

General terms of delivery and payment (hereinafter "ALZB")

Phönix Fluss- und Schwerspat – Bergwerk GmbH – valid as of 1 October 2005

1. Conclusion of the contract

We only conclude delivery contracts subject to the conditions below, even if we do not assert these explicitly in the scope of an ongoing business relationship. Any deviating conditions of the Purchaser's shall only apply if and to the extent that we acknowledge these in writing. At the latest by accepting delivery or the first part delivery, the Purchaser agrees to the order confirmation and the exclusive validity of these ALZB. All offers are subject to confirmation. All deviations from this contract require our written confirmation. Should one of the stipulations of these ALZB be or become invalid, the other stipulations remain valid. The Parties shall replace the invalid stipulation by another one which is as close as possible to the successful economic outcome of the original one.

The Purchaser may assign claims resulting from the Contract to third parties only subject to our previous written consent.

2. Transfer of risk

The risk shall be transferred to the Purchaser when the goods leave the supplier's premises or are placed at the Purchaser's disposal. In case of damage occurred in transit or delivery of the wrong material due to mixing-up at the carrier's, the Purchaser shall inform the carrier immediately and take appropriate action. In case of return of goods, the Purchaser bears the risk pending receipt at the supplier's premises.

3. Acceptance

In case acceptance has been agreed subject to specific conditions, acceptance of supplier's work shall be effected at the Purchaser's costs. If the consignment is also not accepted after expiry of an appropriate period of grace, the goods shall be considered as accepted upon leaving the factory.

4. Warranty, liability

Claims regarding the weight, the quantity and other obvious defects shall be reported immediately, at the latest, however, 7 days after receipt of the goods; hidden defects shall be reported in writing immediately after they have been detected.

If the Purchaser does not report defects in time and if he does not provide immediately on request samples of the non-conforming goods, all claims for defects shall be void.

Correct handling of a formal notice of complaint does not constitute renunciation of compliance with this provision. All claims for defects which are not due to intent, even in case of hidden defects, shall be time-barred at the latest 12 months after delivery. In case of justified complaints, the Purchaser shall be entitled, at our choice, to free substitution or a credit note against return of the non-conforming goods. Should we refuse to eliminate defects or should we fall behind in our obligations, the Purchaser may grant us a reasonable period of grace; after it has elapsed without result, he may demand rescission of the contract or reduction of payment. Any further claims by the Purchaser arising from legislature and the contract, in particular damage unrelated to the delivered item itself, shall not be accepted, with the exception of claims arising from intent or gross negligence. Replacement of the entire delivery or of the remaining partial delivery may not be demanded as a result of a faulty partial delivery.

We may refuse elimination of defects as long as the Purchaser has not fulfilled his obligations to an appropriate extent.

We shall be held liable for technical consultation or application and deployment options regarding our products and of all the other relevant information by us or our vicarious agents only in case of explicit written undertaking, provided that the Purchaser has provided us with the information required for correct consultation. The Purchaser is obligated to verify that the goods ordered or suggested are suitable for the purpose envisaged by the Purchaser; we do not warrant suitability thereof. Quality and durability warranties have to be designated in detail as such expressly in writing. Such warranties shall be subject to the above-mentioned sections 2 and 3 to the extent that this is legally admissible. We shall only be held liable for damage if the undertaking pursued the purpose of safeguarding the Purchaser against the damage incurred. In case of disputes regarding the reporting of defects, the Chamber of Industry and Commerce responsible for the supplier's factory shall designate an officially recognized expert body to issue an expert opinion or an analysis. The unsuccessful party shall bear all costs incurred due to the expert opinion or the analysis.

5. Delivery periods

The delivery periods shall determine the time of delivery ex works. They shall only apply approximately; they shall be extended appropriately if the Purchaser does not fulfil his obligations. Even in case of agreed deadlines, we shall only get into default following a reminder. In case binding delivery periods and deadlines have been promised explicitly and after an appropriate period of grace has expired without results, the Purchaser may only request compensation for damages on account of non-performance of the entire obligation or rescind the entire contract if partial performance of the contract is not in his interest. Other claims for damages on account of non-performance or delayed performance shall be ruled out.

If we are prevented from performing our obligations by unforeseen circumstances which could not be averted despite reasonable care being exercised, the delivery period shall be extended by the duration of the obstruction. This shall also apply in case of labour unrest, disturbances in our operations or in those of our subcontractors including our carriers, disturbances caused by government measures and disturbances of traffic routes. If delivery or performance is prevented due to such circumstances, we shall be exempted from our obligation to provide compensation for damage regarding our obligation to supply. If the Purchaser proves that subsequent delivery due to the delay is not in his interest, he may rescind the contract with the exclusion of further claims.

Delivery call-offs and specification of individual part deliveries shall be effected over periods of time and quantities which are as uniform and timely as possible so as to ensure correct production and delivery within the contractual deadlines. If no deadline has been stipulated for the allocation in question, three months shall be considered as agreed. If call-off is not effected or specified at all or not in time, we shall be entitled to set a reasonable period of grace and, upon expiry thereof without results, rescind the contract or claim compensation for damages instead of the entire performance. If a period of acceptance has been fixed, we shall not be obligated to deliver upon expiry thereof.

6. Basis for credit

If the Purchaser gets into default regarding due claims, or does not honour bills or cheques on time or if considerable, substantiated doubts regarding the solvency of the Purchaser arise following conclusion of the contract, we shall be entitled to withhold our deliveries until all the due claims have been settled or the Purchaser has provided security.

7. Reservation of title

We reserve the right of ownership towards the Purchaser to the goods delivered by us and to the products possibly resulting from processing and machining thereof (reserved goods) pending satisfaction of all claims arising now or in future from the business relationship. The Purchaser is obligated to store separately and to identify the reserved goods.

The Purchaser shall perform any processing or machining on our behalf without thus creating obligations for us. If the Purchaser processes reserved goods together with other goods, we shall be entitled to joint ownership of the new products in the ratio of the value of the processed reserved goods to the other goods at the time of processing and machining.

The Purchaser shall transfer any proportion in joint ownership that may arise through connecting, commixture or compounding with other items to us as of now.

The Purchaser shall take all items owned by us into safekeeping for us with the diligence of a prudent businessperson.

The Purchaser shall only be entitled to sell the goods delivered by us and the new products resulting from the connecting, commixture or compounding of the same in the course of his regular business transactions either for cash or in case a fixed date of payment has been granted, subject to the reservation of ownership. Transfer of ownership as security for a debt, pledging and other dispositions which compromise our title are not admissible.

The Purchaser already assigns to us in terms of security any claims due to him on account of re-sale or another legal cause concerning the reserved goods to the extent of the value of the re-sale of the reserved goods or the sales proceeds if the latter is lower than the value of the goods.

If the Purchaser sells the reserved goods together with other goods, the Purchaser shall assign the selling price claim for the reserved goods to the full amount or, in the event of prior machining or processing with goods not belonging to us, to the amount of the value of the processed reserved goods. If a sale of this nature is made at an all-inclusive price, then the Purchaser shall assign the purchase price claim to the amount of the value of the reserved goods, which are the object of the said purchase. For as long as the Purchaser fulfils his obligations, the assignment shall be treated as a dormant assignment and the Purchaser shall be entitled to collect the claim. Enforcement of reservation of ownership and the request for surrender thereof do not constitute cancellation of the agreement. Should the value of the security exceed our claims by more than 20%, the Purchaser shall be entitled to request release of the security. The Purchaser shall inform us in writing without delay of access by third parties to the reserved goods, communicating the documents required for intervention. The Purchaser shall bear the costs of the intervention.

8. Offsetting, right of retention

The Purchaser shall only be entitled to set-off against our claims for payments or to withhold payments if the counterclaims are uncontested or legally established.

9. Payment

Our invoices shall be due for payment immediately without deduction.

The presentation of bills of exchange requires our approval; their charges and costs as well as the risk of timely presentation and protesting shall be fully borne by the Buyer.

If the Purchaser does not comply with the terms of payment, he shall pass on payments regarding claims assigned to us immediately to us.

The Purchaser may not sell goods acc. to item 7, to which we retain full or partial title without our approval and must surrender them if we request that he does so. Our request for surrender does not constitute cancellation of the agreement.

We shall be entitled to request interest on account of default to the amount of 5 % above the base rate. After a reasonable period of grace has expired without result, we are entitled to rescind the contract or to request compensation for damages on account of non-performance.

10. Data protection clause

We would like to point out that the personal data obtained regarding or in conjunction with our business relationships - no matter whether they issue from the Purchaser as such or from third parties - shall be processed in terms of the Data Protection Act.

11. Place of performance, legal venue

The place of performance for delivery and payments shall be Gehren; the legal venue shall be Meiningen.

12. Law

The laws of the Federal Republic of Germany shall apply. The United Nations Convention on the International Sale of Goods and the United Nations Convention on Contracts for the International Sale of Goods shall not apply.