

# General Terms and Conditions of Sale and Delivery of HeidelbergCement AG

These General Terms and Conditions shall apply to all goods and services sold by us. The buyer's general terms and conditions shall not be applicable, even if we do not expressly object.

## I. Conclusion of Contract

Our offers are subject to change without notice. Contracts are deemed concluded when our written confirmation is available, respectively when a dispatch note, bill of delivery or invoice was issued.

## II. Scope of Contract

1. Our products are described in trade descriptions of goods, standards (e. g. DIN EN 197-1), approvals by building authorities and similar documents. These descriptions do not constitute any legal warranties regarding quality or durability. We deliver our products in accordance with the existing German material standards. As far as such standards do not exist, we deliver our products in good quality customary in the trade.
2. All of our products are subject to internal quality control.  
To the extent our products are standardized or subject to approval by building authorities, their quality is controlled by institutions accredited with the building authorities. As proof, the products carry the respective conformity mark (e. g. CE marking).

## III. Delivery

1. We reserve the right to choose the supplying plant respectively the distributing warehouse.
2. If not expressly stipulated in the contract, we have the right to choose the means of transportation and to fully use its loading space.
3. The buyer shall precisely state the final destination (discharge location or place of consumption) and the recipient at the time the order is placed as well as immediately inform us about any changes to the delivery schedule.  
If the buyer does not fulfill these obligations, we shall be released from further delivery commitments. Additionally, we shall have the right to invoice recalculated freight charges or assert a claim for damages. Moreover, in addition to the claim for damages the buyer shall incur a contractual penalty in the amount of Euro 20.00/t, at least Euro 150.00 per load.
4. If not expressly stipulated otherwise in the contract, goods shall be delivered in fully loaded silo trucks. The buyer or the user shall order the goods in silos or sacks in writing or via telephone in a timely manner. In special cases, a delivery schedule shall be determined.
5. We endeavor to meet the agreed delivery date. However, any such promises are not binding unless stipulated otherwise in writing. Two weeks past the agreed delivery date, the buyer may request in writing

delivery within a reasonable period of time. This notice shall put us in default.

6. If delivery is made by vehicles operating on our behalf, the buyer shall ensure that:
  - the discharge location is configured in a way that the vehicles can enter and discharge unobstructed on a good driving surface without delay;
  - at the time of delivery, the storage facilities respectively the silo room is operable and can receive the goods and that authorized staff (for packaged goods also unloading staff and equipment) is available to receive the shipping documents, to direct the vehicle to the stockyard respectively to the silo room to be filled and to sign the bill of delivery.If the buyer fails to fulfill these duties, we shall be entitled to act in our sole discretion, on the buyer's account and at the buyer's risk without the buyer being able to claim damages. Especially, we shall be entitled to not discharge goods transported as well as to invoice freight and/or waiting time.
7. If the buyer or a third party assigned by the buyer collects the goods, the buyer respectively the third party assigned by the buyer shall solely be responsible for the goods' safe and secure loading and transport. Especially, the buyer respectively the third party assigned by the buyer shall solely be responsible for compliance with statutory regulations regarding permissible maximum weight and proper load securing.

## IV. Payment Terms

1. In general, our invoices become due on the date they are issued and payment shall be effected without any deductions within 30 days from the invoice date. Cash discount rates effective on the delivery date shall only be applied if all older outstanding and due invoices are paid.  
Security interests transferred by the buyer and payments made on account of performance do not affect the due dates of our outstanding invoices. We are also not obligated to satisfy any outstanding invoices from the security interests or payments on account of performance in advance before demanding payment of our invoice from the buyer.
2. In the event of a default pursuant to subsection 1, the buyer shall owe statutory interest in the amount due as well as be liable for possible damages.
3. We reserve the right to accept promissory notes and bills of exchange on a case-by-case basis. In general, bills of exchange and checks are only accepted on account of performance. The outstanding invoice shall be deemed paid only after it is irrevocably paid or after unconditional credit of the payment. Discount charges and other costs shall be borne by the buyer. Payments via bank draft or postal giro transfer shall be deemed made when our account has been unconditionally credited.
4. The buyer may only set off a counter-claim if the counter-

claim was expressly acknowledged, is uncontested or has become *res judicata*. The buyer shall not refuse performance until counter-performance is effected if the counter-claim is in dispute.

5. We shall be entitled to demand immediate cash payment for all deliveries if the buyer fails to adhere to the payment terms as well as under circumstances that give rise to serious doubts about the buyer's creditworthiness. An extension of payment possibly inherent in the acceptance of bills of exchange shall become null and void. In exchange for returning the bill of exchange, the buyer shall pay in cash. In these cases, we have the right to withdraw from the contract and claim damages. The buyer shall not assert claims for damages.

## **V. Passing of Risk**

1. If our products are delivered by vehicles operating on our behalf, the risk shall pass with the hand-over at the place of destination.  
In order to secure possible claims against the carrier, the buyer shall be held responsible that a neutral person is establishing the actual situation before the discharge.
2. If our products are picked up by vehicles operating on the buyer's behalf, the risk shall pass at the time the products leave our loading facilities.  
We are neither liable for damages to our products during transport nor for losses. This shall also apply for damages caused by soiled or unsuitable vehicles and transport containers.

## **VI. Duty to Examine and Requirement to Make a Complaint with Respect to Defect, Reference Samples**

1. The buyer shall immediately examine the goods for their conformity with the contract, especially whether there are discrepancies in type, quantity or weight as well as of noticeable defects. After having determined defects, shortage or delivery of the wrong goods, the buyer shall immediately notify us in writing.
2. The notice of defect shall contain precise information as to type of product and type of defect, the number of the bill of delivery, possibly the batch number and the supplying plant/warehouse.
3. Weight discrepancies shall be claimed within 3 days after risk has passed on the basis of an official re-weighting.  
In general, the weight determined at the plant shall prevail. Deviations from the gross weight of packaged goods of up to 2% shall be deemed as irrelevant. The statutory provisions shall be applicable in all other respects.
4. Because the quality of concrete does not solely depend on the cement used but also on the cement's composition, its treatment as well as on external conditions, firm conclusions on the quality of cement at the time the risk passed, may not be drawn from tests performed on concrete test specimen, a finished part or a building.  
In order to secure possible warranty claims the buyer or his customer shall take a sample from every delivery

in accordance with the following guidelines: The sample shall be taken at the time the risk passes, i. e. if delivery is made by vehicles operating on our behalf, immediately after the goods have arrived at the ship-to location and before they are unloaded; if delivery is made by vehicles operating on the buyer's behalf, immediately after the cement has left our loading facilities.

In each case, the sample shall weigh at least 5 kg. In case of loose cement, the sample shall be taken through the vehicle's upper filling opening. In case of packaged cement, the sample shall consist of individual samples of 1 -2 kg, which shall be carefully mixed to obtain an average sample of about 5 kg. The individual samples shall be taken from the middle of at least 5 undamaged sacks. For bigger deliveries, a separate average sample shall be taken for every 250 t. The samples shall be hermetically sealed and stored protected against environmental conditions that influence their quality and shall be labeled with the following information: supplying plant and/or stockyard, date and hour of delivery, type of cement, mechanical strength, additional description of special cement if any, date and hour the sample was taken, place and type of storage as well as the number of the bill of the delivery of the supplying plant. If requested by us, the buyer shall provide us with a sufficient part (at least 2 kg) of the sample taken by him for our own review. If such sample is not available, we shall use our own findings to determine the quality of the cement delivered. Cement samples not taken in compliance with the above stated guidelines cannot be allowed because it cannot be excluded that the cement's technical characteristics have changed after the risk passed, e. g. due to contamination, mixing, improper or too long storage.

Additional costs for other evidence shall be borne by the buyer even if the notice of defect is justified.

5. In the interest of the buyer and for the review of the quality of other products a representative sample shall also be taken from products other than cement. If requested by us, the buyer shall provide us with a sufficient part of the samples taken by him for our own review. If such samples are not available, we shall use our own findings to determine the quality of the products delivered.
6. When reviewing samples, the German material standards shall apply, in as far as they exist.
7. The buyer may not process goods that are subject of a complaint or recognized as defective. If this obligation is not fulfilled, we shall not be liable for damages.

## **VII. Warranty**

1. If the notice of defect is justified and given in due time, the buyer may demand delivery of goods free of defects. The buyer may only claim failure of subsequent delivery if two further replacement deliveries were defective and more than one week has passed since notice of defect was given.
2. Furthermore, we are not liable for slight negligent violation of minor contractual obligations, except for damages resulting from injury to life, body or health.

The liability in cases of slight negligent violation of essential contractual obligations as well as intentional or gross negligent violation of contractual obligations by vicarious agents shall be limited to the amount of foreseeable typical average damages. Any liability for pecuniary loss shall be excluded.

3. With the exception of the claims described in Art. 478 BGB (German Civil Code) and claims for damages arising from injury to life, body or health or from the intentional or gross negligent violation of contractual obligations or slight negligent violation of essential contractual obligations, all claims of the buyer based on delivery of defect goods become statute-barred two years after the risk passed.

### VIII. Liability for Secondary Obligations

Our application-specific advice is free of charge and to the best of our staff's knowledge. All data and information have no binding force and do not discharge the buyer from the obligation to perform his own examinations and tests. The provisions of clause VII.2 shall also apply with respect to any liability in relation to the advice given by us. The buyer shall comply with all statutory and official regulations when using our products.

### IX. Force Majeure

If we are not able to fulfill our obligations due to events amounting to force majeure irrespective of whether they occur on our side or on our pre-suppliers', the delivery time shall be extended by the duration of the hindrance plus a reasonable start-up period. The following events shall also be deemed to be force majeure: Traffic obstructions, operational breakdowns, delays in delivery of raw materials, strike, lock-out or other circumstances that we could neither foresee nor avert even while employing the same diligence as in our own affairs. If delivery is impossible, we shall be exempted from the delivery duty. We shall inform the buyer and return payments already rendered without undue delay. The buyer may demand a notification whether we will withdraw from the contract or deliver within a reasonable period of time. If we do not provide a notification, the buyer may in this regard withdraw from the contract. As far as permissible by law, other claims are excluded.

### X. Retention of Title

1. All of our products are delivered subject to retention of title. Therefore, we retain title to the goods sold until all outstanding bills arising from the business relationship with the buyer are paid in full. This applies also if the purchase price of specific goods delivered is paid. The buyer has the right to sell the goods subject to the retention of title in the ordinary course of business, provided that he and his customer have agreed on retention of title and that claims arising from the resale are transferred to us in accordance with clause X. 4. set forth below. The buyer may neither pledge nor transfer by way of security the goods subject to retention of title.
2. The goods subject to retention of title may be treated or processed for us as the manufacturer in accordance with Art. 950 BGB but without any obligation on our part deriving therefrom. The new goods shall be presumed

subject to retention of title pursuant to clause X. 1.

3. By processing, combining or mixing goods subject to retention of title with other goods, we shall become co-owner of this new product in proportion of the invoice amount of the goods subject to retention of title to the invoice amount of the other goods used. If the title expires due to combining or mixing, the buyer shall immediately transfer his title to the new stock or goods in the invoice amount of the goods subject to retention of title. He shall safeguard the title for us with the usual care in the ordinary course of commercial business. The joint ownership rights resulting therefrom shall be deemed as goods in which title is retained pursuant to clause X.1.

If requested by us, the buyer shall inform the purchaser of the goods subject to retention of title or of the newly produced goods of our ownership rights.

4. In order to secure all, even future, claims, the buyer shall assign all claims including all accessory rights in connection with the resale to us effective immediately, irrespective of whether he sells the goods subject to retention of title untreated, treated, processed or together with other goods. If they are sold together with goods not owned by us, the assignment shall only be valid up to the value of the goods subject to retention of title, which is calculated based on our selling prices.
5. The buyer is authorized to collect debts from the resale, but our right to collect debts shall not be affected by this. As long as the buyer fulfills his payment obligations, we ourselves will not assert any claims. If requested by us, the buyer shall indicate to us the third party debtors and inform them of the assignment of claims. Our right to notify the third party debtors of the assignment ourselves shall not be affected. The buyer shall reimburse us for the costs for such notifications. The buyer shall neither assign claims against third party debtors to a third party nor invoke objections arising from a possibly existing prohibition of assignment of claims nor agree with the third party debtor on a prohibition of assignment of claims.
6. The buyer shall be obligated to immediately notify us of any seizure or any other interference with our security interest by third parties. The buyer shall surrender all documents necessary to intervene and shall bear all intervention costs we are charged with.
7. If the market value of the existing securities exceeds the claim to be secured by 20 %, we shall release a corresponding part of the securities as chosen by us.

### XI. Price Setting and Reimbursement of Freight Costs for Cement

1. The prices (carriage paid) effective on the day of delivery plus VAT shall be applicable. If the buyer after having entered into the agreement advances freight charges, he shall be reimbursed for freight costs as notified by us. Prices and freight costs depend on the indicated place of consumption. We have the right to prescribe maximum freight charges.
2. Unless otherwise agreed, the prices are calculated as follows:
  - a) for deliveries of packaged cement via truck, freight prepaid to discharge location; for loose cement freight

prepaid pumped into silo at place of consumption;  
b) for delivery via train, freight prepaid railway cars to train station closest to place of destination.

3. Irrespective of the calculation of freight charges, a reasonable surcharge may be added for deliveries where the carrying capacity of the respective means of transportation was not fully used. Special transport costs shall be borne by the buyer.

## **XII. Price Setting and Reimbursement of Freight Costs for Other Products**

1. The prices effective on the day of delivery plus VAT shall be deemed agreed upon.
2. If not otherwise agreed upon, the prices are ex works. In as far as delivery free of freight charges was agreed upon, we deliver:
  - a) in the event of delivery of packaged goods via truck, freight paid to discharge location;
  - b) in the event of delivery via train, freight paid railway wagon to train station closest to place of destination;
  - c) in the event of silo goods, freight paid and pumped at place of consumption.
3. Deliveries are made by order of the recipient. If the buyer after having entered into the agreement advances freight charges, he shall be reimbursed for the freight costs as per freight charges set by us. We shall be entitled to prescribe maximum freight charges.
4. Irrespective of the calculation of freight charges, a reasonable surcharge may be charged in the event the carrying capacity of the means of transportation was not fully used for the relevant delivery. Special transport costs shall be borne by the buyer.

## **XIII. Compliance with legal requirements**

Unless specifically agreed otherwise, the buyer is responsible for compliance with all laws and regulations regarding import, transport, storage and use of the goods.

## **XIV. Place of Performance, Jurisdiction, Applicable Law, Data Protection and binding version of General Terms and Conditions**

1. Place of fulfillment for the handover of the goods sold shall be our supplying plant or our distributing warehouse. Place of fulfillment of all other rights and liabilities of the contract parties shall be Heidelberg.
2. The local courts of Heidelberg shall have jurisdiction over legal disputes concerning the purchase price of the goods as well as over legal disputes arising from bills of exchange or checks, provided that the contract party is a registered merchant, a public law entity or a special fund under public law. The courts with jurisdiction over the location of our headquarters or, if chosen by us, the courts having jurisdiction over the location of the supplying plant shall be the venue for all other legal disputes arising from the sales and delivery contract.
3. Solely the laws of the Federal Republic of Germany shall apply without giving effect to the United Nation Convention for the International Sale of Goods.
4. We point out to the buyer that personal data requested by us (name, address and invoice data) might be saved, processed and transferred to credit reporting

agencies in accordance with the legal requirements (particularly Art. 27 - Art. 32 BDSG (German Federal Data Protection Law)). In connection therewith, and if necessary, we will provide the credit reporting agencies with information regarding the fulfillment or non-fulfillment of the contractual obligations by the purchaser.

5. These General Terms and Conditions are executed in both the German and the English language. Unless otherwise expressly agreed in writing, the English version of these General Terms and Conditions shall serve for information purposes only. In the event of any inconsistency between the German and English version, the German version shall prevail.

## **XV. 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) in the current version applies to the goods supplied, buyer agrees to download the relevant safety data sheet on our website at <http://www.heidelbergcement.com/de/de/country/zement/index.htm>.

## **XVI. Severability Clause**

Should individual provisions of these General Terms and Conditions become invalid, the validity of the remaining provisions of the contract shall not be affected.

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