

General Terms of Sale & Delivery

1. Scope/conclusion of the contract

- 1.1 The following exclusive terms of sale and delivery shall apply to our goods and services. We do not recognise and are not bound by any contrary terms and conditions or regulations of the Buyer deviating from our terms and conditions, unless we have expressly agreed to their validity in writing. This shall also apply if we make delivery to the Buyer without any reservation in the knowledge of the Buyer's contrary terms or terms deviating from our terms and conditions.
- 1.2 Our sales terms shall only apply vis-à-vis businesses within the meaning of § 310 I BGB. They shall also apply to all future business relations with the Buyer.
- 1.3 Our offers are subject to change. Any contract will only be considered concluded when it has been confirmed by us in written form or when the goods have been dispatched.

2. Delivery

2.1 Delivery times

- 2.1.1 Delivery periods begin with the date of our order confirmation but in no case prior to a final settlement of all details relating to an order; the same applies to delivery dates.
- 2.1.2 For a compliance with the delivery periods and times, the time of dispatch ex works is binding. If the goods cannot be dispatched in time through no fault of our own, the delivery periods and times shall be deemed to be met on timely notification of readiness to ship.
- 2.1.3 If the Buyer fails to comply with contractual obligations or fails to comply with them in time (this includes the duty to cooperate and secondary obligations like the provision of certificates, provision of an advance payment or similar), we shall be entitled to postpone our delivery periods and times to a reasonable extent according to the requirements of our production process.

2.2 Procurement risk

If we undertake to deliver goods solely defined by their type, this does not constitute the assumption of a procurement risk or a guarantee of quality.

2.3 Partial deliveries

- 2.3.1 We are entitled to make partial deliveries to an extent which is reasonable for the Buyer.
If the Buyer does not schedule by the 20th of a month – if possible observing invariant monthly quantities - for the following month for any contract with continuous delivery and if no other agreements have been made or if he defaults on a call-off order, we are entitled to define the call-off quantity ourselves, taking into account the purchase quantity of the previous months, after the Buyer has failed to adhere to an appointed grace period.

2.4 Delayed delivery, Acts of God

- 2.4.1 If we are late with a delivery or service or should it become impossible for us to provide a delivery or service, the statutory provisions shall apply. By way of derogation, our liability for compensation shall, however, be limited according to the provisions of the following § 7. In the event we are late with a partial delivery, the Buyer's rights of withdrawal from the contract shall be limited to the part of the contract which has not yet been fulfilled. Any regulation to the contrary shall only apply if the Buyer can demonstrate that he has no use for the partial delivery received. The Buyer shall then be entitled to withdraw entirely from the contract.
- 2.4.2 Acts of God – no matter whether they occur to us or an upstream supplier – authorise us to postpone delivery for the duration of the hindrance and an appropriate start-up time or to withdraw from the contract due to the unfulfilled part, provided that we are not responsible for the hindrance. The Buyer may demand a statement on our part whether we intend to withdraw or deliver within an adequate period. If we do not make a statement, the Buyer may withdraw. Circumstances considered equal to Acts of God are those substantially hindering delivery or making it temporarily impossible, like for instance transport hindrances, difficulties in obtaining material or energy, late delivery by suppliers, strikes, lawful lockouts, etc.

2.5 Weight

The calculation is based on the weighing results of our staff. In case of rail transport the results are determined with railway authority validity. If the Buyer demands an additional weighing, he will bear the costs.

2.6 Passing of risk

On leaving the loading unit or on the actual taking over by the carrier or self-collector (but at the latest on leaving the plant premises), the risk shall pass to the Buyer.

2.7. Inadmissible reshipment and misdirection

- 2.7.1 At our request the Buyer is obliged to provide proof of the whereabouts of the goods in compliance with the details on the intended purpose and intended place stated by the Buyer on completion of the contract.
- 2.7.2 If the goods have been taken to a place and/or address deviating from that stated on the invoice, we reserve the right to claim for damages.

3. Prices and terms of payment

- 3.1 Unless otherwise agreed, our prices are ex works and do not include value-added tax, which is to be paid additionally by the customer in the amount prescribed by law.
- 3.2 Payment shall be made net within 14 days from the date of the invoice. Customers may only withhold or offset due payments against their own counter-claims if these are uncontested or have been found to be legally binding. For SEPA Direct Debit Mandates granted by the Buyer, Buyer acknowledges that the Pre-Notification has to reach him one day prior to the collection.
- 3.3 Upon default of payment statutory default interest of 9 % above the base lending rate of the European Central Bank are charged.
- 3.4 If the Buyer defaults on his payments, if he does not comply with the terms of sales and delivery or if we learn of any circumstances that allow the conclusion of a substantial deterioration of the Buyer's assets, we are entitled to retain any outstanding deliveries until the counter-service associated with it has been fulfilled or security has been provided.

- 3.5 In case of default on payments, deterioration of assets or application for opening insolvency proceedings we can
- withdraw from the contract following a reasonable period of notice; further statutory claims shall remain reserved.
 - reclaim our delivered products sold subject to retention of title - insofar as they have not been paid by the Buyer - in accordance with clause 5.1 without this taking back the goods constituting a withdrawal from the contract.
 - enter the Buyer's premises for the purposes of taking possession any unpaid products sold subject to retention of title.
 - revoke the authorisation to collect debts according to 5.7 and demand that the Buyer furnishes the data required, hands over all related documentation for collection of the assigned claim and advises the debtor of the assignment. The Buyer also authorises us to do the latter for him with binding effect.

4. Group offset

We are entitled to set off all claims we have towards the Buyer against all claims the Buyer has towards us or any of the below-mentioned companies (1).

5. Retention of title and collateral

- 5.1 Delivered goods shall fully remain our property until all outstanding receivables within the scope of the business connection have been fully paid up. This shall also apply to future and conditional claims.
- 5.2 Conditioning and processing of the goods sold subject to retention of title shall be done for us as the manufacturer according to § 950 of the German Civil Code (BGB) without obliging us. The conditioned and processed goods are deemed goods sold subject to retention of title according to 5.1.
- 5.3 In case of processing, combining or mixing of goods sold subject to retention of title with other goods we shall be entitled to co-ownership of the new property inasmuch as the invoiced value of goods sold with retention of title relates to the invoiced value of the other involved goods. Where our co-ownership becomes null and void due to processing, combining and mixing with other goods, the Buyer immediately assigns to us those of his rights of ownership and expectant rights in the new property or compound matter which correspond to the amount of the invoiced value of goods subject to retention of our title.
- 5.4 The Buyer may only resell goods sold subject to retention of title in normal business operations under his normal terms and conditions and as long as he is not defaulting, provided that he reserves the right to ownership and the claims resulting from any resale according to 5.5 and 5.6. pass over to us. He is not entitled to any other kind of disposal of the goods sold subject to retention of title. The use of the goods sold subject to retention of title to fulfil contracts of work and labour and contracts for work and materials is also deemed a resale.

- 5.5 The Buyer immediately assigns to us any receivables resulting from a resale of goods sold subject to retention of title. These will be used to substitute the goods sold subject to retention of title according to 5.1 as collateral of the equivalent amount.
- 5.6 In case of a resale of goods of which we are co-owners according to 5.3 he shall assign to us his receivables inasmuch as the amount relates to our co-ownership share.
- 5.7 Unless we give notice of revocation in the cases stated in 3.5, the Buyer shall be entitled to collect receivables from the resale. At our request the Buyer shall promptly notify his customers of the assignment to us and to furnish the data required and to hand over all related documentation for collection.
- 5.8 The Buyer is not entitled to any other assignment of claims; this also applies to all kinds of factoring.
- 5.9 The Buyer shall promptly notify us of a foreclosure or any other impairment by third parties.
- 5.10 We are entitled to collaterals for our claims usual in their manner and extent, also if they are provisional or temporary. If the value of the existing collateral exceeds the amount of secured claims by a total of more than 10 %, we are obliged to release securities of our own choice on request of the Buyer.
- 6. Warranty**
For any defects of the goods we shall provide warranty in accordance with the following regulations:
- 6.1 A warranty for a certain proportion of chemically effective lime in the respective product is not assumed. We cannot be made liable for minor deviations in quality, colour, and grain size of the products as natural products are subject to these unavoidable deviations due to their respective deposit. For this reason, we can also not assume any warranty for a certain extent of chemical effectiveness in the individual product.
- 6.2 The purchased goods have to be examined carefully immediately after delivery to the Buyer or a third party designated by him and any identifiable defects have to be reported in writing. The purchased goods are deemed to have been approved by the Buyer with regard to any obvious defects or other defects which would have been identifiable upon immediate, careful examination unless we receive a written notification of defects within five working days after delivery. Regarding other defects the purchased goods are deemed to have been approved by the Buyer if we do not receive the notification of defects within five working days after the time the defect becomes apparent. If the defect was identifiable to the Buyer during normal usage at an earlier time, this earlier time shall be the relevant time for the beginning of the notice period. At our request the rejected goods must be sent back to us carriage paid. If the notification of defects proves to be justified, we shall reimburse the costs for the most reasonably priced delivery. This shall not apply if the delivery item is located somewhere other than the location of the intended use and this increases the costs for return delivery.
- 6.3 In the event of any material defects of the goods delivered, we shall be obliged, within a reasonable time period and at our discretion, to either remedy the defect or deliver a substitute. In the event of failure, i.e. the impossibility, unreasonableness, refusal or inappropriate delay of the remedy of the defect or delivery of a substitute, the Buyer may withdraw from the contract or reduce the purchase price appropriately. If we are to blame for a defect, the Buyer can demand compensation under the additional provisions set forth in 7.
- 6.4 The warranty ceases to apply if the Buyer processes or uses the goods without our consent and the remedy of the defect thus becomes impossible or unreasonably difficult. In any event, the Buyer shall have to bear the additional costs of the remedy of the defect caused by the processing or use of the product.
- 6.5 The limitation period for claims of warranty by the customer is set at one year from delivery unless the goods were used for a building structure in accordance with their customary use and caused its defectiveness. The limitation period of one year shall also not apply in the case of intent or if we have fraudulently concealed a defect or have provided a guarantee for the quality of the delivered goods. It shall also not apply for claims for damages for injury to life, body or health, in cases of compulsory liability pursuant to the German Product Liability Act or grossly negligent violation of duty. In these other cases, the statutory period of limitation shall apply.
- 7. Liability for compensation due to culpability**
- 7.1 Our liability for compensation, irrespective of its legal grounds, in particular for impossibility, delay, defective or incorrect supply, breach of contract, infringement of duties during contract negotiations and tort actions, shall be limited, to the extent that it involves our culpability, to the regulations under this clause 7.
- 7.2 Our liability for material damage and pecuniary loss shall be excluded in the event of our own ordinary negligence or the ordinary negligence of our legal representatives or vicarious agents unless the damage was caused by the negligent breach of a substantial contractual duty. Substantial contractual duties are those whose performance shapes the contract and which the Buyer may rely on. In this event, our liability shall be limited to the foreseeable, typically occurring damage.
- 7.3 In all other cases, our liability for material damage and pecuniary loss shall be limited to the foreseeable, typically occurring damage or expenses, provided we can prove that the violation of duty was not caused by intentional actions.
- 7.4 The foregoing limitations of liability shall not apply if we have guaranteed the compliance with delivery dates or a quality of the goods purchased or have fraudulently concealed a defect. Liability for culpable injury to life, body or health shall not be affected; this shall also apply for the mandatory liability in accordance with the German Product Liability Act.
- 7.5 All claims for damages against us, irrespective of their legal grounds, shall become time-barred at the latest after one year from delivery of the goods to the customer, in the event of liability based on tort from the time of knowledge, or grossly negligent ignorance, of the circumstances giving rise to the claim and the person who is liable for damages. Our liability for intent or gross negligence and the liability for assumption of a warranty, the fraudulent concealment of a defect, the injury to life, body or health and a liability pursuant to the German Product Liability Act shall remain unaffected hereby. For these cases the statutory limitation periods shall apply.
- 8. Sales to countries outside Germany**
- 8.1 If the Buyer, domiciled outside Germany, or his authorised agent collects goods or transports them outside Germany, the Buyer has to furnish the proof of exportation required for tax purposes. If this proof is not furnished, the Buyer shall be obliged to pay the value-added tax applicable to goods delivered within Germany on the amount invoiced
- 8.2 Deliveries made to other countries of the EU remain – in accordance with the current tax regulations – tax-free, if the Buyer provides a valid Entry Certificate for Intra-community trade. We support Buyer with a corresponding pre-formulated declaration. Buyer shall send us the Entry Certificate for Intra-community trade by e-mail within one month after receipt of the invoice. Without such evidence the Buyer is obligated to pay VAT according to the statutory provisions of the Federal Republic of Germany at all times in addition to the agreed purchase price.
- 8.3 For deliveries from Germany to other EU member states the Buyer has to notify us of his VAT identification number under which he declares the tax on intra-community acquisitions before the goods are delivered. Failing this, he shall have to pay the sales tax amount statutorily owed by us on our goods delivered in addition to the agreed sales price.
- 10. Place of fulfilment and place of jurisdiction**
- 10.1 Place of fulfilment for deliveries shall be our respective delivering plant.
- 10.2 The sole place of jurisdiction shall be our place of business. We are, however, also entitled to sue the Buyer at his place of business or domicile.
- 11. Applicable law, partial invalidity**
- 11.1 Governing law shall be the law of Germany with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April, 1980.
- 11.2 For the settlement of the payment of goods delivered from Germany into other EU member states, the value-added tax provisions of the respective receiving member state shall be applied if either the Buyer is registered for VAT in another EU member state or if we are registered for VAT in the receiving member state.
- 11.3 Should any of the clauses of these terms be or become invalid, the validity of the remaining clauses shall not be affected.
-
- (1) Regarding clause 4.**
- Rheinkalk GmbH
 - Rheinkalk Grevenbrück GmbH, Lennestadt;
 - Rheinkalk Lengerich GmbH, Wülfrath
 - AWA INSTITUT Gesellschaft für angewandte Wasserchemie mbH, Pelm
 - Walhalla Kalk GmbH & Co. KG, Regensburg