

# LMT-Services GmbH & Co. KG, Hausach

## General Standard Terms and Conditions of Sale and Delivery

### 1. Offer and Formation of Contract

Our supplies and services shall be exclusively subject to these General Standard Terms and Conditions. Any terms and/or conditions of purchase of Buyer shall only be effective if accepted by us in writing. Our terms and conditions shall be deemed to be accepted at the latest on acceptance of our supply or service.

Our offers shall be without engagement. Any agreements shall not be legally effective unless confirmed by us in writing; the goods offered being subject to prior sale.

Any prospectuses, drawings, advertising material etc. issued by us and any data contained therein with respect to weight, analysis and condition, for example, shall not constitute a guarantee as defined in § 443 BGB [German Civil Code] and shall not be authoritative unless expressly declared by us as obligatory in writing.

Indications of quantity are always approximate. Deviations of 10 % plus or minus shall be considered to be in conformance with the contract.

### 2. Terms of Payment

Our prices are understood ex stock or ex works plus freight and value added tax, unless agreed otherwise. Payment shall be made promptly on delivery. Any bills of exchange and/or checks shall only be accepted subject to prior agreement and on account of performance – subject to the possibility of discounting – and shall not be considered as payment unless honored. Any charges shall be at Buyer's expense.

Unless expressly agreed otherwise, the measurements, weights, quantities and qualities set forth in our or our suppliers' documentation shall be authoritative for the purposes of invoicing and accounting.

Should any freights, charges or fees be introduced or raised after conclusion of a contract, we shall be entitled to modify the price accordingly even in the case of freight prepaid and/or customs-cleared delivery. Any canal tolls and/or cart road fees, demurrage and detention charges, surcharges for low water and/or high water, ice demurrage, etc. shall be at Buyer's expense.

Buyer shall not be entitled to retain or set off any payments because of any counter-claims, including claims from warranties, unless such counter-claims have been accepted by us in writing or recognized by declaratory judgment.

Should Buyer not pay as agreed or insolvency proceedings be instituted against Buyer or should we come to know circumstances giving rise to serious doubts concerning the solvency or credit worthiness of Buyer or contract compliance by Buyer, we may – without prejudice to any other rights or remedies – cancel all existing contracts with Buyer of whatever kind, wholly or partly and instead we may at our option defer compliance of such contracts, making our performance dependent on an advance payment or the provision of suitable collaterals by Buyer or declare immediately due all receivables from an existing contract relationship.

Buyer shall be deemed to be in default if he has not paid the full purchase price within 7 calendar days from receipt of invoice and/or delivery of the goods (whichever date is earlier). In the event of delayed payment, Buyer shall pay interest from the due date, in the amount of 8 % above the respective base interest rate (§ 288 German Civil Code) plus value added tax; we reserve the right to assert claims for damages.

Unless agreed otherwise, the place of payment shall be the registered domicile of Seller. As an essential term of contract it shall be understood that Buyer makes payments in the currency set forth in the contract ("contract currency"). Buyer's obligation to make payments in the contract currency shall not be complied with or satisfied by the situation that Seller receives payments in a currency different from the contract currency due to a payment by Buyer under a passed judgment or its enforcement, inasmuch as the payments in that other currency do not lead to receipt of the amount payable in the contract currency.

### 3. Conditions of Delivery

Terms and dates of delivery shall only apply approximately, unless we have expressly acknowledged them as binding in writing. Should we be in delay, Buyer shall grant us a reasonable extension. Upon elapse of such additional period of time, Buyer may cancel the contract for those quantities which were not delivered up to the elapsed additional period.

Unless expressly agreed otherwise, INCOTERMS in their respective latest version shall apply to all supplies. Place of performance shall be the place of the agreed delivery party in accordance with INCOTERMS. Buyer shall bear all risks of the goods in transit even if we effect delivery with our own vehicles.

It is a prerequisite for delivery "free on truck/road tanker" that the unloading place is readily accessible. Consignee shall be exclusively responsible for prompt and appropriate unloading. Any waiting times will be invoiced.

If delivery is effected by means of road tankers subject to agreement, the selection of the size shall be at our option. Buyer shall be obligated to totally empty the tankers directly on arrival and return them promptly to the place of dispatch, freight and charges prepaid, unless instructions to the contrary are given. We shall make available the tankers free of lease for 72 hours. Unless the tankers are returned duly emptied within this mentioned period, we shall charge daily tanker rent. Our tankers must not be used by Buyer in his own works or on behalf of third parties.

Buyer undertakes to obtain in due time before delivery by us any governmental or other permits or licenses necessary or expedient for the import or other performance of Buyer subject to the terms and conditions of this contract and to maintain such licenses and permits valid, furnishing proof on our request.

### 4. Force Majeure

Should events occur which are beyond our control or caused by Force Majeure and prevent us or our suppliers from performing delivery or transport, we shall be exempted from the duty to deliver without any further obligations. Force Majeure as specified shall also be deemed to be hindrances causing prohibitive costs to us such as governmental acts, shortage of raw material, interruptions of the mine-and/or beneficiation-operations beyond our reasonable control, transport difficulties and mechanical damage. Cases of Force Majeure affecting our suppliers shall be considered Force Majeure of Seller. Once such obstacles have been removed, Seller may deliver to Buyer the affected, non-delivered quantities at the terms and conditions of the contract unless the parties agree otherwise. Should Buyer invoke a case of Force Majeure with respect to such quantities for which we have already booked means of transportation or warehousing capacities, Buyer shall be obligated to reimburse to us any costs thus incurred, such as dead freight or canceling charges.

### 5. Reservation of Title

The goods and any related documents ("goods subject to reservation") shall remain our sole property up to the complete satisfaction and discharge of all our present and future claims and receivables based on our business relationship with Buyer.

Up to the full payment of the purchase price, Buyer shall hold the goods subject to reservation in trust for us and store them separately so that they are identifiable as our property.

The sale, use or consumption of the goods subject to reservation shall only be allowable in the ordinary course of business. Buyer shall not be allowed to dispose of the goods subject to reservation, in particular pledge or chattel mortgage the goods subject to reservation nor allow such a disposal by others. Any claims or receivables arising to Buyer in connection with a resale or other disposal of the goods subject to reservation are herewith fully assigned by Buyer to us in advance. Buyer shall only be authorized to collect the claims and receivables assigned in the ordinary course of business and only subject to revocation. In case Buyer combines, mixes, blends, commingles or processes the goods subject to reservation with our goods, we shall acquire co-ownership of the new

goods produced in proportion with the contributing values of the goods subject to reservation and the value of the other goods.

Buyer's authorization to dispose of the goods subject to reservation and to combine, mix, blend, commingle or process them and to collect the claims and receivables assigned shall terminate ipso iure on non-compliance with the terms of payment, unauthorized disposal or also if insolvency proceedings are applied for or instituted against Buyer or if a substantial deterioration of Buyer's financial situation becomes apparent or known to us. In such cases, we shall be entitled to immediately take possession of the goods subject to reservation, to enter Buyer's premises for this purpose and to obtain all relevant information on the goods subject to reservation, and, if applicable, on any claims or receivables having arisen or resulting from their resale as well as to inspect Buyer's records inasmuch as this serves to secure our rights. Taking the goods back shall not be deemed to be a rescission of the contract. We shall be entitled to utilize the goods taken back in a reasonable manner and to credit the proceeds thus obtained – net of the utilization expenses – to the purchase price still owed.

Should the value of the collateral or security given to us exceed our receivables and claims by more than 20 %, we shall release the excess security or collateral upon Buyer's request.

If, and inasmuch as, applicable law does not allow the agreement of a reservation of title, or not in the above described manner, Buyer shall undertake to provide other suitable collateral or security to us upon our first demand, such as by granting a security interest. Should the effectiveness or the enforcement of reservation of title or any other collateral, such as a security interest, presuppose the registration and/or compliance with other formalities, Buyer shall be obligated to take all necessary measures at his expense on our first demand in order to allow the effectiveness of the reservation of title or an alternative collateral. Buyer herewith irrevocably authorizes us to take all measures as are considered necessary by us to ensure our retention of title or other security interest in the goods.

### 6. Requirement of Examination and Complaint; Limitation of Liability

Even in the case of substantial deviation in kind or quantity, Buyer shall be obligated to immediately inspect the goods. In the event of hidden defects, the complaint shall be made immediately on detection. Buyer shall promptly raise any complaints for defects and inadequate quality in writing to Seller and attach the relevant evidence. On expiration of a period of 12 months from the date of delivery, liability for hidden defects shall be excluded. Should Buyer not make available samples of the non-conforming goods upon request, any claims for defects shall expire. Without prejudice to the earlier limitation of claims, claims with respect to defects shall be subject to a limitation of 4 weeks from the rejection of a complaint for defects.

Should the goods delivered prove to be defective or non-conforming in any other respect, we shall at our option, either eliminate the defects free of charge or supply non-defective and conforming goods free of charge against return of the defective goods. Should we not comply with these obligations or not in conformance with the contract within a reasonable period of time, Buyer may grant in writing an additional period for compliance with these obligations. On elapse of such an additional period or failure of the attempts for compliance, Buyer may demand a reasonable price discount or rescind the contract. Any other rights or claims of Buyer shall be excluded. This shall apply in particular to any rights of Buyer emanating from § 478 German Civil Code. We shall not be liable for defects of quality which reduce the value or suitability of the goods only insignificantly.

The limitation period for claims in respect of defects of quality shall be 12 months. This shall not apply inasmuch as longer periods are mandatory by law, especially for goods which were applied in accordance with their customary use for a building and which caused defects in it.

We shall not give any guarantees or warranties with regard to the salability of the goods or their suitability for a defined purpose or in any other way, neither expressly nor by conduct implying an intent.

In the event of lack of correct or timely self supply we shall be entitled to delay or rescind this contract or the respective supply obligation.

Any Claims, compensation for consequential or incidental damages, including, without limitation, loss of anticipated profit which have been caused due to partial or non performance or delayed compliance with the contractual obligations, if and as far as it has been caused by circumstances of Force Majeure, are excluded.

Any claims for damages because of unauthorized action or damage not caused to the object supplied shall be excluded unless Buyer proves that Seller, his corporate bodies, directors, officers or such vicarious agents to whom specific management responsibilities were transferred, acted with intent or gross negligence. Seller (including his corporate bodies, directors, officers or other employees) shall not be held liable for whatever reason for any consequential damage due to defects or unforeseeable damage nor loss of anticipated profits. The above restrictions shall also apply to extra-contractual claims but not to damage due to physical injury or impairment of health.

We shall not be liable for any accidents that may occur when the entering means of transportation or unloading. We shall not be liable either for damage caused by third party vehicles transporting the goods. However, Buyer may demand that we assign any claims arising against third parties from a case of damage.

### 7. Place of Performance, Jurisdiction, Governing Law

The place of performance for our supplies shall be the Supplier's works in the case of ex works delivery and, in the case of delivery ex warehouse, the warehouse.

The place of jurisdiction shall be Lennestadt, but we may also bring an action at the place of establishment and we shall be entitled to file a suit against Buyer at his registered domicile.

All contracts between us and Buyer (including the questions of conclusion, effectiveness and inclusion of these General Standard Terms and Conditions of Sale) shall be governed by German substantive law as applicable between local parties. The applicability of the UN Convention on the International Sale of Goods (CSIG) shall be excluded.

### 8. Miscellaneous

Should one or several of the provisions contained in these terms and conditions be invalid or unenforceable, this shall not affect the validity of the other provisions and of the contract. The parties shall replace any invalid or unenforceable conditions by valid provisions which come nearest to the purpose intended by the invalid or unenforceable conditions.

Any notices in connection with the contract may be given by facsimile or e-mail. Any amendments or supplements of the contract shall require the written form and be signed by both parties.

None of the parties shall be entitled to assign rights and/or duties under the contract, wholly or in part without prior written consent of the other party. Any assignments of the mentioned kind by us shall be allowable subject to written notice to Buyer if the assignee is an affiliated company.

No failure or delay on our part in exercising any right or authority shall operate as a waiver of such a right or such an authority nor shall any single or partial exercise of a right or an authority operate as a waiver thereof.

The headings of the provisions of these terms and conditions are included for convenience only and shall not affect the interpretation of these terms and conditions.

Date: September 2009