



# Sachtleben Bergbau

## **GENERAL TERMS AND CONDITIONS OF SALE**

### **1. Tenders and Awards**

Delivery and service is exclusively carried out under the rules, terms and conditions set forth herein. These terms and conditions apply to all contracts we -the Supplier- and our partners -the Customer-; together -the Parties- agree on for the sale of goods and services. They apply as well to future contracts even if not again separately introduced. All our tenders are without engagement. All contracts become effective not until our letter of acknowledgement upon the Customer's award, before that, the goods and services are subject to prior sale. Delivery and service is exclusively governed by the tender, the award and these present terms and conditions. Supplements and amendments of contract require written agreements signed by both Parties.

We object to all other terms and conditions but the stated terms and conditions given here.

Our catalogues, drawings, mock-ups, samplings etc. and the data, weight or specification mentioned therein are without obligation and do not issue any guarantee pursuant sec. 443 German Federal Civil Code. Such data and / or specification merely becomes binding upon agreement in writing within the award and the above mentioned letter of acknowledgement.

For all bulk, quality, colour, and weight, the customary tolerances apply.

### **2. Conditions of Payment**

All our prices are quoted ex works and net, without freight and custom duties or tolls. Payment is due promptly with delivery. Cheques and bills of exchange are accepted on prior appointment and on account of performance, subject to discounting; charges, taxes, duties and expenses are to Customer's account.

Unless otherwise expressly agreed, the bulk, weight and specifications as recorded on the delivery slip are material to billing and accounting.

Providing that charges, freight, duties, taxes and /or expenses have been raising, the Supplier is entitled to changes in pricing. Stall fees, freight surcharges out of transport issues as ice, flooding, high tide, low tide etc. go to Customer's account.

In case of payment default in spite of notices and reminder or in case of Customer's insolvency and the opening of bankruptcy procedures or in case of circumstances and substantial indication for insolvency which give cause for serious concern with respect to Customer's ability to fulfil his contractual obligations, we are entitled to cancellation and withdrawal, notwithstanding other remedies, as well as we can preliminarily postpone all deliveries and services at our discretion for a reasonable period until securities or bail is provided.

Unless otherwise agreed, the Customer is in default, if payment is not made within 30 [thirty] days from invoice. In default, the Customer is charged with interest for default at 9% above the ECB's current base rate plus V.A.T. - see sec. 288 (2) Federal Civil Code- notwithstanding other remedies and damages.

### **3. Delivery**

Delivery dates and delivery periods are without obligation unless otherwise agreed as binding. In case of delay, the Customer is obliged to set a period of grace / an extension in writing. If such extension expires without effect, the Customer is entitled to cancellation of the due and delayed bulk.

Unless otherwise agreed expressly, for all deliveries *FCA Wolfach* applies pursuant INCOTERMS 2010. Place of delivery and fulfilment is the Supplier's plant in Wolfach, BW, Germany.

Prerequisite for a delivery FCA or FOB is the accessibility of the place of unloading. The Customer is in charge of prompt and proper unloading, stall fees got to Customer's account.

If a delivery in road tankers is agreed, it is in our -the Supplier's- discretion choosing its size. The Customer is in charge of entirely and promptly unloading the road tanker. The Customer immediately returns the road tanker to its shipping point. The Customer is not entitled to use the road tanker for its own purposes. If the road tanker is returned with delay, we can charge the Customer with one or more daily operation fees.

The Customer is in charge of timely providing all necessary licenses and/or authorizations for import and trans-border-deliveries. Upon request, the Customer shall verify said licenses and/or authorizations by showing documents.

#### **4. Force Majeure**

Force Majeure means an occurrence beyond the control and without the fault or negligence of the Party affected and which by exercise of reasonable diligence is unable to prevent or to provide against. The Party claiming to be affected by Force Majeure cannot be held liable for non-performance of its contractual obligations. This Party shall notify the other Party in writing, without delay, about Force Majeure circumstances.

Any new European or U.S export or payment restriction affecting, directly or indirectly, the performance of any obligation in this contract, whether foreseeable or not, will automatically suspend the performance of that obligation and shall be regarded as Force Majeure event.

Force Majeure events are included, but not limited to

- official and unofficial strike
- breakdown of production through fire, explosion, flooding, etc.
- war, civil war, terrorist attacks, riots etc.
- natural disaster

#### **5. Retention of Title**

Until full payment of all existing and outstanding bills, the delivered goods remain in property of the Supplier.

The Customer is entitled to process and to resell the goods and products until the Supplier claims cancellation and liquidation of the retention. In case of cancellation because of default or breach of duty, the Supplier can claim replevin and instant withdrawal of the goods covered by retention of title.

If the goods covered by the retention are processed, mixed, compounded, it is agreed that this is carried out for and on behalf as well as on account of the Supplier who immediately becomes proprietor of such material or new products. If the goods are processed to new products with other goods and/or raw material, the Supplier gets a co-ownership share of the newly produced goods, which correlates with the share of its goods in the new product. Provided, the Customer resells, he assigns his claims against his buyers in advance to the Supplier, in case of a co-ownership equivalently to his share. The same applies to such claims surrogates, as damages claims, insurance claims etc. The Supplier is obliged to release all goods and new products as far as their value exceeds the value of outstanding bills by more than 50%.

#### **6. Testing & Defects, Liability**

It is the Customer's duty to test the delivered goods instantly, also for quantity variance. To preserve his contractual rights and remedies, the Customer has to notice the Supplier on defects and variances in writing without delay. In case of defects not visible to the naked eye, the Customer has to notice the Supplier instantly after discovery. The Supplier's defects liability is limited to a period of 12 [twelve] months from delivery. The limitation of action to 12 months does not apply to damages for willful or gross negligent act or to claims for killing, injury, trauma and/or any other impairment of health.

Upon written notice without delay as set forth above, we -the Supplier- have a right to cure and rectification within reasonable period of time. All costs for measures with respect to such cure and rectification go to our account.

If we fail to cure and/or rectify within reasonable period of time, the Customer is entitled to cancellation and/or other contractual remedies.

The Supplier's defects liability for damages is limited with respect to negligence as far as follows: The defects liability is limited to gross negligence and willful conduct, if it's not concerning a basic and crucial performance obligation, such as delivery free of defects. To the extent legally permissible, the Supplier's liability, irrespective on what legal basis, for indirect and consequential damages, including, without limitation, lost profits, loss of goodwill, losses arising out of a business interruption and frustrated expenses, shall be excluded. The foregoing shall not apply with respect to the Supplier's liability for (i) third party claims raised against the Customer and related to damages referred to in the preceding paragraph or (ii) attorney's fees and the like reasonably incurred by the Customer in connection with the defense against any third party claim. Any damage claims of the Customer shall furthermore be limited to an aggregate amount equal to 150 % of the net purchase price of the defective goods. These limitations do not apply in case of gross negligence or willful conduct and in case of claims for killing, trauma, injury and/or any other impairment of health. These limitations do not apply to compulsory international product liability statutes and conventions or relevant EU-Directives. The Supplier is not liable for damages incurring whilst unloading or by third party - vehicles.

## **7. Governing Law, Jurisdiction and Venue**

All contracts with the Supplier concerning the sale of goods and services are governed by the laws and statutes of the State of Baden-Wuerttemberg and the Federal Republic of Germany. The Parties hereby agree to rule out and ban the C.I.S.G. - United Nations Convention on Contracts for the International Sale of Goods.

All disputes arising out of or in connection with such contracts are resolved by the Offenburg District Court which has exclusive jurisdiction and venue.

## **8. Severability & Form of Notices, Periods**

Any demand, consent or other communication given or made pursuant to the contract must be in writing. Such written notice will be taken to be duly given also by Facsimile /Fax or E-Mail.

Any provision of the contract which is ineffective, prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the contract. Where a provision is ineffective, prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the contract.

'Days', used within these terms or in the Parties' agreements means all working days without Saturdays or any legal holiday in the State of Baden-Wuerttemberg.

'Unless otherwise agreed' always means expressly agreed and in writing.