

General Terms and Conditions for the Sale of Sand, Gravel, Transit-Mixed Concrete, Factory-Made Ready-Mixed Mortar, and Special Products, hereinafter referred to as "Concrete Construction Materials"

Valid as of 01.09.1999

1. Purchase Offer

Our purchase offer is based on the pricelists and variety lists valid at the relevant time. Purchaser alone shall be responsible for the correct selection of the concrete/construction materials variety and quantity.

2. Delivery and Acceptance

When picked up, the delivery shall be ex works, otherwise at the place agreed. If this is changed subsequently on request of Purchaser, Purchaser alone shall bear the cost thereby incurring.

Non-compliance with the performance times (deadlines and dates for delivery) agreed shall entitle Purchaser to rescind due to delay if Purchaser granted a reasonable additional period by unsuccessfully warning about non-acceptance (section 326 *BGB* (German Civil Code)). To the extent to which any circumstances we are not responsible for impede or prevent us from performing purchase orders accepted, we shall be entitled to postpone the delivery/residual delivery for the period of hindrance. To the extent to which the same circumstances make the delivery/residual delivery impossible, we shall be entitled to rescind the contract in whole or in part. For example, we shall not be responsible for administrative interventions, interruption of operations, strikes, lockouts, disturbances by political or economic conditions, lack of required raw materials and supplies, delays in transport by traffic disturbances and any unpreventable events at ours, our suppliers or third parties, on which our operations depend, to the extent to which they cannot be predicted by us and are unavoidable for us. Purchaser shall be liable for the consequences of incorrect and incomplete information on calls; Purchaser shall be responsible for transmission errors. At deliveries to the place agreed, the concrete materials

vehicle has to be able to reach and leave it with no risk at all. This requires a sufficiently firm access road that can be driven on in an unhindered way by heavy lorries. If this prerequisite is not complied with, Purchaser shall be liable for any damage thereby incurring, irrespective of being or not being at fault. Unloading has to be possible without delay, speedily (1 cbm 5 minutes maximum) and without any risk for the vehicle. If Purchaser is a merchant in the sense of *HGB* (German Commercial Code), the individuals signing the delivery note shall be deemed by us authorized to accept the concrete/construction materials and to confirm their reception, and our list of deliveries/variety list shall be deemed acknowledged by signing the delivery note.

Purchaser, regarding any refused, delayed or otherwise irregular acceptance shall compensate us irrespective of Purchaser's obligation to pay the purchase price, unless the refusal or delay based on reasons we are responsible for. Several purchasers shall be jointly liable for the regular acceptance of the concrete/construction material and payment of the purchase price. We shall perform for any of them with effect for and against all of them. All Purchasers authorize each other to receive our binding statements in all matters in relation with the sale.

3. Transfer of Risk

The risk of accidental loss or deterioration of the concrete/construction materials on pick up from the works shall pass to Purchaser upon loading the goods. Regarding deliveries, the risk shall pass to Purchaser as soon as the vehicle arrives at the delivery site, but as soon as it leaves the public road to access the delivery site agreed, at the latest.

4. Warranty/Liability

We warrant that the concrete/construction materials of our variety list have been produced, supervised and delivered in accordance with the regulations in force. Special agreements shall apply for other concrete/construction material. The warranty becomes void if Purchaser or the individual deemed authorized pursuant to 2.4 mixes our concrete/construction materials with additives, water, concrete/construction materials of third suppliers, or changes them, or has them mixed or changed, or accepts them with delay.

Any defects shall be complained of towards the Management. If the complaint is made orally or on the phone, it shall be confirmed in writing. Drivers, lab assistants, and dispatchers are not allowed to receive complaints. Any obvious defects, irrespective of their kind, and the delivery of other than the ordered concrete/construction material varieties or quantities, shall have to be complained of on acceptance of the concrete/construction materials immediately (sec. 433.2 BGB). In such case, Purchaser shall have to leave the concrete/construction materials untouched, for the purpose of review by us. Any hidden defects, irrespective of their kind, and the hidden delivery of a concrete/construction material variety or quantity not ordered, shall have to be complained of immediately upon becoming obvious, by merchants in the sense of the Commercial Code, and by non-merchants within the legal period of 6 months from delivery. Our liability for the quality shall end on pick up from the works, upon loading the vehicle, on delivery when unloading is performed at the delivery place agreed, under the prerequisite of an immediate and speedy unloading. Sample pieces shall only be deemed an evidence for the quality if made and treated in the presence of a person assigned by us and as per instructions.

If the complaint is not within the period and/or form stipulated, the concrete/construction materials shall be deemed approved. Purchaser shall be entitled to the legal warranty rights if there is a defect we are liable for pursuant to subsection 1-3. To the extent to which it is a matter of

consequential losses based on redhibitory defects, liability shall be limited to the limit of liability – DM 2,000,000 – of our product liability insurance policy, unless the breach of contract we are responsible for is based on intent or gross negligence. Any warranty claims of a merchant in the sense of the Commercial Code shall come under the statute of limitation one month after our rejection of the complaint for defects at the latest.

5. Liability for Other Reasons

Any other claims for damages of Purchaser against us, our vicarious agents, irrespective of which cause in law, notably for fault caused by contractual negotiations, delay and tort shall be excluded, unless the loss incurred by intent or gross negligence of our bodies, legal representatives or vicarious agents, or by a breach of an obligation that is essential for the performance of the contract. This shall not apply to compensation for bodily and health damage, as well as damage to privately utilized objects that are based on the product liability law not depending on fault. Any possible transport of our concrete/construction materials at the construction site and any procurement of means of transport and/or their utilization shall not be a subject-matter of this contract of sale.

6. Protective Rights

The concrete/construction materials supplied shall remain our property until complete fulfilment of any claims of us against Purchaser. Purchaser shall not pledge our concrete/construction materials or assign them as a security. Purchaser, however, shall be allowed to sell or process them in the normal course of business, unless Purchaser, contrary to subsection 4, assigned the claim to a third party in advance or agreed on a prohibition of assignment with such third party. Any possible processing of our concrete/construction materials by Purchaser with the result of a new chattel

shall be performed on our order and with effect in favour of us, without any liabilities arising for us. We, however, grant Purchaser as early as now a co-ownership in the new chattel in the ratio of the value of the new chattel versus the value of our concrete/construction materials. Purchaser shall be obligated to keep the new chattel with due commercial diligence and at no cost for us. For the case that Purchaser, by mixing our concrete/construction materials with other chattels to become a consistent new chattel, acquires sole ownership or co-ownership in it, Purchaser, as early as now, assigns this ownership to us to secure the fulfilment of the claims stated in sentence 1, in the ratio of the value of our concrete/construction materials versus the value of the other chattels, by promising at the same time that Purchaser will duly keep them at no cost for us. For the case of a resale of our concrete/construction materials or the new chattel made from them, Purchaser shall instruct Purchaser's customers on our ownership.

To secure the fulfilment of our claims according to subsection 1, sentence 1, Purchaser, as early as now, assigns to us any future claims resulting from the resale of our concrete/construction materials, including all and any ancillary rights, in the amount of the value of our concrete/construction materials, ranking before the residual part of Purchaser's claims. For the case that Purchaser sells our concrete/construction materials together with other goods or new goods made with our concrete/constructions materials or mixes them with any third-party chattel and thereby acquires a claim that also covers Purchaser's other performance, Purchaser, as early as now, regarding the same claim, assigns such claim to us, including any ancillary rights, in the amount of the value of our concrete/construction materials, ranking before any other part of his claim. The same shall apply to the same extent to Purchaser's possible rights to be granted a legal mortgage due to the processing of our concrete/construction materials due and amounting to our total unpaid claims. We herewith accept Purchaser's assignment. On our request, Purchaser shall be obligated to give evidence of

these claims on an individual basis and to instruct Purchaser's customers on the assignment, requesting from them to pay to us, up to the amount of the claims as per subsection 1, section 1. We shall be entitled to instruct Purchaser's customers ourselves about the assignment and to collect the claims. We won't, however, make use of such rights as long as Purchaser duly meets Purchaser's obligation to pay.

Purchaser shall not be entitled to assign or pledge Purchaser's claims against Purchaser's customers to third parties, and Purchaser shall not be entitled to agree on a prohibition of assignment. For the case that Purchaser collects parts of the claim assigned to us, Purchaser, as early as now, assigns to us the parts of the claims to the amount of Purchaser's residual claim. The claim to surrender the amounts collected shall not be affected. With an open account, our securities shall be deemed a security for payment of our balance claim. Purchaser, before any pledging or any other impairment of our rights by third parties, shall be obligated to notify us without delay. Purchaser shall be obligated to deliver all and any documents required for an intervention and to bear all and any expenses incurring for us. The value of our concrete/construction materials in the sense of this point 6 corresponds to the purchase prices stated on our invoices, plus 20%. On request of Purchaser, we shall release our securities to the extent to which their value pursuant to subsection 1 exceeds the claims by 20%.

7. Conditions of Price and Payment

If, between issuance of the purchase offer or acceptance of the purchase order, and the performance, our actual costs increase notably for cement, gravel, freight, energy and/or wages, we, irrespective of the purchase offer and confirmation of order, shall be entitled to correct our sales price correspondingly. This shall not apply to supplies to non-merchants that have to be made within 4 months after the conclusion of the contract, outside of contracts for the performance of continuing obligation. Extra charges shall apply for low

quantities, irregular roads and construction sites, as well as with non-immediate unloading on arrival, as well as for deliveries outside the normal business hours or during the cold season, as per our pricelist in effect. In the case of low water, the legal surcharges shall be raised in accordance with the relevant *Kleinwasserrundschreiben* (circular letter on low water).

As a matter of principle, our invoices shall be paid immediately on receipt, without any deductions. Exceptions require a written agreement. If, after the conclusion of the contract, a notable deterioration occurs regarding the assets of the other party, by which our claim for consideration is put at risk, e.g. Purchaser discontinues payments, is over-indebted, settlement or bankruptcy proceedings are opened or such proceedings are refused in default of means, or if a notable deterioration of Purchaser's assets incurs otherwise, by which our claim is put at risk, we shall be entitled to refuse to perform as per contract, until the consideration is effected or secured. Discounting requires our approval and that Purchaser has paid our older claims and no bills payable exist. Bills and cheques shall only be accepted pursuant to a prior special agreement. Default interest at the usual bank interest rate shall be charged in case of default. Set-off by Purchaser against counterclaims, irrespective of which kind, shall be excluded, unless the relevant counterclaim has not been contested by us, or has finally been recognized. Complaints for defects shall neither affect the obligation to pay nor the due date, and Purchaser shall waive asserting any right of retention if Purchaser is a merchant in the sense of the Commercial Code. If Purchaser is a merchant in the sense of the Commercial Code and if Purchaser's fulfilment is not sufficient to pay all of our claims, we shall determine from which debt the payment is set off, also at inclusion in the open account.

8. Third-Party Supervision

Our agents (own supervisors) and their third-party supervisors and the *Oberste Bauaufsichtsbehörde* (Superior

Construction Site Supervisory Agency) shall be entitled to access the construction site and take samples at any time, during the working hours.

9. Place of Performance and Place of Jurisdiction

The place of performance for picking up is our works, the place of performance for deliveries is the place of delivery, and the place of performance for payments is our headquarters. The place of jurisdiction for any disputes arising from the contractual relationship (also for legal actions in connection with bills and cheques) with full merchants shall be the place of our headquarters.