.

**15. Public utterances, recommendations or promotion** Public utterances, recommendations or promotion shall not constitute information as to the quality and condition of the item purchased as defined in article 2.

**16. Seller's right to price increases** The Seller's right to all price increases as defined in article 3 clause (2) shall exist regardless of whether more than four months elapse between conclusion of contract and delivery/provision of the service, and of whether the underlying contract is a continuous obligation.

**17. Future claims** Future claims shall also be claims as defined in article 5 clause (1).

**18. Complaints and warranty** (1) In the event of partial or incomplete delivery or if there is a material defect, the Buyer shall at the Seller's discretion be entitled to substitute performance, repudiation, or a reduction in the purchase price, further warranty claims being excluded.

(2) Any complaints about a delivery must be lodged with the Seller in writing. The Buyer shall complain of observable defects immediately. It shall moreover immediately take or process samples to satisfy itself that the delivery is correct. This shall be done within 14 days of delivery at the latest. Defects that can be detected by taking/processing samples shall be notified to the Seller within 14 days of detection.

(3) Complaints to the Seller shall be permissible only if a batch sample of at least 1 kg (or 1 litre) is provided to the Seller for verification. The sample shall be taken according to the DIN standard that applies to the product concerned. The Seller shall be given an opportunity to take the sample itself, or to satisfy itself that the sample was taken correctly.

**19. Place of jurisdiction / applicable law** (1) Any and all disputes out or in connection with this contract which the parties cannot settle by mutual agreement are subject to the administration of justice in the German jurisdiction. The place of jurisdiction for business people shall be Hamburg.

(2) All contracts shall be subject to the law of the Federal Republic of Germany, with the exception of its international private law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

#### **Data Protection Notice**

Comprehensive information on data protection can be found on the Internet at [www.shell.de/datenschutz](http://www.shell.de/datenschutz).

On request, these can be provided to customer in paper form.

The customer is entitled to contact the data protection officer of SGS in data protection matters. Contact details are within the privacy policy.