

General Terms of Delivery and Payment

I. Conclusion of contract and delivery and Force Majeure

1. Our quotations are non-binding. The purchase contract is concluded by our written order confirmation.
2. The contract is concluded subject to proper and timely delivery to ourselves by our suppliers. This shall only apply in the event that we are not responsible for the non-delivery, especially in the event that a corresponding hedging transaction has been concluded with our supplier. We reserve the right to deliver goods equivalent in terms of price and quality. The buyer shall be immediately informed if the goods ordered are not available. The amount paid shall be refunded immediately.
3. All prices shall be understood as free truck ex works or quarry, ex railroad station or ship-loading site nearest to the quarry, plus value-added tax. Place of performance and execution shall be the seller's registered office.
4. Pursuant to section 15 (1) sentence 1 of the German Packaging Act, manufacturers and distributors of, among other things, transport packaging (no. 1), sales and secondary packaging that does not typically accumulate as waste with private final consumers after use (no. 2), sales and secondary packaging for which system participation is not possible due to system incompatibility pursuant to section 7 (5) of the Packaging Act (no. 3), sales packaging containing hazardous substances (No. 4) or reusable packaging (No. 5) shall be obliged to take back, free of charge, used, empty packaging of the same type, shape and size as the packaging they have placed on the market at the place of actual delivery or in the immediate vicinity thereof, in order to reuse or recycle it. Unless otherwise agreed in individual cases, the ordering party shall assume the take-back obligations of Stephan Schmidt Group in the supply relationship between the parties in accordance with Section 15 of the German Packaging Act and shall ensure that the packaging is taken back and properly and professionally recycled. Upon request, Stephan Schmidt Group must be provided with information about the take-back and the professional and proper recycling of the packaging and suitable evidence of this must be submitted. The costs incurred for taking back and recycling shall be borne by the customer.
5. The risks of accidental destruction and accidental deterioration of the goods shall be passed on to the buyer upon handover, in the case of sale by delivery to a place other than the place of performance, upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. Delivery shall be deemed to have taken place if the Buyer is in default of acceptance. For the invoicing of the goods, the weight determined at the loading station by the weighing machine of the quarry or by the railway shall be used; if delivery is taking place by ship, the registered survey shall be used.
6. "Force Majeure" means the occurrence of an event or circumstance which prevents a party from performing one or more of its obligations under the Contract if and to the extent that the party affected by the hindrance proves that: (a) such impediment is beyond its reasonable control; and (b) it was not reasonably foreseeable at the time of entering into the Contract; and (c) the effects of the impediment could not reasonably have been avoided or overcome by the affected party.

In the absence of proof to the contrary, the following events affecting a Party shall be presumed to meet the requirements under paragraph 5 lit. (a) and lit. (b) of this clause: (i) war (declared or undeclared), hostilities, attack, acts of foreign enemies, large-scale military mobilization; (ii) civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy; (iii) monetary and trade restrictions, embargo, sanctions; (iv) lawful or unlawful official acts (e.g., gas power reduction or gas shutdown in the event of a government emergency plan), compliance with laws or government orders, expropriation, seizure of works, requisition, nationalization; (v) plague, pandemic (e.g. COVID-19 pandemic), epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged failure of transportation, telecommunications, information systems or power; (vii) general labour unrest such as boycotts, strikes and lockouts, slowdowns, occupation of factories and buildings.

A party successfully invoking this clause shall be released from its obligation to perform its contractual obligations and from any liability for damages or any other contractual remedy for breach of contract from the time when the impediment makes it impossible for it to perform; provided that this is notified without delay. If the notice is not given without delay, the release shall take effect from the time the notice reaches the other party. If the effect of the asserted impediment or event is temporary, the consequences just set forth shall apply only for so long as the asserted impediment prevents performance of the contract by the affected party. If the duration of the asserted impediment has the effect of substantially depriving the parties of that which they had a right to expect by virtue of the contract, either party shall have the right to terminate the contract by giving notice to the other party within a reasonable period of time. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the hindrance exceeds 120 days.

In cases of force majeure, the contracting party affected thereby shall be released from the obligation to deliver or accept for the duration and to the extent of the effect. Force majeure shall be any event beyond the control of the respective contracting party as a result of which it is prevented in whole or in part from fulfilling its obligations, including pandemics, epidemics, fire damage, floods, strikes and lawful lockouts as well as operational disruptions or official decrees for which it is not responsible. Supply difficulties and other performance disruptions on the part of our upstream suppliers shall only be deemed to be force majeure if the upstream supplier, for its part, is prevented from providing the service incumbent upon it as a result of an event pursuant to sentence 1 above.

The affected contracting party shall immediately notify the other contracting party of the occurrence and cessation of the force majeure and shall use its best efforts to remedy the force majeure and to limit its effects as far as possible.

The Contracting Parties shall, upon the occurrence of Force Majeure, agree on the further course of action and determine whether, upon its cessation, the Products not delivered during such period shall be subsequently delivered. Notwithstanding the foregoing, either Party shall be entitled to withdraw from the orders affected thereby if the Force Majeure continues for more than 12 weeks from the agreed delivery date. The right of each contracting party to terminate the contract for good cause in the event of force majeure lasting for a longer period shall remain unaffected.

II. Payment

1. Should the buyer fail to pay within thirty days of the invoice date, he shall be considered to be in default, even without a dunning letter being sent. An interest rate of 8 % above the base lending rate shall be charged on monetary debts. We reserve the right to prove that greater default damages exist and to press claims accordingly.
2. Checks and bank drafts shall be accepted only on account of performance; the buyer shall bear all costs associated with the collection.
3. The buyer shall only have the right to offset amounts if his counter-claims have been confirmed in a court of law or have been acknowledged by us in writing.

III. Warranty

1. Our deliveries are carried out in accordance with the specific production information (data sheets) issued in each case, or with technical delivery conditions that have been agreed to in writing.
2. If a product is defective, we reserve the right to fulfil the warranty by delivering substitute goods. Supplementary performance does not involve the disassembly of the defective product, nor its reassembly, nor the payment of the costs for disassembly and reassembly if we were not originally obliged to carry out the assembly.
3. Should the delivery of substitute goods fail, the buyer may, at his discretion, demand a reduction of the remuneration (abatement) or rescission of the contract (withdrawal). However, in the event of only a minor breach of contract, in particular in the event of only minor defects, the Buyer shall not be entitled to rescind the contract.

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4. The buyer shall inspect the delivered goods immediately upon receipt and shall inform us immediately in writing of any obvious defects; otherwise the assertion of the warranty claim shall be excluded. Timely dispatch shall be sufficient to meet the deadline. The buyer shall bear the full burden of proof for all claim prerequisites, in particular for the defect itself, for the time of discovery of the defect and for the timeliness of the notice of defect.
 5. Weight loss during transport caused by drying of the goods or any other losses shall not justify warranty claims.
 6. Should the buyer, after a replacement delivery has failed, choose to withdraw from the contract, the buyer shall not be entitled to any additional damages based on the defectiveness of the goods. Should the buyer, after a replacement delivery has failed, choose to receive damages payments, the goods shall remain in the possession of the buyer, where this is reasonable.
 7. The warranty period shall be one year, beginning with the delivery of the goods. This shall not apply if the buyer has not punctually informed us of the defect and thus is not entitled to warranty claims (see Section 4).
 8. Each partial delivery shall be considered to be a concluded transaction. In this case, the buyer shall only be entitled to cancellation of the contract if he is able to prove that there was no commercial reason for said partial delivery.
2. The buyer shall be entitled to process the goods within the scope of his properly performed commercial operations. Should the ownership title change hands due to processing, mixing and/or blending, we shall receive co-ownership rights to the new item in proportion to the value of our goods to other goods.
 3. As long as reservation of title is in effect, the sale of the goods, pledging of the goods as collateral, transfer of ownership by way of security, lease or any other transfer or change to the goods which would have a negative effect on the seller's security shall only be permitted if the seller has given his consent previously in writing.
 4. Should our goods be re-sold, the buyer hereby transfers the full amount of all receivables and claims against third parties, which have arisen due to the re-sale or due to any other legal action, as security for the purchase price claim to which we are still entitled. Should the value of the receivables transferred to us as security exceed the purchase price by more than 20% in total, we shall be obliged to reassign the claim at the buyer's request.
 5. At our request, the buyer shall be obliged to inform his customers of the transfer of receivables. Despite the transfer, the buyer shall be authorized to perform collection. Our right to perform collection shall not be affected by this authorization. We shall, however, not collect the receivables ourselves as long as the buyer properly fulfils his payment obligations.
 6. In the event of breach of contract by the buyer, including but not limited to payment default or breach of an obligation set forth in this section, we shall be authorized to cancel the contract and to demand the return of the goods. No right of retention shall apply where this claim of return of goods exists.
 7. The buyer shall inform us immediately in writing of any seizure by third parties to our property or to the receivables and claims that have been transferred to us, including but not limited to distraint measures, confiscations, or any damage caused to our property.

IV. Limitations to liability

1. We shall be liable for breaches in contract caused by slight negligence on our part and for the slight negligence of our legal representatives and vicarious agents only to the extent to which the damages that occur are, according to the type of goods, predictable, contractually normal, direct, and average. We assume no liability for the breach of nonessential contractual provisions due to slight negligence.
2. Should the damages in the case at hand be covered by an insurance policy taken out by the buyer (not including fixed-benefit insurance), we shall only be liable for any disadvantages connected therewith, such as higher insurance premiums or disadvantageous interest rates until the claim is settled by the insurance company.
3. Damages claims shall be time-barred one year after the risk is transferred. This shall not apply to claims based on illegal or illegitimate acts.
4. The limitations set forth in Sections 1-3 above shall not apply if we can be charged with gross negligence, intent or malice, or if our breach of obligations can be imputed to have caused damage to the body and/or health of the buyer, or to have caused the buyer's death, and not for claims based on product liability.
5. Safe loading of cargo: We shall place the goods onto the carrier of the collector according to the driver's instructions. The loading, which shall be safe in terms of transportation and operation in accordance with the currently valid loading safety practices, shall be performed by the collector who shall employ personnel that have received relevant training. The collector shall provide the accessories necessary to ensure safe loading. We assume no liability for damages caused by insufficient loading safety practices.
6. Information, advice and recommendations are given to the best of our knowledge. Said information, advice and recommendations shall remain non-binding and shall not release the person/company on the receiving end from performing its own tests and trials. We shall only be liable for the said information, advice and recommendations, or for an omission of same, in the case of gross negligence or intent.

V. Reservation of title

1. Ownership title to the delivered goods shall be transferred to the buyer only when the buyer has fulfilled all present and future obligations to us. This shall also apply to any current account balance.

VI. Place of execution and jurisdiction

The place of execution for the obligations set forth in this contract shall be Langendernbach; the place of jurisdiction shall be Limburg.

VII. Sole applicable law

1. The laws of the Federal Republic of Germany shall apply. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.
2. These terms and conditions of business shall apply to all current and future commercial transactions. Any general terms and conditions which deviate from, contradict or supplement these General Terms of Delivery and Payment shall, even if recognized, not become a part of the contract unless the seller expressly agrees to accept their validity.
3. Should individual provisions set forth in the contract with the buyer, including these General Terms of Delivery and Payment, be or become invalid in whole or in part, the validity of the remaining provisions shall not be affected thereby. The provision which is partially or wholly invalid shall be replaced by a provision whose commercial effect is as close as possible to that of the invalid provision(s).