

Terms and Conditions of Sale and Delivery for Special Binders and Lime Products, valid as of 1 NOVEMBER 2019

- I. **SCOPE OF APPLICATION** These Terms and Conditions of Sale and Delivery apply exclusively to business relationships with entrepreneurs within the meaning of section 14 of the German Civil Code (BGB), public-law legal entities and public-law funds. They do not apply to contracts with consumers within the meaning of section 13 BGB.
- II. **CONCLUSION OF AGREEMENTS**
1. All of our deliveries and services – including future deliveries and services – including proposals, consultations and other ancillary services are provided exclusively on the basis of the following terms and conditions. Purchasing terms and conditions of the buyer are hereby objected to and shall not apply. They are not recognised even if we do not explicitly object to them again after receiving them.
 2. Our offers are subject to change without notice. Agreements are considered concluded when we have provided written confirmation, or when the goods have been delivered.
- III. **SUBJECT MATTER OF THE AGREEMENT**
1. Our deliveries and services are described in the product descriptions, e.g. in DIN (German industry standard) EN 459-1 (building lime), EN 413-1 (plasters and wall binders), DIN 18506 (hydraulic road binders), approvals from the building authorities, offers, order confirmations, brochures, leaflets, processing instructions, etc. These product descriptions do not contain any guarantee regarding the quality or durability of the delivered goods unless they are explicitly denoted as guarantees in writing.
 2. Goods are delivered by vehicles operating on our behalf in the absence of any agreements to the contrary.
 3. Our products are subject to ongoing quality control in accordance with DIN EN 459-1, EN 413-1 and DIN 18506. If these controls are carried out by Gütegemeinschaft der deutschen Kalkindustrie e. V. or Verein Deutscher Zementwerke e. V., then our deliveries bear the seals of quality issued by these organisations.
 4. Upon delivery of the aforementioned products, the supply plant shall issue a delivery note bearing the mark of the inspection body when the products are handed over. The delivery note also contains information on the quantity, type, date and time of delivery, registration number or forwarding number of the vehicle, assignment, recipient, place of consumption and buyer. If the abovementioned products are delivered in paper sacks, then the information stipulated by the applicable standard and seals of quality, as well as the packaging date (date on which the sack was filled), are printed on the sack.
 5. If construction site silos are arranged by us, the terms and conditions announced in supply plant circulars shall apply to these silos.
- IV. **PROCESSING INSTRUCTIONS, ADVICE, INFORMATION**
1. As the working conditions and areas of application in which our products are used vary considerably, our processing instructions and technical information can only contain general information. If our products are used in working conditions or areas of application that are not specified in these documents, we recommend that you seek technical application advice from us before commencing processing operations.
 2. Technical application advice and information provided verbally and in writing are based on our knowledge and experience. All details and information on the suitability and application of our products are non-binding and do not release the buyer from the obligation to perform its own tests and experiments. If we are nevertheless liable, the liability for the advice we provide is based on the provisions set out in XIII below. 7. The buyer is responsible for complying with the statutory and official provisions when using our products.
- V. **PRICING**
1. Our prices are “carriage paid” prices in the absence of any agreements to the contrary. The

prices for packaged products are calculated based on the weight including packaging (gross for net).

If the buyer advances freight charges based on the agreements that have been reached, then freight remuneration to be determined by us will be refunded.

We are authorised to set maximum freight remuneration and only to reimburse the pro rata freight remuneration for part shipments. Prices and freight remuneration are based on the specified place of consumption.

2. The buyer must specify the place of consumption and the recipient, and provide us with corresponding evidence on request. In the event of deliveries to a warehouse, the location of the warehouse is considered the place of consumption. Any changes must be reported to us immediately. If changes are made, we will charge the corresponding prices and freight remuneration. In cases involving drop shipments made by us, the buyer must subject its customers to the foregoing obligation, subject to the proviso that these customers pass the obligation on to their customers accordingly.
3. In cases involving delivery by vehicles operating on our behalf, the prices are based on the quantities which entail the lowest freight costs in each case. A corresponding mark-up applies to smaller quantities or in the event that the vehicle is not utilised in full.
4. Special costs, such as weighing charges, local surcharges, additional costs as a result of road diversions, waiting times, etc., shall be borne by the buyer.
5. The weight ascertained by the supply plant or the railway company that has been commissioned shall be decisive for the purposes of the calculation.

VI. INCORRECT INFORMATION ON THE PLACE OF CONSUMPTION

If the buyer or one of its downstream customers breaches the obligation to specify the correct place of consumption referred to in V. 2, then we shall be released from our further delivery obligations and shall be entitled to claim damages; at the very least, the buyer shall incur a contractual penalty in the amount of €20.50 per t, but at least €154.00 per load.

VII. PAYMENT TERMS

1. Our invoices are payable within 30 days of issue. Discounts shall only be granted based on the rates applicable on the day of delivery if there are no older claims that are still outstanding. The amount to which the discount applies is shown on our invoices.
2. We reserve the right to accept bills of exchange on a case-by-case basis. Discounts shall not be granted in such cases. The acceptance of bills of exchange and cheques, as well as the crediting of amounts we receive by way of the bank direct debit procedure, shall be exclusively on account of performance. In addition, credits for such amounts shall be made, subject to receipt, with a value date corresponding to the day on which we can dispose of the equivalent value. All expenses incurred, e.g. discount charges, will be charged separately.
3. If the due dates specified in VII. 1 are not adhered to, interest and commission shall be charged in accordance with the applicable bank rates for short-term loans, but at least at the level of the statutory default interest rate.
4. The exercise of a right of retention from earlier or other transactions within the context of the ongoing business relationship is not permitted. Offsetting against counterclaims is only permitted insofar as these claims are not disputed by us, have been recognised and are due for payment or have been established with *res judicata* effect.
5. All of our claims – regardless of the term of any accepted and credited bills of exchange – shall fall due immediately if the payment terms are not adhered to or if we become aware of circumstances that seriously call the buyer's ability to pay into question. In such cases, we are also entitled to prohibit the resale and the processing of the delivered goods and to demand their return or the transfer of indirect possession of the delivered goods at the buyer's expense, as well as to revoke the collection authorisation pursuant to VIII. 7. The buyer already authorises us to access its premises and take back the delivered goods in the cases referred to above.
6. Our deliveries and services are not covered by a commercial credit insurance policy. As a result, we perform credit checks for our customers and take the results of these checks as a basis for determining the receivables/credit limit granted by us. If our invoices are overdue and/or this receivables limit has been exceeded, we are entitled to suspend all further deliveries and services until payment has been received for these invoices. Irrespective of the above, the following applies: If the receivables limit agreed with the buyer is exceeded by deliveries and services that have not yet been charged and/or further deliveries and services together with the balance of the outstanding receivables, we are also entitled to make further deliveries

and services dependent on advance payments and/or other forms of security being provided for the amounts by which the limit is likely to be exceeded. We are entitled to set a new receivables/credit limit at our reasonable discretion and to reduce or abolish the limit. Among other scenarios, we shall have the right to set a new receivables/credit limit if the rating/credit limit of the buyer is reduced by a third party (e.g. rating agency, credit insurer) after the agreement has been concluded. The new limit shall apply from the date on which the buyer receives the notification. The above provisions apply based on the new limit as of this point in time. In all other respects, our rights under sections 273, 320 – 323 BGB shall remain unaffected by the provisions set out in VII.

VIII. SECURITY INTERESTS

1. All delivered goods shall remain our property (reserved goods) until the agreed purchase price has been settled.
2. The processing of the reserved goods shall be performed for us as the manufacturer within the meaning of section 950 BGB without giving rise to obligations for us. The processed goods are deemed to constitute reserved goods within the meaning of VIII. 1.
3. Where the reserved goods are processed and mixed with other goods, it is agreed that we shall immediately acquire co-ownership of the new object based the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. If the reserved goods are combined or inseparably intermixed with other objects to form a uniform object, and if one of the other objects is to be regarded as the main object, then the buyer shall transfer co-ownership of the uniform object to us, insofar as the main object belongs to it, based on the ratio set out in sentence 1. The buyer shall store the goods for us free of charge. The above-mentioned co-ownership rights are deemed to constitute reserved goods within the meaning of VIII. 1.
4. The buyer may only sell the reserved goods in the course of its normal business dealings and as long as it is not in default, provided that it has agreed on a reservation of title with its customers and the claim resulting from the further sale is transferred to us pursuant to VIII. 5 and 6. The buyer has no other power of disposition over the reserved goods.
5. The claims of the buyer resulting from the further sale of the reserved goods are already assigned to us, namely in the amount of the invoice value of the reserved goods that are sold in each case. They are used for security to the same extent as the reserved goods. The above shall apply accordingly if the reserved goods are sold together with other goods not sold by us. The part of the claim from the further sale that is assigned to us shall take precedence over the partial claim that remains with the buyer.
6. If the reserved goods are used by the buyer for the performance of a contract for work with a specific outcome (*Werkvertrag*) or contract for labour and materials (*Werklieferungsvertrag*), then VIII. 5 shall apply accordingly to the claims under this agreement.
7. The buyer is entitled to collect claims from the further sale pursuant to VIII. 4 and 6 using a separate trust account until we issue notice of revocation, which we are entitled to do at any time. The collection authorisation shall lapse, even without explicit revocation, if the buyer stops making its payments. Otherwise, we shall only make use of the right of revocation in the cases set out in VII. 5. The buyer is not authorised to assign the claim under any circumstances. At our request, it shall be obliged to notify its customers immediately of the assignment to us – if we do not do so ourselves – and to provide us with the information and documents necessary for collection.
8. If the realisable value of the security in place exceeds the secured claims by a total of more than 10%, then we are obliged, at the request of the buyer, to release security as we choose to this extent. The buyer must notify us without delay of any attachment or other impairments by third parties.

IX. DELIVERY PERIOD

1. Delivery dates or periods, which may be agreed upon as binding or non-binding, must be stipulated in writing.
2. In cases involving delivery dates or delivery periods agreed with binding effect, call-offs of quantities must be made in writing or by telephone as soon as possible in order to ensure that punctual delivery is possible. A delivery plan must be agreed for larger orders.
3. If we default, the buyer can withdraw from the agreement following the expiry of a period of grace set for us that we deem to be reasonable with regard to the delayed delivery.
4. The applicable loading and call-off periods will be announced in supply plant circulars. The vehicles are loaded during the known loading periods and in the order in which the vehicles arrive. No remuneration shall be paid for any waiting times.

X. FORCE MAJEURE

If we are unable to fulfil our obligations due to events of force majeure – irrespective of whether these events affect us or our suppliers – then the delivery period shall be extended by the duration of the hindrance, plus a reasonable start-up period. The following events shall be deemed equivalent to force majeure: Transport obstructions, interruptions of operations, delays in the delivery of raw materials, strikes, lock-outs and other industrial disputes, as well as all other unforeseeable and extraordinary circumstances for which we are not to blame. If delivery is impossible or unreasonable due to force majeure or the aforementioned circumstances, then we shall be released from our delivery obligation. If the delay lasts for more than one month, the buyer is entitled to withdraw from the agreement. If the delivery time is extended or if we are released from our delivery obligation, then the buyer cannot derive any claims for damages from these circumstances. We can only invoke force majeure and the other circumstances if we have notified the buyer immediately.

XI. DISPATCH

1. In the event of delivery by vehicles operating on our behalf, the buyer shall ensure that
 - 1.1 the unloading point is set up in such a manner that the vehicles can access it and unload the goods unobstructed on a good driving surface and without any waiting period;
 - 1.2 the warehouse/silo area is ready for operation and ready to accept goods at the time of delivery and an authorised person – and where appropriate also unloading staff – is available at the unloading point to accept the delivery documents, specify the storage location/silo area to be filled, sign the delivery note and, where appropriate, for unloading.
The individual who guides the vehicle on site shall be deemed “authorised”.
 - 1.3 A breach of this obligation shall entitle us to act at our own discretion at the expense and risk of the buyer, without the latter being entitled to assert claims for damages. In particular, we are entitled to not to deliver a quantity transported to the site and to invoice our freight costs and/or waiting periods.
2. In the event of collection by vehicles operating on the buyer’s behalf, the buyer shall ensure that
 - 2.1 the technical features of the vehicles correspond to the supply plant’s loading devices;
 - 2.2 the goods are collected by qualified personnel in accordance with the guidelines of the supply plant;
 - 2.3 the driver confirms due and proper receipt of the goods on the delivery note.
 - 2.4 Upon collection of the goods by the buyer or by a third party commissioned by the buyer, the buyer/the commissioned third party shall have sole responsibility for loading the goods in a manner that ensures safe operation and transportation. In particular, the buyer/commissioned third party is solely responsible for adhering to the permissible total weight required by law and the existing provisions on due and proper load security.

XII. TRANSFER OF RISK

In the event of the delivery of bulk or packaged products, the risk shall pass:

1. in the event of delivery by vehicles operating on our behalf, at the time of handover at the destination. The buyer shall ensure that the actual situation is established conclusively before unloading in order to safeguard any claims against the forwarding agent resulting from transportation.
2. In the event of collection by vehicles operating on the buyer’s behalf, when the products leave our loading devices (e.g. tube, stacker, discharge conveyor, etc.).
We are not responsible for any damage caused by or during the transportation of the products or for losses. This also applies to damage caused by contaminated or unsuitable vehicles and loading equipment.

XIII. COMPLAINTS, LIABILITY

1. Our liability for defects is based on the statutory provisions in the absence of any provisions to the contrary below. Products are low-chromate products in accordance with the statutory provisions. The effect of the chromate reduction has a duration – unless otherwise indicated – of a maximum of three months from the date of manufacture (goods in sacks) or the date of unloading (silo goods) (III. 4).
2. Liability refers to the quality of the products at the time of transfer of risk.
3. Obligation to object to defects: Section 377 HGB applies to the obligation to inspect the goods immediately and object to any defects with the following measures:
 - 3.1 In order to safeguard the rights of the buyer, the notice of defects must be received by us without delay. The notice of defects must contain clear information on the type of product, the nature of the defect, the delivery date and information on the plant or warehouse and delivery

from which the product originates. Further documentation supporting the notice of defects, in particular the results of the inspection of the representative sample quantity in accordance with XIII. 5 must be submitted as soon as possible; the same applies to the sample quantity to be provided to us pursuant to XIII. 5.5.

- 3.2 The buyer shall ensure that, as soon as the product arrives at the destination, a check is performed to ensure that the labelling of the delivery matches the order and that a visual inspection is performed; in the event of deviations, the buyer shall inform us immediately and ensure that, where appropriate, the product is not blown into the silos or processed in any way.
- 3.3 In cases involving the delivery of bulk products, the buyer is also responsible for ensuring that the driver of the silo vehicle is clearly referred to the silo into which the product is to be blown - by indicating this in writing on the delivery note.
- 3.4 Obvious defects affecting the product, irrespective of the type of defect, including the delivery of a variety that is evidently different to the one agreed, shall be reported without delay upon the transfer of risk. Defects that are not obvious, irrespective of the type of defect, including the delivery of a variety that is not evidently different to the one agreed and differences in quantities that are identified shall be reported as soon as they come to light. If, however, the buyer could have identified the defect at an earlier point based on the normal use of the product, then this earlier point in time shall apply to the commencement of the notification period. Objections relating to differences in quantities can only be asserted for a period of three days following the transfer of risk.
- 3.5 Complaints relating to weight can only be asserted on the basis of subsequent official weighing. In all other respects, the weight determined by the supply plant shall apply. Objections cannot be raised for deviations from the gross weight of up to 2%.
- 3.6 In cases involving complaints that were not made in a timely manner or in line with the formal requirements, the delivered product shall be considered to be approved.
4. Products that have been recognised as defective or are visibly defective must not be processed. We assume no liability for damage caused by the failure to comply with this obligation.
5. Findings derived from concrete test specimens and the finished component or structure cannot allow any definitive conclusions to be drawn as to the quality of the products used at the time of transfer of risk, because the quality of concrete depends not only on the products, but also on its other composition, its treatment and external conditions.
This means that a product sample has to be taken from each delivery in accordance with the following provisions:
 - 5.1 The buyer or the buyer's customer must take a sample from each delivery. In cases involving larger deliveries, a separate average sample is to be taken for each 250t.
 - 5.2 The samples have to be taken at the time of the transfer of risk, i.e. in cases involving delivery by vehicles operating on our behalf, immediately after arrival at the destination prior to unloading, and in the event of collection by the vehicles operating on the buyer's behalf, immediately after the product has left our loading devices.
 - 5.3 The sample must always weigh at least 5 kg. In cases involving bulk products, it must be taken at the vehicle's upper filling opening from a depth of at least 15 cm. For packaged products, the sample must be taken from sub-samples of 1 kg to 2 kg per sack which are to be mixed carefully to produce an average sample of approximately 5 kg; the sub-samples must be taken from the centre of the sack filling and from at least five sacks that are intact until the samples are taken.
 - 5.4 The samples must be kept in an airtight container and must be clearly marked with the following information: Supply plant and/or plant warehouse, date and time of delivery, Type of product, strength category, where appropriate additional product designation, date and time of sampling, location and type of storage, as well as the number of the delivery note.
 - 5.5 The buyer is obliged to provide us with a sufficient part (at least 2 kg) of the abovementioned samples on request so that we can perform our own subsequent checks.
 - 5.6 Product samples in respect of which the foregoing provisions have not been observed cannot be accepted, as it is impossible to rule out a scenario in which the technical properties of the product changed following the transfer of risk, e.g. due to impurities, mixing, improper or excessively long storage.
 - 5.7 If there is no such product sample available, the results identified by the supply plant shall be taken as the basis for the purposes of assessing the delivered product.
 - 5.8 If other means of evidence are used, the additional costs shall be borne by the buyer, even in the event of a legitimate notice of defects.
6. In cases involving timely and justified notices of defects, we reserve the right to rectify the

defects by delivering defect-free products. In the event of such subsequent delivery, we are obliged to bear the expenses incurred for the purposes of subsequent performance, in particular transportation, travel, labour and material costs. Our right to refuse to make subsequent deliveries in accordance with the statutory requirements shall remain unaffected. If the subsequent delivery is not made within a reasonable period, the buyer may, at its discretion, demand a reduction in the purchase price or the rescission of the agreement with regard to the goods to which the notice of defect relates.

The buyer's right to subsequent improvement is excluded due to the properties of the products. After processing, the statutory provisions apply.

7. Our liability for damages, irrespective of the legal grounds, including damages in tort, is as follows: We shall be liable in accordance with statutory provisions for damage caused wilfully or by gross negligence. The same applies to damage caused as a result of ordinary negligence resulting from injury to life, limb or health. In cases involving physical loss or damage and purely financial loss caused by ordinary negligence, we and our vicarious agents are only liable in the event of a breach of a material contractual obligation. The amount of such liability is, however, limited to the damage that is typical for this type of agreement and that can be foreseen at the time the agreement is concluded. Even if the UN Convention on Contracts for the International Sale of Goods applies, we shall only be liable for damages if we culpably caused the damage. The preceding provisions are without prejudice to absolute liability under the German Product Liability Act (*Produkthaftungsgesetz*).

XIV. SAFETY DATA SHEET PURSUANT TO REACH REGULATION

If Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 (REACH Regulation) applies, as amended, to the delivery item, the buyer states that it consents to the retrieval of the relevant safety data sheets via our website <https://www.dyckerhoff.com/grauzement/lieferprogramm/lengerich> or <https://www.dyckerhoff.com/grauzement/lieferprogramm/neuwied>.

XV. EXPORT CONTROL

The deliveries and services (contract performance) are subject to the proviso that performance does not infringe national, European, or international export control provisions, embargoes, or other restrictions. The foregoing also applies with respect to applicable U.S. and other foreign law, provided that this does not conflict with German or European legislation (all aforementioned provisions and requirements being referred to hereinafter collectively as "Export Control Provisions"). The buyer undertakes to provide all information and documents as may be necessary in order to be able to assess whether any export control restrictions exist and, if so, ensure that they are complied with. Delays that are caused by the assessment of export control restrictions or approval procedures result in the suspension of deadlines and delivery periods. We agree to give the buyer prompt notice of such delays. If the necessary approvals are not granted and/or if contract performance infringes Export Control Provisions, we are released from our delivery and service obligation. Claims for compensation of damages are excluded in this regard, as well as on account of the aforementioned deadlines and delivery periods having been exceeded.

By inspecting and accepting our products and services, the buyer warrants that all applicable export control requirements are being complied with.

The buyer may not directly or indirectly sell, export, deliver, transfer, or otherwise make available the delivered goods to persons, companies, institutions, or organisations, or in countries, to the extent that this infringes Export Control Provisions. If the buyer infringes Export Control Provisions, we are entitled to terminate the contract.

XVI. APPLICABLE LAW AND PLACE OF JURISDICTION

1. German law shall apply to all legal relationships between us and the buyer.
2. The place of jurisdiction for all disputes arising in connection with the contractual relationship is the court responsible for our registered office. Each Party is entitled, however, to bring action against the other Party at the general place of jurisdiction for the latter.
3. These Terms and Conditions of Sale and Delivery are available in German, Dutch and French. In the event of the discrepancies or contradictions, the German version shall prevail.

XVII. DATA PROCESSING

The buyer is advised that we store and process personal data (name, address and invoice data) in accordance with our "Information regarding the processing and protection of personal data for employees of business partners, for customers and for suppliers of Dyckerhoff GmbH". The current version can be downloaded from <https://www.dyckerhoff.com/datenschutzinformationen>.

XVIII. SEVERABILITY CLAUSE

Should individual provisions of these Terms and Conditions of Sale and Delivery be ineffective either in full or in part, this shall not affect the validity of the other provisions.