

General Terms and Conditions of Sale of Goods by Eurofish Trading AG

1. Scope

These General Terms and Conditions set out the standard terms on which the Seller supplies the goods to the Buyer and they shall apply to all offers and sales unless otherwise agreed in writing.

The Seller shall not be bound by conflicting terms and conditions or reservations made by the Buyer even if the Seller has not explicitly contradicted the conditions or reservations.

2. Offer and Agreement

2.1. Offer

The Seller shall issue a written offer specifying the type, length, quantity, quality, price as well as the date and place of delivery of the goods and the INCOTERM-Rule (FOBs, CFR, CIF etc.) under which the delivery of the goods shall be made. Such offer shall be valid until date and time indicated in the offer, if not specified – 3 days after the receiving of the offer. The offer shall be void if the Buyer does not accept the offer unconditionally in written as set out in clause 2.2 until the indicated date and 3 days respectively.

“Subject to unsold”:

If the Offer is marked as “subject to unsold” it means that the goods are offered at the same time to different clients and the Seller does not guarantee that the goods will be available even if the Buyer confirms all the terms indicated in the offer.

"Subject to catch"

If it is indicated "subject to catch" in the offer it means that the quantity, the breakdown and sizes of the products are given without any guarantee and

based only on estimation of the Seller. If the Seller delivers less quantity and different breakdown than indicated in the offer which contains the term "subject to catch", the Seller in case of bad catches will not have any responsibility for the costs (dead freight, demurrage on the loading) which the Buyer will possibly have due to delivery of less quantity than indicated.

2.2. Acceptance of the offer:

No offer shall be binding for the Buyer until it is accepted in writing by the Buyer.

3. Price, Payment Term, Default

3.1 Price

The Buyer shall pay the price indicated in the offer. Such price is, as a general rule, exclusive of any applicable value added tax, any other taxes, public charges and fees. For such taxes and fees, the Buyer shall be additionally liable to pay to Seller.

If the offer specifies an INCOTERM -Rule under which the delivery of the goods shall be made, such rule shall apply with regard to the division of costs.

Unless otherwise agreed in writing, payment shall be made in the currency indicated in the offer.

3.2. Payment Terms

Unless otherwise agreed in writing, the Buyer must pay the price of the goods in advance prior to delivery within 3 days after acceptance of the offer. No deliveries will be made by the Seller until advance payment has been made.

3.3 Default

If the Buyer fails to make any payment on the due date set out in clause 3.2. then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

- cancel the contract;
- suspend or cancel the delivery of the goods indicated in the offer;
- suspend any further deliveries to be made to the Buyer;
- charge the interest on the amount unpaid of the rate 5% per annum.

In case, the Buyer wrongfully fails to take delivery of the goods or in case the goods cannot be delivered as agreed by a reason caused by the Buyer or in case, the delivery of the goods is suspended or canceled due to the default in payment of the Buyer., the Buyer shall be obliged to pay the whole price of the goods. The Seller reserves the right to assert any further damage caused by the delay.

Payments may not be withheld or set off for any reason without the Seller's consent.

4. Delivery

The delivery shall pass and be made according to the INCOTERM-Rule specified in the offer.

4.1 Delivery FOB – Free on Board

If the offer specifies that the delivery shall be made "FOB", the Seller delivers when the goods pass the ship's rail at the named port of shipment. This means that the Buyer has to bear all costs from that point. The FOB-term requires the Seller to clear the goods for export.

The Buyer must give the Seller sufficient notice of the vessel name, call sign, contact details, capacity, number of holds and derricks, and the destination.

The Seller shall not be obliged to provide insurance for the goods.

4.2. Delivery CFR – Costs and Freight

If the offer specifies that the delivery shall be made “CFR”, the Seller delivers when the goods pass the ship's rail in the port of shipment. The Seller must pay the costs and freight necessary to bring the goods to the named port of destination, but any additional costs due to events occurring after the time of delivery, are transferred from the Seller to the Buyer. The CFR-term requires the Seller to clear the goods for export.

The Seller shall not be obliged to provide insurance for the goods.

4.3. Delivery CIF - Cost, Insurance and Freight

If the offer specifies that the delivery shall be made “CIF”, the Seller delivers when the goods pass the ship's rail in the port of shipment. The Seller must pay the costs and freight necessary to bring the goods to the named port of destination, but any additional costs due to events occurring after the time of delivery, are transferred from the Seller to the Buyer. The Seller has to procure marine insurance against the Buyer's risk of loss of or damage to the goods during the carriage. The CIF-term requires the Seller to clear the goods for export.

The Buyer must provide the Seller with the necessary information for procuring insurance.

4.4 Time of delivery

Delivery dates and times for the goods set forth in the offer shall be deemed to be estimated. The Seller shall have the right to earlier start the delivery if the catches are better than expected or to postpone the delivery if the catches are worse than expected. The Seller shall not be liable in respect of any liability, loss, expense, claim or damage incurred by the Buyer arising from such later or earlier delivery or any other reasonable delay in the delivery of the goods.

In case the Buyer wrongfully fails to take delivery of the goods at the date agreed or in case, the delivery cannot be made by reasons caused by the Buyer at the date agreed or in case, the Buyer delays the delivery or the delivery acceptance, the Buyer shall be liable for any damages or costs resulting thereof.

6. Warranties / Exclusions of Warranties

6.1. Warranties

The Seller warrants that, at the time they are delivered to the Buyer, the goods are of the type, quality and length as set out in the offer. Any other warranties of every type and kind, including but not limited to implied warranties, are excluded in all respects and for all purposes. The Seller disclaims and makes no warranties whatsoever.

In case, the Buyer wrongfully fails to take delivery of the goods at the date agreed or in case, the delivery cannot be made by reasons caused by the Buyer at the date agreed or in case, the Buyer delays the delivery or the delivery acceptance, also any warranties of every type and kind with regard to the quality of goods are excluded in all respects and for all purposes.

6.2. Inspection of the goods / defect report

The Seller shall provide the Buyer an opportunity to examine the goods before or during loading. The Buyer shall be obliged to check immediately the quality, quantity, weight, length and packaging of the goods supplied and he shall immediately notify the seller in the event that defects exist for which the Seller must warrant. If the Buyer fails to notify within 24 hour after the delivery, the goods are deemed to be accepted.

The Buyer shall have the burden of proof that a defect has already existed at the time of delivery of the goods.

6.3 Replacement performance

The Seller shall be entitled to preclude any further claim (including but not limited to claims for compensation) of the Buyer by immediate delivery of goods of the same type, length and quality.

6.4. Statute of limitations

Actions based on warranty for defects of the goods shall be barred at the end of three month after delivery to the Buyer.

7. Limitation of Liability

Any claims against the Seller for damages or loss are excluded, unless the Buyer proves that the Seller has caused the damages or loss by willful misconduct or gross negligence. The Seller shall not be liable to the Buyer for any claims, damages or loss of profit which may be suffered by the Buyer in any respect for incidental, special, consequential, direct or indirect damages of any kind arising out or in relation to the sales of goods, unless the Buyer proves that the Seller has caused the damages or loss by willful misconduct or gross negligence.

8. Transfer of benefits and risk

Unless otherwise agreed in writing, the risk of loss or damage to the goods shall pass to the Buyer according to the INCOTERM- Rule specified in the offer.

9. Impossibility of performance / Force Majeure

To the extent that a party's performance becomes impossible because of circumstances for which it is not responsible, including but not limited to, fire events, flood events, earthquake, strike, military operations, etc., the obligation is deemed to be extinguished.

10. Final Provisions

Any amendments or additions to these General Terms and Conditions are only binding if they are in writing.

Should individual provisions of these General Terms and Conditions be or become wholly or partially inoperative or should a contractual loophole emerge, the validity of the remaining provisions shall not be affected thereby. The inoperative provision shall be replaced or the loophole plugged in good faith by a suitable regulation such as comes closest to what the parties intended or would have intended in conformity with the sense and object of the agreement, had they given thought to the matter.

These General Terms and Conditions and the relationship between the parties shall be governed by, interpreted and construed in accordance with the **substantive law of Switzerland**. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not be applicable.

For all disputes and claims in relation to this Agreement, the exclusive **place of jurisdiction** shall be **Zurich (Switzerland)**.