

General Terms of Sale & Delivery

1. Conclusion of the contract

1.1 In the absence of contrary agreement the following terms of sale and delivery shall apply (without any signature) to all present and future commercial relations between the contracting parties. Different general terms and conditions of trade of the buyer, do not become part of the contract even if disclosed unless they are subject to a written acceptance. Even if not expressly contradicted, the lack of comment does not imply acceptance.

1.2 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 complete settlement of all details relating to an order; the same applies to delivery dates.

2.1.2 If the buyer does not meet contractual duties – also the duty to co-operate or secondary obligations like furnishing certificates, effecting an advance payment or similar – in due time, we are entitled to adequately extend our delivery periods and dates – notwithstanding our rights resulting from a default of the buyer – according to the requirements of the production process.

2.1.3 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.

2.1.4 If the goods cannot be delivered or if we default delivery, the buyer may rescind the contract after an adequate grace period if the goods have not been delivered or the buyer has not been notified of their readiness to ship at the time of expiry of this period. If the partial delivery is of no interest for the buyer, he may completely withdraw from the contract. In the absence of malicious intent or gross negligence on our part, you are not entitled to make any claims against us whatsoever, in particular claims for damages because of default, impossibility or non-fulfillment.

2.2 Partial deliveries

If the buyer does not schedule by the 20th of a month – if possible observing invariant monthly quantities - for the following month for contracts 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 after the buyer has failed to adhere to an appointed grace period.

2.3 Acts of God and delivery terms

Acts of God – not 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. 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, disruptions of operation or industrial action.

2.4 Weight

The calculation is based on the weight determined on the weighing machine by our weighing staff and in case of rail transport with railway authority validity. If the buyer demands an additional weighting, he will bear the costs.

2.5 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, the risk shall pass to the buyer.

2.6 Inadmissible reshipment and misdirection

2.6.1 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 place stated by the buyer on completion of the contract.

2.6.2 If the goods have been taken to a place and/or address deviating from that stated on the invoice, Rheinkalk reserves 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.

3.3 Upon default of payment default interest of 4 % 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 and the secondary obligations associated with it have been fulfilled or security has been provided.

3.5 In case of default on payments, deterioration of assets or application for opening bankruptcy or composition proceedings we can

3.5.1 reclaim our delivered products sold subject to retention of title according to 5.1 without this taking back the goods constituting a withdrawal from the contract and enter the buyer's premises for the purposes of taking possession.

3.5.2 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) in which Rheinkalk GmbH has a direct or indirect majority interest.

5. Retention of title and collateral

5.1 Delivered goods shall fully remain our property (goods sold subject to retention of title) until all receivables, in particular also the respective balance claims we are entitled to within the scope of the business connection, have been fully paid up. This shall also apply to future and provisory 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 in the new property or compound matter which correspond to the amount of the invoiced value of goods subject to retention of our title, in case of processing inasmuch as the invoiced value of goods sold with retention of title relates to the invoiced value of the other involved goods. He shall also be responsible for holding such goods in safe custody on our behalf and at his own expense. Any property or compound matter co-owned by us are deemed to be goods sold subject to retention of title according to 5.1.
- 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 fulfill 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 If the buyer resells goods sold subject to retention of title together with goods from other suppliers, he shall assign to us his receivables from such resale inasmuch as the amount stated in our invoice for goods sold subject to retention of title relates to the invoiced amount of the other goods. 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 3.4, 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 – unless we personally advise them – and to furnish the data required and to hand over all related documentation for collection. The buyer is not entitled to any assignment of claims; this also applies to all kinds of factoring which the buyer is not entitled to notwithstanding being entitled by us to collect claims.
- 5.8 The buyer shall promptly notify us of a foreclosure or any other impairment by third parties.
- 5.9 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 and liability**
We give a warranty for defects on the goods according to the following regulations:
- 6.1 Our warranty shall only be applicable if our goods were not in a contractually agreed condition at the time the risk passes.
- 6.2 We shall not give any guarantee for a certain amount of chemically effective lime in the respective product. We shall also not be made liable for minor deviations in quality, colour or grain size of the products, as these deposit-related deviations cannot be avoided in natural products.
- 6.3 Notices of defects shall have to be made in written form immediately after receipt of the goods at their destination and include details like the dispatch date, the waggon number and, in case of deliveries by lorry, the carrier and the delivery note number.
- 6.4 In case of justified complaints in due time – also with regard to secondary contractual obligations – the buyer may demand the delivery of defect-free goods instead of the defective ones. If the replacement delivery is not made within a reasonable time, the buyer may demand to reduce the price or to rescind the contract at his discretion.
- After processing, only a reduction of the price paid for the goods complained about may be obtained. All other claims including claims for damages against us or our staff are excluded unless they result from malicious intent, gross negligence or the want of guaranteed specifications. We shall only be liable for malicious intent or gross negligence on the part of non-executive persons employed to perform the contract if they violate an essential contractual obligation.
- 6.5 We shall be entitled to refuse to remedy defects if the buyer has not given us the opportunity to assure ourselves of the defect or if the details according to 6.3 have not been provided.
- 6.6 The aforementioned conditions shall also apply to the supply with other goods than specified in the contract.
- 6.7 Claims according to the Product Liability Law shall remain unaffected.
- 7. Place of fulfillment and place of jurisdiction**
Place of fulfillment for deliveries shall be our respective delivering plant. Place of jurisdiction shall be our place of business or, at our discretion, the place of business or the domicile of the buyer.
- 8. Applicable law, partial invalidity**
- 8.1 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.
- 8.2 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.
- 8.3 Should any of the clauses of these terms be wholly or partially invalid, the validity of the remaining clauses or parts thereof shall not be affected.
- 9. Proof of exportation**
If the buyer, domiciled outside Germany, or his authorised agent collects goods and transports or ships 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.
- 10. Value-added tax identification number**
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.
- 1) Rheinkalk Eifel Sauerland GmbH & Co. KG, Wülfrath
Rheinkalk HDW GmbH & Co. KG, Herzberg-Scharzfeld
Rheinkalk Grevenbrück GmbH, Lennestadt
Rheinkalk KDI GmbH & Co. KG, Wülfrath
Rheinkalk Lengerich GmbH, Lengerich
AWA-INSTITUT Gesellschaft für angewandte
Wasserchemie mbH, Pelm