

**General Terms and Conditions of Sale, Delivery and Payment for Deliveries of Solid Fuels to Merchants pursuant to Section 14 of Germany's Civil Code (BGB) and to Public Authorities**

**1. Scope, offer and subject matter**

Services by our Company, Rheinbraun Brennstoff GmbH ("RBB") are subject to the present General Terms and Conditions of Sale, Delivery and Payment for Deliveries of Solid Fuels ("**Terms and Conditions**"), unless agreed otherwise in the Supply Agreement. Our offers are subject to change without notice, unless a firm period of validity is stated. An agreement is deemed binding for us and Customer if and when a Supply Agreement has been signed or an enquiry by Customer has been confirmed by us in writing, in a qualified digital version or text form in accordance with Section 127 of Germany's Civil Code (BGB). We hereby expressly reject any terms and conditions of Customer that deviate from our Terms and Conditions; these shall only apply if and to the extent that we have confirmed them in writing. Acceptance of delivery shall imply acknowledgement that our Terms and Conditions are binding.

We are entitled to amend the present Terms and Conditions at any time. The amended Terms and Conditions shall be offered to Customer in a digital version or text form no later than one month prior to their scheduled coming into force. Customer shall be deemed to have accepted the amended Terms and Conditions if Customer has not expressed rejection prior to their scheduled coming into force. In our offer, we shall expressly refer to the fact that the amended Terms and Conditions become effective if not expressly rejected by Customer.

**2. Payment**

Failing other arrangements, invoicing shall only be by e-mail on a daily basis. Invoice amounts shall be due and payable within 14 days to our account stated in the invoice. Any payments made shall be deemed received on the day when RBB can dispose of the amount. Offsetting shall be admissible only with uncontested or legally enforceable claims.

In the event that on the 15<sup>th</sup> of the following month, Customer is in default with his payment obligations totalling more than 5% of monthly sales under the Supply and Purchase Agreement and the outstanding amount is not received within another five working days after receipt of an electronic demand for payment, we shall be entitled to discontinue product delivery immediately pending full settlement of the outstanding amount. Working days within the meaning of this provision are Mondays to Fridays, except for statutory holidays (including statutory holidays at the agreed place of delivery).

RBB, at its own expense, takes out credit-sale insurance ("CSI") for deliveries to Customer. If and to the extent that the insurer in question refuses CSI or grants CSI in an insufficient amount or subsequently reduces the CSI limit or prematurely terminates CSI, we shall be entitled to request from Customer suitable security up to the amount of the countervalue of two-twelfths of the annual delivery amount agreed. Until such security is furnished by Customer, we shall only have a duty to continue delivery against advance payment. This shall not affect our statutory rights, specifically Section 321 of Germany's Civil Code (BGB).

The defence of uncertainty pursuant to Section 321 BGB is due to us, inter alia, if a credit-sale insurer reduces the credit line for transactions with the buyer by at least 50%.

**3. Delivery**

Our products shall be delivered ex the delivery plants Fortuna-Nord (Niederaussem), Wachtberg (Frechen) and Berenrath (Hürth) of RWE Power AG ("the **Delivery Plants**"). Deliveries shall be by rail, dump or silo truck to the following places of delivery and performance, unless another place is agreed in an individual contract.

a) The place of delivery and performance for deliveries by rail shall be the relevant delivery railway station at Customer's location. Risk shall pass to Customer with the forwarder or carrier

indicating his readiness to unload. Unloading shall be organized by Customer himself and at his own expense; Customer shall be responsible for maintenance of the silo system and the unloading hose, in particular.

- b) Place of delivery and performance for deliveries by dump truck shall be the bunker or warehouse at Customer's location. Risk shall pass to Customer with the forwarder or carrier indicating his readiness to unload the truck.
- c) Place of delivery and performance for deliveries by silo truck shall be the truck unloading point at Customer's location. Customer shall provide a paved and level unloading area in the immediate vicinity of the silo for unloading the silo truck, in particular. The unloading area must be designed such that the merchandise may be delivered both by dump-silo truck and by hopper silo truck. For unloading, the silo system and the unloading hose must be operational and in proper condition. Any costs incurred even before passage of risk because the unloading area is not suitable or may only be used with restrictions shall be borne by Customer. Before unloading, Customer shall inform the driver about the unloading pressure required for unloading the product from the silo truck into Customer's silo. Risk shall pass when our products pass the hose-connection point of the silo truck's unloading hose.

Customer shall take account of the obligations of the party receiving a dangerous goods shipment pursuant to Section 20 of the German Regulation on the Carriage of Dangerous Goods by Road, Rail and Inland Waterways (GGVSEB) and the obligations of the unloading party pursuant to Section 23 a GGVSEB. If the driver carries out the unloading process, the obligation to instruct the driver in unloading in accordance with ADR 1.3 "Training of persons involved in the carriage of dangerous goods" shall be met by Customer.

For all types of delivery, Customer shall establish any necessary prerequisites for proper unloading.

The delivery weight or the delivery quantity may be inferred from the delivery notes or the weighing slips of the respective Delivery Plants. Customer shall be entitled to demand information on weighing in the Delivery Plants, in particular copies of test certificates on the calibration of the scales from an independent third party.

To ensure the quantities required by Customer or for planning reasons of RBB and for the sake of smooth and continuous deliveries, we reserve the right to use various forwarders and/or carriers to handle transportation for those shipments organized by us.

If Customer refuses to accept the delivery of a shipment organized by us, the additional costs for redirecting or returning the delivery shall be borne by Customer, unless the refusal to accept the delivery is justified on the grounds that RBB or its vicarious agents committed a breach of contract prior to the refusal. A delay in delivery shall not discharge Customer from his obligation to accept the delivery.

If the waiting time of a driver deployed by a forwarder or carrier commissioned by RBB exceeds the unloading time within the meaning of Section 412 (3) of the German Commercial Code (HGB), he shall be entitled to appropriate compensation in the form of demurrage. Demurrage shall be invoiced to Customer starting with a waiting time of more than 90 minutes at the rate customary in the market. Customer shall confirm the waiting time and the reason for delay on the consignment or handover receipt.

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**4. Quality of products**

RBB delivers natural products that are subject to certain variations in quality and appearance. Neither are the delivered products' properties defined nor do we assume any guarantees or assurances concerning said properties of the product delivered. In addition, we do not guarantee that the use of the respective product in Customer's plant leads to a specific result. No liability for defects shall exist if Customer commingles the products supplied by RBB with other products or otherwise modifies such merchandise, unless such commingling or modification was not the cause for the defect.

Any complaints about obvious defects shall be lodged immediately after the respective product has been delivered in a digital version or in writing. In the event of hidden defects, any complaints must be lodged in a digital version or in writing within 3 days of detection. If no complaint is lodged or no complaint is lodged within the period stipulated, the delivery in question shall be deemed approved. In the event of any quality complaints, Customer shall provide us with a sample of the material complained of within 10 days

**5. Force majeure**

Force majeure is any event which is beyond the control of the respective party concerned and which prevents it from performing its obligations, including the following events:

Any disruptions to operations, plant closures, cut-backs in operation; natural disasters, such as tempest, flooding and fire; epidemics; acts of war, blockades, terrorism, sabotage, riots or demonstrations; shortage of workers and other staff as well as shortage of trucks/wagons and truck/train drivers, walkouts, lockouts and strikes or labour dispute actions similar to strikes; interruptions to transport routes, obstacles to traffic; road/line closures or shut-downs; (weather-related) temporary closure for dangerous goods vehicles, embargoes and sanctions or other restrictions directly or indirectly imposed on the product by a government or international organisation (e.g. United Nations, European Union) or a responsible authority by way of a law; any permissible or impermissible denial of authorisations required under applicable national, international or European foreign trade laws, any subsequent cessation or non-issuance of import and export licenses in the country of origin; denial of official driving permits (e.g. for driving on Sundays and public holidays), the introduction of new, or more than merely slight increases in taxes and customs duties in respect of the merchandise or the export of same.

A contracting partner affected by an event of force majeure shall immediately notify the other contracting partner in text form (e.g. e-mail). The contracting partners' duties to perform shall be dormant for the duration of such force majeure. In particular, we shall be entitled to restrict or postpone a delivery. If a force majeure event exceeds a period of three months beginning with the written notification of the respective contracting partner, either contracting partner shall be entitled to terminate the Agreement. An event of force majeure shall not give rise to any claim for compensation unless the claim is based on wilful action or gross negligence.

**6. Security**

Pending payment in full for all deliveries, we shall retain title to the delivered product. Pending any resale or consumption in the ordinary course of business, Customer shall store the merchandise under reserve separately and mark it as such at our demand. In the event that Customer is in default, we shall be entitled to demand surrender of the delivered merchandise under reserve even without rescinding the contract; Section 449 Subsection 2 BGB shall not apply. Failing other explicit arrangements, RBB's demand for surrender shall not imply rescission of the Agreement.

In the event that any product is resold prior to payment of the full purchase price, the product shall be replaced by the resulting claim

due to Customer, which is assigned to us herewith. We shall be notified upon signing of the contract at the latest of any assignment performed of pecuniary claims up to the conclusion of the contract based on the resale of the fuels supplied by us. Any later assignments shall be inadmissible.

Customer may neither pledge nor assign any product under reserve. Customer shall notify us without delay should any third party seize either the product under reserve or the purchase price replacing the product.

In the event of any attachment, Customer shall forward to RBB the minutes of the attachment and an affidavit stating that the attached items are our property.

In the event that the product supplied by us is commingled, mixed or added to other merchandise, we shall be entitled to co-ownership of the resulting merchandise (Section 948 BGB). Our co-ownership interest shall depend on the ratio of the purchase prices of the previously separate merchandise. In the event that the new merchandise is waste or otherwise not commercially exploitable, we shall be entitled to abandon our lien by declaration vis-à-vis Customer or any co-owner. In the event that the merchandise supplied by us is processed by Customer or Customer's contracting partners (Section 950 BGB) such processing shall be deemed to have been performed on our behalf, i.e. we shall acquire title to such processed merchandise. The property due to us under this paragraph shall be stored by Customer or Customer's contracting partners free of charge for us. In the event of any resale, subsection 2 of this clause (assignment of claim to purchase price) shall apply mutatis mutandis.

For the purposes of examination and justified repossession of our security, Customer shall grant us access thereto.

**7. Loyalty clause**

The Parties hereto are agreed that application of the provisions agreed in the Agreement (including these Terms and Conditions) is subject to the principles of commercial loyalty and give a mutual assurance of their intention to execute the Agreement in this spirit.

Going beyond the provisions of statute, the foundation for the transaction shall be subject to the following arrangements: Should circumstances emerge during the contractual term that have a significant and lasting effect in financial or legal terms on further execution of the Agreement for at least one of the Parties hereto, the Parties hereto shall make efforts to adjust their contractual commitments to meet the changed circumstances.

Depending on the individual case, this may include the following situations: a long-term decline in the energy needs of Customer, the shutdown of dry-lignite (DL) production in at least one of RWE Power AG's production locations, or any not merely immaterial and temporary increase in production costs due to a change in the legal or approval situation.

The contracting partner who wishes to rely on changed circumstances shall notify the other partner thereof in writing. Such notification shall detail the changed circumstances and the preconditions pursuant to subsection 2 above.

If no amicable adjustment comes about in the case of subsection 2 within one month after the contracting partner has received a notification that meets the requirements of subsection 3, either contracting partner may terminate the Agreement by giving 6 months' notice to the end of a month. Any termination notice shall be in writing.

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### **8. Statutory limitation**

Any claims based on an infringement of contractual duties due to minor negligence or on an infringement for which we are not answerable are barred within one year of such infringement; in the case of claims based on defects, statutory periods shall apply. In the event of gross negligence and wilful action, statutory provisions shall apply.

In the event that levies within the meaning of the Supply and Purchase Agreement that influence the purchase price are increased, reduced, introduced or subsequently imposed, the statutory period of a claim by RBB for supplementary payment due to the subsequent increase in the purchase price or of a claim by Customer for reimbursement does not commence before the end of the year in which the parties obtained knowledge of the levies to be paid or would have obtained such knowledge if they had not shown gross negligence. The statutory period commences at the end of the third year after delivery at the latest. This shall not affect the other provisions of Section 199 (1) of Germany's Civil Code (BGB).

### **9. Confidentiality**

The contracting partners, their governing bodies and vicarious agents, including employees, shall treat in confidence the provisions of this Agreement and any other information of a commercial or technical nature received within the scope of the business relationship, specifically any prices, rebates, conditions, contractual terms, etc.

### **10. Liability**

We do not assume liability to pay compensation, irrespective of the legal grounds and regardless of whether a direct or indirect loss is involved, unless the loss was caused by us or our legal representatives or our vicarious agents due to either wilful action or gross negligence. This shall not affect liability if injury to life, limb or health was caused, if we have failed with malicious intent to disclose any defects, if the product lacks any guaranteed properties, if applicable (cf. Article 3), or liability under Germany's Product Liability Act (ProdHaftG). The same shall apply to any not immaterial infringement of material contractual duties (duties that are essential for due and proper contractual performance and on whose fulfilment Customer generally relies and must be able to rely). In the event of an infringement of material contractual duties, our liability shall be limited to the compensation of foreseeable, typical loss. For the avoidance of doubt, RBB shall be not liable, however, if an uncontrollable risk materialises in the case of a vicarious agent employed by RBB, which leads to a significant restriction of the ability to perform, such as a shortage of trucks/wagons or truck/train drivers for which the vicarious agent is not responsible or a shortage of staff due to significant sickness levels.

RBB's liability arising from delivery is limited in amount to EUR2.5 million per individual insured event, which might include several infringements of duties if they result in identical damage. The exceptions from limitation of liability outlined in this Article shall apply accordingly.

Where RBB is exempted from liability or RBB's liability is limited, the same shall apply to our representatives', vicarious agents' and employees' personal liability.

Customer shall release RBB from any third-party claims within the scope of his proportion of liability.

The following shall apply to the extent that our employees provide free consulting services relating to our products: Free consulting services, irrelevant of whether they are provided in person, in writing or via phone, are performed by RBB or its employees with the utmost care and with liability being excluded to the greatest possible extent. We or our employees shall thus be liable only in the event of

wilfully causing damage. As, in general, numerous circumstances that might be important to Customer's or the consumer's request (company-specific concerns, in particular) are not taken into account, our consulting services may merely support Customer or the consumer in developing a solution approach himself. Therefore, we do not guarantee either that the information provided by us is complete, topical, reliable or suitable for your intended use.

### **11. Taxes and duties, packaging**

Customer shall be liable for compliance with any tax and customs regulations he is required to observe. Customer shall indemnify us for any loss resulting from violations of statutory regulations.

If Customer is exempt from energy tax, Customer will provide us with any necessary information and documents regarding the exemption in due time and shall in particular notify us in writing or text form of any changes in company name or the commercial register without delay.

If the delivery is subject to energy tax according to the legislation in the country of the place of destination, the Customer shall be liable for paying such energy tax and shall comply with all reporting and payment obligations towards the authorities responsible for energy tax in the respective jurisdiction, resulting from this tax liability.

### **12. Data protection**

The contracting partners are obliged to respect the applicable, legal provisions and to comply with the relevant current regulations on data protection when handling confidential information provided by the other contracting partner and any other information and personal data concerning employees (including any governing bodies or managing directors) of the other contracting partner obtained in connection with the Agreement. The individual contracting partners are each responsible for compliance with these provisions and are the controllers within the meaning of the GDPR.

### **13. Sale of affiliates**

In the event that Customer sells an affiliate or its business operations in such a way that Customer's demand for our products declines or ceases to apply, Customer shall impose a duty on the buyer to conclude with RBB an agreement on the supply and purchase of the quantity concerned subject to the conditions of the Supply and Purchase Agreement concluded with Customer. Upon coming into effect of the agreement between us and the buyer, the delivery quantity agreed shall decrease by the quantity agreed with the buyer.

### **14. Legal succession**

Either contracting partner shall be entitled to assign/transfer all of its rights/duties under this Agreement to a third party subject to the consent of the other contracting partner. Such consent must be given if, in the light of the available knowledge, the third party offers a guarantee of due and proper contractual performance. RBB shall be entitled to assign/transfer all of its rights/duties to its affiliated companies within the meaning of Sections 15 ff of Germany's Stock Corporation Act (AktG) without requiring Customer's consent.

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**15. Compliance**

Compliance with law

The Parties agree to comply with all laws, regulations and conventions applicable to the Agreement and their own activities, in particular competition and antitrust laws, anti-money laundering and anti-corruption and anti-bribery regulations, as well as foreign trade laws, export control and sanctions laws. The Parties shall act honestly, loyally, with integrity, and in good faith while avoiding conflicts of interest under this Agreement.

Code of conduct

RBB expressly refers to the "RWE Code of Conduct" applicable in the RWE Group, which can be inspected at <https://supplier.rwe.com> (Path: <https://www.group.rwe/der-konzern/compliance/verhaltenskodex>). RBB expects the other Party hereto to accept the principles of conduct contained in the Code of Conduct as the basis for cooperation and, in particular, to endorse the support and implementation of the principles concerning human rights, labour relations and the environment and corruption established in the Global Compact initiative of the United Nations ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

Anti-corruption

Subject to applicable law, the Parties shall not give or receive, offer or solicit, directly or indirectly, any payment or benefit constituting an unlawful advantage to or from anyone. The Parties hereto shall make all reasonable efforts to ensure that their managing directors, managers and employees do not commit bribery offences but act in full compliance with all applicable laws.

Sanctions

a. Definition: Sanctions

Sanctions shall mean any economic or financial sanctions or trade embargoes imposed, implemented or enforced by the Federal Republic of Germany, the European Union (EU) or the United Nations Security Council.

Sanctions shall also mean any economic or financial sanctions or trade embargoes imposed, implemented or enforced by the United States of America, unless this constitutes a violation of the German Foreign Trade and Payments Ordinance ("Außenwirtschaftsverordnung; AWV") or compliance with the sanctions constitutes a violation of Regulation (EC) No. 2271/96 or a comparable regulation of the EU.

b. Neither the Customer nor any of its affiliates nor, to the best of the Customer's knowledge, any legal representative of the Customer or any of its affiliates is a person subject to sanctions or is owned or controlled by a person subject to applicable sanctions.

Neither the Customer nor any of its affiliates nor, to the best of the Customer's knowledge, any legal representative of the Customer or any of its affiliates is located in or registered or domiciled in any country or territory which is subject to sanctions applicable to itself or its government (currently Cuba, Iran, North Korea, Syria and the Crimea region).

c. The Customer:

(i) shall comply with all sanctions and export control requirements applicable to it and its business activities insofar as they relate to actions under this Agreement;

(ii) may not sell, deliver or transfer items received from RBB to third parties if this would result in RBB violating applicable sanctions or export control regulations;

(iii) may not sell, supply or transfer items received from RBB to third parties to the extent that this is prohibited on the basis of applicable sanctions or export control regulations;

(iv) shall not take any action that would cause RBB to be in breach of any applicable sanctions or export control regulations;

(v) shall promptly notify RBB in text form if the Customer becomes aware of any event or transaction that would cause the Customer or RBB to be in violation of any applicable sanctions or export control regulations insofar as this relates to transactions in connection with this Agreement.

Notwithstanding any other provision of this clause, RBB shall be entitled to terminate with immediate effect all business activities, deliveries and/or any related contracts (including this Agreement) if the contract concerned or any part of the contract concerned or any actions of the Customer would cause RBB to be in breach of any applicable sanctions or export control regulations.

**16. Other Provisions**

Should any provision of the Supply and Purchase Agreement or of these Terms and Conditions be or become ineffective or incomplete, this shall not affect the validity of the remaining provisions. The contracting partners shall replace the respective provision with a valid, complete and enforceable provision reflecting the economic effect of the respective ineffective provision as closely as possible. The same shall apply to any loopholes.

Any amendments or supplements to the Agreement (including these Terms and Conditions) shall be in writing and require the signatures of both parties hereto. This shall also apply to any amendment to or cancellation of this written-form requirement.

The Agreement, including these Terms and Conditions, is subject to German law, ousting the provisions of private international law and the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

In respect of any disputes under the Supply and Purchase Agreement for which no amicable solution can be found, the courts at Cologne shall have jurisdiction.

**17. Severability**

The Agreement and these General Terms and Conditions shall remain binding even if specific provisions are ineffective.

**Last amended: June 2022**