

Standard Terms and Conditions of Business (STCs), 07-2018

WOLFF & MÜLLER Baustoffe GmbH



§ 1 Scope of application

- 1.1 These Standard Terms and Conditions of Business (STCs) apply to all sales contracts entered into between WOLFF & MÜLLER Baustoffe GmbH (WMB) and customers ("buyers") for raw materials, industrial minerals and building materials (particularly quartz sand and quartz gravel, sand, gravel, grit). These STCs apply irrespective of whether WMB has produced the items purchased ("goods") itself or has purchased them from a supplier for resale to the buyer.
- 1.2 These STCs apply exclusively. WMB will not accept the terms and conditions of the buyer. Any terms and conditions of the buyer which differ from or qualify these STCs will only become part of the contract if WMB gives its express written consent.
- 1.3 These STCs apply even if WMB supplies to the buyer without reserve in the knowledge that the buyer's terms and conditions differ from or conflict with its own.

§ 2 Conclusion and execution of contract

- 2.1 Legally binding declarations regarding conclusion of the contract (offer and acceptance of offer) and execution of the contract (e.g. setting deadlines, reporting defects) must comply with written-form requirements unless otherwise stated in the sales contract or these STCs.
- 2.2 Offers made by WMB are subject to change and non-binding. Unless otherwise stated in the offer, as of receipt the buyer has two weeks within which to accept the offer. WMB reserves the right of prior sale.
- 2.3 Where WMB has not submitted an offer and the buyer has placed an order for goods, the order shall be deemed to be a binding invitation to WMB to enter into a contract for sale. Unless otherwise stated in the order, as of receipt WMB has two weeks to accept invitation to enter into a contract of sale. Such acceptance can be made expressly in writing or implicitly by supplying the goods.
- 2.4 Any specimens and samples provided serve as an indication of average type and quality due from WMB. The goods supplied by WMB may differ from the specimen or sample provided they comply with the applicable DIN standard or have the attributes agreed upon in the contract. WMB will only recognise control specimens which have been taken in the presence of a person acting on WMB's behalf. Specimens, samples, product documentation, test certificates, etc. remain the property of WMB.

§ 3 Prices – Terms of payment

- 3.1 Unless otherwise stated in the contractual provisions in the specific individual case, the agreed prices are ex works excluding packaging. Packaging will be charged separately. Our prices do not include value-added tax; VAT will be indicated separately in the invoice at the statutory rate applicable on the invoice date.
- 3.2 The date on which the purchase price is due shall be as stated in the applicable provisions of the contract for sale. Unless otherwise stated in the sales contract, the purchase price is payable immediately in full without any deductions in euros on receipt of the goods and invoice. Discounts may only be deducted if expressly agreed in writing.
- 3.3 The buyer shall fall into default with payment without WMB having to issue a reminder if it does not pay within 14 calendar days after the payment is due.
- 3.4 The buyer may only offset amounts from the purchase price if its counterclaims have been ruled final and absolute by a court of law, if they are undisputed or if they have been acknowledged by WMB.
- 3.5 The buyer is only authorised to withhold part of the purchase price if its counterclaim is based on the same contractual relationship as is WMB's claim.
- 3.6 WMB is under no obligation to accept a bill of exchange or a cheque in payment. However, if it does so, this is done on account of and not in lieu of performance. Hence, performance is not deemed to have occurred until WMB has satisfied its claim from the bill of exchange or the cheque and the respective claim against the buyer no longer exists. Acceptance of a bill of exchange or a cheque does not constitute deferral of the due date of payment of the principal claim. For accepted bills of exchange, charges will be made for discounting, at out-of-town locations and abroad, collection fees and exchange-rate losses will be charged for.
- 3.7 If, having accepted a bill of exchange or cheque, WMB demands immediate payment of the principal claim because the buyer has stopped payments, filed for insolvency or its assets have deteriorated in some other way, all discounts, bonuses, etc. shall be deemed to have been forfeited and the buyer shall then be required to pay the gross prices charged without any deductions.
- 3.8 If, after the contract has been concluded, the buyer's assets deteriorate or are at risk such that a levy of execution is exercised on its assets or out-of-court composition proceedings are conducted against the buyer or an application is filed for the institution of insolvency pro-

ceedings or bills or cheques are protested, WMB has the right to refuse to perform until the purchase price has been paid in full. WMB is also entitled to withdraw from the contract if it has set the buyer one reasonable deadline pursuant to § 323 (1) German Civil Code (*Bürgerliches Gesetzbuch*, hereinafter BGB). WMB may withdraw from the contract without setting a deadline if the conditions set out in § 323 (2) BGB are satisfied.

- 3.9 A small-quantity surcharge of 100% will be added to the price of the materials where the quantity to be supplied is less than 1 t. For bulk shipment WMB reserves the right to supply up to 10% more or less than the quantity ordered. Our calculation will be based on the weight measured at our loading point.

§ 4 Terms of delivery

- 4.1 The delivery time is as stated in WMB's offer or, where an order is placed by the buyer, in WMB's acceptance. The delivery time begins when all technical issues which are of relevance to execution of the order have been clarified. If WMB's offer or the acceptance of the buyer's order does not specify the delivery time, the delivery time shall be two weeks ex works.
- 4.2 WMB is only bound by said delivery time if the buyer meets its statutory and/or contractual duties in a proper and timely manner. WMB expressly reserves the right to plead the defense of unperformed contract (§ 320 BGB).
- 4.3 If the buyer does not accept the goods (items purchased) or does not do so in a timely manner despite having been set a reasonable extension to the original deadline, the buyer shall compensate WMB for all resultant losses without prejudice to its obligation to pay the purchase price.
- 4.4 Where there is more than one buyer, these shall be liable jointly and severally for purchasing the goods ordered (items purchased) and for payment of the purchase price. Where WMB renders performance to one of the buyers, this shall be deemed to be performance for and against all other buyers in a community of buyers. All members of a community of buyers shall authorise one another to make/take receipt of legally binding declarations to/from WMB on behalf of the community of buyers in all matters related to the sale.
- 4.5 If the buyer is in default with acceptance of the items purchased or if the buyer negligently breaches other ancillary duties pursuant to § 241 BGB, WMB has the right to demand compensation for any resultant loss including any additional expenditure. WMB reserves the right to assert any rights over and above this. The risk of accidental loss or accidental deterioration of the items purchased passes to the buyer at the latest when the buyer falls into default.
- 4.6 WMB shall notify the buyer of any delay in supply without undue delay, informing the buyer of a new delivery time. For each complete week of delay WMB shall pay the buyer compensation of 3% of the value of the shipment as liquidated damages for expenses incurred. Such compensation is subject to a cap of 15% of the value of the shipment. However, the buyer has the right to prove that the loss incurred in a specific instance is higher. WMB's liability for compensation is limited to reasonably foreseeable loss provided that the delay in delivery is attributable to fault on the part of WMB and not to intentional breach of contract.

§ 5 Passage of risk – Sales shipment

- 5.1 Unless otherwise stated in the confirmation of order delivery shall be "Free Carrier" (INCOTERMS 2010: FCA). Shipment is made from the loading point at the supplying works. The risk of accidental loss and accidental deterioration of the goods passes to the buyer on delivery of the goods at the loading point of the supplying works.
- 5.2 The goods (items purchased) will be shipped to a different place of destination at the buyer's cost if so requested by the buyer (sales shipment pursuant to § 447 BGB), in which case WMB has the right to determine the means of shipment (in particularly carrier, shipping route, packaging) taking account of the reasonable interest of the buyer (§ 315 BGB). In the case of sales shipment pursuant to § 447 BGB the risk of accidental loss and accidental deterioration of the goods and the risk of delay passes when the goods are handed over to the forwarder, the carrier or other person instructed to carry out shipment at the loading point of the supplying works. In the case of sales shipment the buyer shall bear the costs of transport from the supplying works. The same applies to any applicable customs duties, fees, taxes and other public levies.
- 5.3 In the case of sales shipment the buyer must ensure that access to the place of destination is unimpeded and that the delivery can be taken of the goods (items purchased) without undue delay. It must be possible to reach the place of destination without danger. This means access road to and from place of delivery which is suitable for a heavy goods vehicle. Unloading must take place immediately without risk for the delivery vehicle. WMB can refuse to deliver the goods if these conditions are not met. The buyer is liable to WMB for any additional costs and losses arising as a result of difficult delivery conditions. Additional

costs caused by snow and icy conditions must also be borne by the buyer.

- 5.4 For orders for bulk goods, either in sacks or loose (such as special sands), the buyer may decide whether it wishes WMB to unload. This must be stipulated in the sales contract (INCOTERMS 2010: DAT or DAP).
- 5.5 If the buyer is an entrepreneur within the meaning of § 14 BGB, WMB will deem the individuals who sign the delivery note to be authorised to accept and confirm receipt of the goods. Signature of the delivery note is deemed to be acknowledgement of the list of supplies.
- 5.6 WMB will treat transport packaging and all other packaging in accordance with the German Packaging Regulation (*Verpackungsordnung*). More detailed information can be requested directly from WMB. The buyer must dispose of any packaging not covered by the German Packaging Regulation at its own cost. WMB will charge for reusable Euro pallets; these will become the property of the buyer when the buyer takes receipt of the goods. Where Euro pallets are exchanged WMB will issue a credit note in favour of the buyer.
- 5.7 WMB will take out transport insurance for the shipment at the buyer's request. The associated costs shall be borne by the buyer.

§ 6 Liability for defects – Compensation – Reporting defects

- 6.1 Unless otherwise stated below, in the event of defects in quality and title the buyer's rights are as provided for by statute. WMB will not accept any guarantee for any specific attributes or durability within the meaning of § 443 BGB. WMB will only warrant that a construction material is fit for a specific purpose where this is expressly agreed in writing with the buyer.
- 6.2 Where the sale constitutes a commercial transaction for both parties, claims associated with defects can only be asserted if the buyer fulfils its obligations to inspect the goods and report defects pursuant to § 377 German Commercial Code (*Handelsgesetzbuch*).
- 6.3 If the items purchased are defective, WMB may elect to render subsequent performance either by remedying the defect or by replacing the defective item by a non-defective item. If WMB elects to remedy the defect, it shall bear any expenditure needed to remedy the defect including but not limited to transport costs, travel expenses, labour and material costs. Liability for consequential losses attributable to the defect shall be as provided for in section 6.4 of these STCs. If subsequent performance is unsuccessful, the buyer may elect to request to withdraw from the contract or be granted a reduction in price. Where the buyer asks for the defect to be remedied and the request is clearly not justified, the buyer shall indemnify WMB for any costs incurred to WMB in connection with the reported defect.
- 6.4 Where the buyer asserts claims for compensation which are attributable to intent or gross negligence, WMB's liability shall be as provided for by statute. Where a loss is not attributable to a breach of contract caused by intent or gross negligence, liability for compensation shall be limited to reasonably foreseeable loss. This has no effect on liability for culpable injury to life, the body and health. This also applies to mandatory liability under the German Product Liability Act (*Produkthaftungsgesetz*). To the extent permitted by law, any other liability is excluded.
- 6.5 The limitation period for claims for defects is as provided for in § 438 BGB. However, notwithstanding § 438 (1) no. 3 BGB, the general limitation period is twelve months.
- 6.6 WMB does not accept liability for compensation over and above what is set out in section 6.1 to 6.5 of these STCs irrespective of the legal nature of the claim asserted. This applies in particular to compensation claims attributable to *culpa in contrahendo*, other breaches of duties or tortious claims for remedying property damage pursuant to § 823 BGB and personal liability for compensation on the part of WMB's employees, members of staff, independent contractors, representatives and vicarious agents.

§ 7 Reservation of title

- 7.1 WMB reserves title in all items purchased (goods) pending full payment of the purchase price.
- 7.2 In the case of an ongoing business relationship reservation of title also covers any amounts due to WMB from sales contracts for other items purchased.
- 7.3 The buyer may not pledge reserved items or assign them as security to third parties until the secured trade receivables have been paid in full. The buyer shall notify WMB without undue delay in writing if and to the extent that third parties exercise attachment rights on items purchased (goods) owned by WMB.
- 7.4 The buyer shall treat items purchased with care and, in particular, shall insure them sufficiently against fire, water and theft at replacement value at its own cost.
- 7.5 The buyer may resell or process the goods or mix or combine

them with other items in the normal course of business. In this respect the parties agree that:

- 7.5.1 Reservation of title shall include any products generated by processing, mixing or combining with the items purchased. Any such processing, mixing or combining of the purchased items by the buyer shall always be carried out for WMB. WMB shall acquire co-title in the new item, the extent of such co-title being the ratio of the value of the item purchased to the value of the other items processed, mixed or combined at the time of processing, mixing or combining.
- 7.5.2 On conclusion of the sales contract the buyer shall assign to WMB all future trade receivables due to buyer from third parties from resale of the item purchased, the amount of such trade receivables being commensurate with the value of WMB's pro rata title share arising from sale, processing, mixing or combining. WMB hereby accepts such assignment. The buyer is authorised to collect the respective claim. At the same time, WMB also has the right to collect such trade receivables itself. However, WMB undertakes not to collect such trade receivables as long as the buyer is not in default with payment, has not filed an application for the institution of insolvency proceedings or an equivalent statutory procedure or has not discontinued payments. If the above criteria for collection by WMB are satisfied, the buyer shall inform WMB of the claims assigned and their respective debtors, provide whatever information is necessary to permit collection of the claim, furnish the relevant documents and notify the debtors (third parties) of the assignment.
- 7.6 WMB undertakes to release the securities of the buyer to which it is entitled to the extent that the realisable value of the securities exceeds the claims to be secured by more than 10 per cent. WMB may select which securities to release as it sees fit.

§ 8 Inspection of construction materials

WMB's own inspector, third-party data inspectors and the representatives of the supreme buildings inspectorate (*oberste Bauaufsichtsbehörde*) reserve the right to enter the site without notice at any time during operating hours and to take samples of the items purchased.

§ 9 Data protection – Data processing

- 9.1 The buyer is informed that the data related to the respective contractual relationship – including without limitation names and addresses of the contractual partner, terms of payment and data related to the persons involved in the transaction – will be saved and processed in automated electronic files.

To the extent necessary for the execution of the order, these data are also made available electronically or in writing to third parties (such as forwarding agents, parcel service providers, other companies involved), as far as this is necessary and legally permissible. The buyer will inform his employees about the collection of this data and their rights towards us on our own responsibility.
- 9.2 The parties shall respect the relevant statutory provisions, in particular the General Data Protection Regulation (DSGVO), with regard to personal data of the other party and its employees.
- 9.3 Personal data of the buyer shall be collected, stored, processed and used by WMB, if and to the extent necessary for the establishment, execution or termination of a contract. Any further use of personal data shall only take place to the extent that a legal requirement requires or permits or the buyer has permitted.
- 9.4 The buyer is aware that the collection, processing and use on the basis of Art. 6 para. 1 lit. b) DSGVO among other things, its name, consumer or entrepreneurial status, address and bank details are required.
- 9.5 WMB is entitled to - within the scope of the legally permissible - for the purpose of deciding on the establishment, execution or termination of the purchase contract to examine the risk of payment defaults on the buyer side. In that regard, probability values for the future behavior of the buyer are collected and processed. To calculate these probabilities, the buyers address data will also be used. For the purposes of the audit, WMB will provide services from credit bureaus, such as SCHUFA Holding AG (Wiesbaden) or other third parties (e.g. Creditreform) and for this purpose forward or request data from the buyer. The collection, processing and use of data for this purpose is based on Art. 6 para. 1 lit. b) DSGVO.
- 9.6 In particular, WMB shall be entitled to transfer the data of the Buyer to third parties if and to the extent that this is necessary for carrying out pre-contractual measures and fulfillment of this contract (for example for shipping, invoicing or customer service) in accordance with Art. 6 para. b) DSGVO or fulfillment of a legal obligation within the meaning of Art. 6 para. 1 lit. c) DSGVO is required. WMB will, under the circumstances permissible by law, possibly also use this data for the purpose of enforcing claims in accordance with Art. 6 para. 1 lit. b) and / or f) pass on the DSGVO to third parties (e.g. debt collection companies).
- 9.7 Upon request, WMB will give the buyer free of charge information on the stored personal data. The buyer has the legal right to demand the correction, deletion, limitation of the processing or transmission of his

data to a third party. In addition, the buyer has the right to complain to a supervisory authority.

- 9.8 The Buyer may refuse any use of his personal data (I) for the required performance of a task performed in the public interest or in the exercise of official authority, which has been transferred to WMB or (II) to safeguard the legitimate interests of WMB or a third party, as in accordance with paragraph 5 above - in accordance with Article 21 (1) of the DSGVO at any time by informal notification to WMB. If the WMB cannot prove that there are overriding compelling legitimate reasons for its use, the WMB will no longer use the affected data for these purposes after receipt of the objection.

The buyer may at any time without charge object to any use of his personal data for the purpose of direct mailing pursuant to Art. 21 (2) DSGVO by informally notification. Upon receipt of the objection, WMB will no longer use the affected data for these purposes.

- 9.9 Should the statutory requirements be met, you have the following rights under Articles 15 - 20 DSGVO: Right of information, of correction, confirmation, deletion, to have the processing restricted, data portability and right to effective legal remedy before a court. Also, under Article 21 (1) DSGVO, you have the right to raise an objection to the processing which is based on Article 6 (1) DSGVO, as well to the processing for the purpose of direct advertising.

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You can contact our data protection officer directly at:
c/o WOLFF & MÜLLER Baustoffe GmbH
Schwieberdinger Straße 107, 70435 Stuttgart
Tel. 0711-8204-235 / Telefax 0711-8204-871235
E-Mail: DSB-BS@wolff-mueller.de

Right to complain to the
In accordance with Article 77 DSGVO, you have the right to complain to the supervisory authority, should you be of the opinion that the processing of your personal data is taking place unlawfully.

Supervisory authority:
Der Landesbeauftragte für den Datenschutz und die Informationsfreiheit Baden-Württemberg
Postfach 10 29 32, 70025 Stuttgart
Königstraße 10a, 70173 Stuttgart
Tel.: 0711/61 55 41 - 0 / Fax: 0711/61 55 41 - 15
E-Mail: poststelle@lfdi.bwl.de

§ 10 Interpretation of customary contractual wording

For the supply of special sands both in Germany and abroad customary contractual wording shall be interpreted according to INCOTERMS 2010.

§ 11 Place of jurisdiction – Place of performance

- 11.1 Where the buyer is a businessman within the meaning of the German Commercial Code, jurisdiction for all disputes arising from this contract and any additional contracts and all disputes in connection with the contract or additional contracts shall be WMB's domicile.
- 11.2 The laws of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 11.3 The place of performance for WMB's obligation to transfer title in the item purchased to the buyer shall be WMB's respective supplying works. Place of performance for the payment obligation shall be WMB's domicile.

§ 12 Severability

If any provision of these standard terms and conditions of business is or becomes invalid or contains a lacuna, this shall not affect the validity of the other provisions. In such an event the buyer and WMB shall replace the invalid or incomplete provision by a provision which reflects what the contracting parties intended and would have agreed upon had they been aware of such invalidity or lacuna when they entered into the contract.