



**General terms and conditions for the sale of cement and masonry binders  
(as at 30 October 2013)**

**1. General, scope**

- 1.1. These general terms and conditions are applicable to all sales and services (hereinafter "General Terms and Conditions") that we provide to our clients (hereinafter "Buyer"). They only apply to Buyers which are an enterprise (Section 14 German Civil Code (BGB)), a legal entity under public law or a special fund regulated under public law.
- 1.2. These General Terms and Conditions specifically apply to contracts for the sale and/or supply of moveable property (hereinafter also "Goods"), regardless of whether we have manufactured the Goods ourselves or have bought them from suppliers (Sections 433, 651 BGB).
- 1.3. Our General Terms and Conditions apply exclusively. General terms and conditions of the Buyer which differ from, conflict with or supplement these General Terms and Conditions only form part of the contract if and to the extent that we have expressly consented to them. This requirement of consent applies in all events, including, for example, if we, being aware of the execute delivery to it without reservation in the knowledge of the Buyer's general terms and conditions.
- 1.4. These General Terms and Conditions also apply in the version valid from time to time as a framework agreement for future contracts with the same Buyer for the sale and/or delivery of moveable property, without any requirement on our part to refer to them again in each individual case; we will promptly inform the Buyer about any changes to our General Terms and Conditions in such case.
- 1.5. Individual agreements reached in individual cases with the Buyer (including ancillary agreements, supplements and amendments) take precedence over these General Terms and Conditions in all cases. The contents of any such agreements must be governed by a written contract and/or our written confirmation.
- 1.6. Legally relevant declarations and notifications which the Buyer is required to submit to us after conclusion of the contract (e.g. giving of grace periods, notifications of defects, declarations of cancellation or reduction) are only valid if made in writing.

**2. Offer/conclusion of contract**

- 2.1. Our offers are free of charge and non-binding. This also applies where we have supplied the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, costings and references to DIN standards) or other documents (including in electronic form) to which we reserve the ownership rights and copyrights.
- 2.2. An order placed by the Buyer for Goods constitutes a binding offer of contract. Unless otherwise stated in the order, we are entitled to accept said offer of contract within two weeks of receipt thereof. Acceptance of offers from the Buyer can either be in writing (e.g. by an order confirmation) or by dispatch advice, delivery of the goods to the Buyer or dispatch of the invoice.
- 2.3. The Buyer's orders must state the intended delivery place and the recipient.

### 3. Object of the agreement

- 3.1. Our Goods are described in our technical information sheets and other product documentation, and reference is usually made to the relevant German or European standards and construction approvals. Reference to these descriptions does not constitute a guarantee of quality or durability.
- 3.2. Our Goods are continually monitored (in-house and externally) in compliance with the aforementioned standards. External monitoring is conducted by the Research Institute of the Cement Industry (Forschungsinstitut der Zementindustrie). As a member of the German Cement Works Association (Verein Deutscher Zementwerke), we also use the quality label of the goods supervisory association.

### 4. Delivery and delivery times

- 4.1. Buyers may collect their orders during the applicable loading times; vehicles will be loaded in the order in which they arrive. We accept no liability for loss due to waiting times.
- 4.2. When collecting the Goods, the Buyer must ensure that the Goods are loaded and secured correctly and in compliance with the regulations. When collecting, the Buyer bears sole responsibility for ensuring that the Goods are loaded safely and releases us from all liability. This also applies if our employees are used to help with the collection. If we deem the loading to be unsafe, we are entitled to instruct the Buyer or the person collecting the Goods to take the measures we deem necessary to ensure safe loading.
- 4.3. If we are delivering the Goods, delivery will be in vehicles operating on our behalf, unless otherwise agreed when concluding the contract.
- 4.4. When we are delivering the Goods, the Buyer must also ensure that
  - 4.4.1. the access road is unobstructed, adequately surfaced and suitable for 40 t lorries;
  - 4.4.2. the Goods are unloaded immediately without jeopardising the vehicle and the silo is ready to accept the delivery;
  - 4.4.3. upon delivery of silo cement, a suitably authorised person is available to receive the weight ticket, check the integrity of the seals and specify the silo to be filled. If these conditions are not met or if, in our opinion or the opinion of the delivery company, the Goods cannot be delivered, we are entitled to calculate the standard freight costs for travelling to and from the site and withdraw from the contract in accordance with the statutory provisions. If delivery is only delayed, we are entitled to charge for waiting time.

If these conditions are not met, the Buyer is liable for all resulting loss or damage, regardless of the question of fault. We assume that the persons signing the delivery note are authorised to accept delivery of the Goods and confirm receipt; we also assume that signature of the delivery note implies acknowledgement of our delivery list.

- 4.5. If acceptance of delivery is refused, late, delayed or otherwise improper, the Buyer must compensate us, irrespective of its obligation to pay the purchase price, unless it is not responsible for the refusal, lateness, delay or other impropriety of acceptance of delivery;

in the above case, a Buyer collecting the Goods from our facilities is liable, regardless of the question of fault. Where there is more than one Buyer, all Buyers are joint and severally liable for due acceptance of the Goods and payment of the purchase price. All sales and services that we provide to any of such Buyers apply to all of them. All the Buyers authorise each other to accept our legally binding declarations with regard to all matters relating to sales and services.

- 4.6. The Buyer must specify the place of consumption and the recipient, and at our request must provide proof thereof and details of any changes to the delivery schedule. If delivery is made to a storage facility, its location is deemed to be the place of consumption. The Buyer may not move the Goods to another area or have them taken to a location different from the stated location. Any breach of the duties incumbent on the Buyer entitles us to withdraw from the contract, without setting a grace period, and to exercise all other legal rights.
- 4.7. The delivery deadline will be individually agreed or notified by us when the order is accepted. If such deadline is not expressly stated as binding, it is only an approximate agreement. We are only deemed to have defaulted on delivery if the Buyer has issued a warning.
- 4.8. If we cannot comply with a delivery deadline for reasons beyond our control (non-availability of service), we will immediately inform the Buyer thereof and communicate a new, prospective delivery deadline at the same time. If the service is not available by the new delivery deadline, we are entitled, in whole or in part, to cancel the contract; we will immediately reimburse any remuneration already provided by the Buyer. Non-availability of service includes, in particular, delayed inward delivery to ourselves by our supplier, if we have concluded a congruent cover transaction, neither we nor our supplier is at fault or, in specific cases, we are not liable for procurement.
- 4.9. The Buyer's rights pursuant to Clause no. 9 (Other liability) of these General Terms and Conditions and our legal rights, in particular where our performance obligation has been suspended (e.g. performance and/or remedy of the defects is impossible or unreasonable) remain unaffected.

## **5. Transfer of risk, acceptance of delivery and delay in acceptance**

- 5.1. Unless otherwise stipulated in the order confirmation, delivery is "ex works", which is also the place of performance.
- 5.2. If, at the request of the Buyer, the Goods are delivered to a place other than the place of performance ("Sale by delivery"), we are entitled to specify the type of shipment (in particular, carrier, route, packaging).
- 5.3. The risk of accidental destruction and accidental deterioration of the Goods passes to the Buyer upon delivery at the latest. However, with a Sale by delivery to a place other than the place of performance, the risk of accidental destruction and accidental deterioration of the Goods and the risk of delay pass to the carrier, forwarder or other person or organisation tasked with carriage of the Goods as soon as the Goods have been handed over. Once acceptance of delivery has been agreed, the risk is transferred. In all other respects, the statutory provisions of the law on contracts for services apply accordingly to an agreed acceptance. The same applies to handover and/or acceptance if the Buyer does not accept the Goods on time.

- 5.4. When loading loose cement, the driver of the transport vehicle or other agent of the Buyer acts on behalf of the Buyer. The Buyer bears liability, by virtue of these people, for complying with the loading regulations.
- 5.5. If the Buyer is late in accepting the Goods, fails to provide an act of assistance or if our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to request compensation for the loss or damage arising therefrom, including additional expenses (e.g. storage costs).
- 5.6. This does not affect proof of higher loss or damage or our statutory claims (particularly the reimbursement of additional expenditure, appropriate compensation, termination); however, any additional monetary claims must be offset against the flat rate. The Buyer is entitled to prove that we incurred no loss or damage whatsoever or incurred less loss or damage than the aforementioned flat rate.

## 6. Retention of title

- 6.1. We reserve title of ownership of the Goods sold until complete payment of all our present and future claims under the purchase contract and under the ongoing business relationship (secured claims).
- 6.2. Prior to complete payment of the secured claims, the Goods subject to retention of title can neither be pledged nor assigned by way of security to third parties. The Buyer must inform us immediately in writing if and insofar as any third party executes attachment of the Goods belonging to us.
- 6.3. In the case of conduct by the Buyer in breach of contract, in particular non-payment of the due purchase price, we are entitled to cancel the contract according to the statutory regulations and/or to request restitution of the Goods on the grounds of retention of title. A request for restitution of the goods does not imply notice of withdrawal; we are entitled to solely claim restitution of the Goods and to reserve the right of withdrawal. If the Buyer fails to pay the due purchase price, we may only assert these rights if we have previously granted the Buyer a reasonable grace period for payment that it has failed to meet or if the statutory provisions do not require such a grace period to be set.
- 6.4. The Buyer is authorised to sell and/or to process the Goods which are subject to retention of title in the proper course of business. In such case, the following provisions also apply.
  - 6.4.1. Retention of title extends to the full value of any and all products resulting from the processing, mixing or combining of our Goods, for which we are deemed to be the manufacturer. If, when processed, mixed or combined with products of a third party, such party's right of retention continues to exist, we acquire co-ownership proportionate to the invoice values of the processed, mixed or combined products. Furthermore, the same applies to the resulting product as to the Goods which are supplied with retention of title.
  - 6.4.2. The Buyer hereby assigns to us as collateral all claims arising against third parties from the resale of the Goods or the product, in total or in the amount of any co-ownership share we hold in accordance with the previous clause. We accept such

assignment. The obligations of the Buyer stated in Clause 7.2 also apply to the assigned claims.

6.4.3. Both we and the Buyer are authorised to collect any claims. We undertake not to collect the claims provided that the Buyer fulfils its payment obligations to us and does not fall into arrears, and provided that no request for commencement of bankruptcy proceedings has been filed and no other deficiency in the Buyer's performance arises. However, if any such circumstances arise, we can ask the Buyer to inform us about the assigned claims and their debtors, to provide all data needed for their collection, to hand over the relative documentation and to inform the debtors (third parties) about the assignment.

6.4.4. If the realisable value of the collateral exceeds our claims by more than 10%, we will release collateral of our choice upon the Buyer's request.

## **7. Prices and payment terms/SEPA direct debits**

- 7.1. Unless otherwise agreed in specific cases, our prices are those applicable upon conclusion of the contract, ex works plus VAT at the rate in force.
- 7.2. In the case of Sale by delivery to a place other than the place of performance (Clause 5.2), the Buyer pays the transport costs ex works and the cost of any transport insurance it has requested. The Buyer bears the costs of any duties, fees, taxes and other public charges. We will not take back transport and other packaging material; this becomes the property of the Buyer, with the exception of pallets.
- 7.3. Our invoices are immediately payable and must be paid within 14 days of the invoice date at the latest, without deductions. Any exceptions must be agreed in writing.
- 7.4. Upon expiry of the payment deadline, the Buyer is in default. During the period of default, interest must be paid on the purchase price at the respective statutory default interest rate. We reserve the right to claim additional compensation for loss or damage caused by delay. This is without prejudice to our claim for commercial default interest ("kaufmännischer Fälligkeitsszins", Section 353 HGB (German Commercial Code)).
- 7.5. The Buyer is only entitled to exercise any rights of set-off or retention to the extent that its claim is not disputed or has been legally established. This does not affect the Buyer's rights in the event of defects in the Goods delivered to retain an amount of the purchase price commensurate with the defect.
- 7.6. If, after conclusion of the contract, it becomes apparent that our claim for payment of the purchase price is jeopardised by the Buyer's inability to pay (e.g. by an application for commencement of insolvency proceedings), we are entitled in accordance with statutory provisions to refuse performance and – if necessary after giving a grace period – to withdraw from the contract (Section 321 BGB). In the case of contracts for the manufacture of custom items (made to specification), we can withdraw immediately; this is without prejudice to the statutory regulations concerning the dispensability of giving a grace period.
- 7.7. Where accounts with the Buyer are settled via SEPA Direct Debit (SDD B2B or SDD Core), the Buyer is required to issue us with an appropriate mandate. Unless otherwise agreed, direct debits will be collected ten days after the invoice date.

7.7.1. Forthcoming direct debits will usually be notified at the time of invoicing. Pre-notification is reduced to one day.

7.7.2. The Buyer warrants that its account has sufficient cover. The Buyer is liable for costs that we incur due to non-payment or reverse bookings of direct debits, unless the non-payment or reverse booking was caused by us. The Buyer's duty to ensure sufficient cover on its account continues even if, in individual cases, it does not receive pre-notification or does not receive it on time.

7.8. We are entitled to ask for prepayment in respect of individual buyers and contracts, without having to state reasons.

## **8. Buyer's claims arising from defects**

8.1. Unless otherwise provided in the following, the statutory provisions apply to the Buyer's rights in the event of material defects and defects in title (including incorrect and short deliveries, incorrect assembly or deficient assembly instructions). In all cases, this is without prejudice to the specific statutory provisions on final delivery of the Goods to the consumer (supplier's recourse according to Sections 478, 479 BGB).

8.2. The primary basis of our liability for defects is the agreement made concerning the specifications of the Goods. All product descriptions governed by the individual contract are deemed to be an agreement concerning the specification of the Goods.

8.3. In the absence of any agreed specifications, the existence or absence of defects is determined in accordance with statutory provisions (Section 434 para. 1, clauses 2 and 3 BGB). However, we accept no liability for any public statements by the manufacturer or other third parties (e.g. advertising messages).

8.4. The Buyer may submit claims in the case of defects provided that the Buyer has satisfied its statutory obligations on inspection and reporting of defects (Sections 377, 381 HGB) Any defect discovered during or after examination must be notified to us in writing without delay. Notwithstanding this obligation of inspection and reporting of defects, the Buyer must notify obvious defects (including incorrect and short delivery) in writing within two weeks of delivery; the deadline is deemed to have been observed if the notification is sent in time. If the Buyer fails to properly carry out the standard examination and/or report defects, we accept no liability for defects not notified.

8.5. Firm conclusions about the specifications of the Goods at the time of risk transfer may not be drawn from tests performed on concrete test specimens, finished parts or buildings. For every delivery of more than 500 kg, the Buyer must therefore take a test specimen immediately after receipt according to the following rules:

8.5.1. The test specimen taken for loose cement must be at least 5 kg. The test specimen for packed cement must comprise partial specimens of 1-2 kg, which must be mixed together to form an average specimen of at least 5 kg; the partial specimens must be taken from the middle of the contents of at least five sacks that have not yet been opened.

8.5.2. The specimens must be sealed in an airtight container with details of the day and time of delivery, article, supply plant, day and time the specimen was collected,

article, strength class of the cement type, strength class or additional description for special cement, day and time the specimen was collected, place and type of storage and the number of the supply plant delivery note. Specimens not collected according to the above rules will not be accepted. In such a case, the specimen results of the supply plant apply.

- 8.5.3. Cement specimens that do not meet the above rules will not be accepted because it cannot be ruled out that the cement's technical characteristics have changed since the transfer of risk. In the case of complaints, at our request the Buyer must give us at least 2 kg of the specimen to enable us to conduct our own tests.
- 8.6. If the Goods delivered are defective, we may initially choose whether we subsequently fulfil our performance obligation by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery). This is without prejudice to our right to refuse to remedy the defects under the statutory conditions.
- 8.7. We are entitled to make subsequent fulfilment of our performance obligation conditional upon the Buyer paying the purchase price due. However, the Buyer is entitled to retain an amount of the purchase price commensurate with the defect.
- 8.8. The Buyer must grant us the necessary time and opportunity to subsequently fulfil our performance obligation and in particular must submit the contested Goods for inspection purposes. In the event of replacement delivery, the Buyer must return the defective item to us in accordance with the statutory regulations. Subsequent fulfilment of our performance obligations includes neither disassembling the defective item nor reassembling it, if we were originally under no obligation to assemble it.
- 8.9. If the Goods are defective, we will bear the expenses for examination and subsequent fulfilment of our performance obligation, in particular the transport, travel, work and material costs (not disassembly and assembly costs). However, if the Buyer's request for remedy of a defect proves to be unjustified, we can ask the Buyer to reimburse the costs incurred.
- 8.10. In urgent cases, e.g. if operating safety is jeopardised or to avert disproportionate loss or damage, the Buyer is entitled to remedy the defect itself and to demand reimbursement from us of the expenses incurred, which must be objectively necessary. The Buyer must inform us immediately if it remedies the defect itself, if possible beforehand. The Buyer is not entitled to remedy defects itself if we would be entitled to refuse the relevant remedial work in accordance with the statutory regulations.
- 8.11. If we are unable to subsequently fulfil our performance obligation or a reasonable deadline set by the Buyer for subsequent performance expires without success or is not required by the statutory regulations, the Buyer can cancel the purchase contract or reduce the purchase price. However, the Buyer has no right of cancellation if the defect is insignificant.
- 8.12. The Buyer may only claim for damages or compensation for wasted expenses in accordance with Clause 7; claims are otherwise excluded.

## 9. Other liability

- 9.1. Unless otherwise provided in these General Terms and Conditions, including the following stipulations, we are liable, in accordance with the applicable statutory provisions, for any breach of contractual or non-contractual obligations.
- 9.2. We are liable for damages – no matter what the legal grounds – in the event of wilful intent and gross negligence. In cases of minor negligence, we are only liable for:
  - 9.2.1. loss or damage resulting from death, physical injury or harm to human health,
  - 9.2.2. loss or damage resulting from the breach of a material contractual duty (obligation without whose fulfilment the contract cannot be properly executed and on whose fulfilment the contractual partner regularly relies and may rely); in this case, however, our liability is limited to the reimbursement of foreseeable, typical loss or damage.
- 9.3. The liability restrictions arising from Clause 9.2 do not apply if we have maliciously failed to disclose a defect or have assumed a guarantee for the specifications of the Goods. The same applies to the Buyer's claims under the German Product Liability Act (Produkthaftungsgesetz).
- 9.4. The Buyer can only withdraw or terminate because of a breach of an obligation which is not a defect if we are responsible for breaching the obligation. The Buyer's free right of termination (in particular according to Sections 651, 649 BGB) is excluded. In all other respects, the statutory conditions and consequences apply.

## **10. Time limitations on claims**

- 10.1. Notwithstanding Section 438 para. 1 no. 3 BGB, the general limitation period for claims against material defects and defects of title expires one year after delivery. If acceptance has been agreed, the limitation period begins upon acceptance.
- 10.2. However, if the Goods are a building or an object which has been used for a building in accordance with standard usage and caused the building's defectiveness (construction material), the limitation period under the statutory regulations is five years from delivery (Section 438 para. 1 no. 2 BGB). This is without prejudice to the statutory special regulations governing third parties' claims for return based upon a property right (Section 438 para. 1 no. 1 BGB), fraudulent intent by us as Seller (Section 438 para. 3 BGB) and recourse against suppliers in the event of final delivery to a consumer (Section 479 BGB).
- 10.3. The above-mentioned limitation periods also apply to the Buyer's contractual and non-contractual claims for damages based on defective goods, unless use of the standard legal limitation period (Sections 195, 199 BGB) results in a shorter limitation period in individual cases. This is without prejudice to the limitation periods of the Product Liability Act in all cases. Otherwise, all claims by the Buyer for damages under Clause 9 of these General Terms and Conditions are exclusively subject to the statutory limitation periods.

## **11. Place of fulfilment and jurisdiction/data processing**

- 11.1. These General Terms and Conditions and all legal relationships between us and the Buyer are governed by the law of the Federal Republic of Germany, to the exclusion of international commercial law and in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG). The prerequisites for and effects of the retention of title pursuant to Clause 7 are subject to the law of the respective place where the item is stored if, under said law, the choice of German law is not permitted or is void.





11.2. The place of jurisdiction for all legal disputes arising from the contractual relationship and its existence and effectiveness is Hamburg, which we have also chosen as the registered office of our delivery plant.

11.3. When we collect, process and use personal data that is required for processing contracts and advising the Buyer, we observe the rules laid down in data protection law.

**12. Safety sheet pursuant to REACH Regulation**

If Regulation (EC) no. 1907/2006 of the European Parliament and the European Council of 18 December 2006 (REACH Regulation) in its respective current version applies to the Goods, the Buyer agrees to download the respective safety sheets from our website, as detailed below: <http://www.holcim.de/sicherheitsdatenblaetter.html>