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müllenbach & thewald

General Terms of Delivery and Payment

I. Conclusion of contract and delivery

1. Our quotations are non-binding. Our written job confirmation concludes the purchase contract.
2. The contract is concluded subject to proper and timely delivery to ourselves by our suppliers. This shall apply only if the non-delivery is not caused by ourselves, especially in the case that a corresponding hedging transaction has been concluded with our supplier. We reserve the right to deliver goods that are equivalent to the goods ordered in terms of price and quality. The buyer shall be immediately informed if the goods ordered are not available. The amount paid shall be immediately reimbursed.
3. All prices shall be understood as free carrier ex works or quarry, from the train station or ship-loading site closest to the quarry, plus value-added tax. The place of performance and execution shall be the place in which the seller has its registered office.
4. The risks of accidental destruction and accidental deterioration of the goods shall be passed on to the buyer upon transfer, in the case of a contract which provides for delivery by a carrier upon transfer of the goods to the forwarding agent, shipping company or other person or company responsible for the delivery. If the buyer has delayed in accepting the goods, this shall be considered as transfer. 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.

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 connected with the collection.
3. The buyer shall only have the right to offset amounts if his counterclaims 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 fulfill 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, according to choice, demand a price reduction or cancellation of the contract. The buyer shall, however, have no right to cancellation of the contract in the case of a minor breach of contract, especially in the case of minor defects.
4. The buyer shall check the delivered goods immediately upon delivery and shall inform us immediately in writing of any obvious defects; should said notification be omitted, the buyer shall not be entitled to warranty claims. Punctual postage of the notification shall suffice to meet the notification period requirement. The buyer shall bear the entire burden of proof for all requirements necessary to prove a claim, especially for the defect itself, for the point in time at which the defect was noticed and for the punctuality of the notification of defects.
5. Weight loss during transport caused by drying of the goods or any other loss shall not be cited as grounds for a warranty claim.
6. Should the buyer, after a replacement delivery has failed, choose to cancel 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.

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 loss adjustment is undertaken 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 grounds exist for us to 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 company performing the pickup, 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 company performing the pickup; said company shall employ personnel that have received relevant training. The company performing the pickup shall provide the accessories necessary to ensure safe loading. We assume no liability for damages that have been caused by insufficient loading safety practices.
6. We shall provide information, advice and recommendations that reflect 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 a current account.
2. The buyer shall be authorized to process the goods within the framework 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 object 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 as security, rental 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, to us as collateral for the unpaid purchase price. Should the value of the receivables transferred to us as collateral exceed the purchase price by more than 20%, and should the buyer request it, we shall be obligated to provide a retransfer.
5. Upon request by us, 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 if the buyer properly fulfils his payment obligations.
6. In the case 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 access 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.

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).