

Delivery, Installation and Payment Terms and Conditions



For the companies

**Betonbau GmbH & Co. KG, Waghäusel, Betonbau GmbH, Bockenheim
Betonbau GmbH Kösching, Betonbau GmbH Schkeuditz**

Damage to deliveries shall only be acknowledged if we are liable to compensation and the ordering party or person accepting the goods immediately complains about the defects on the delivery note.

1. Contracts

Offers are subject to confirmation. All contracts and their amendments shall only become binding by our written confirmation. Telephone or verbal agreements and assurances also require our written confirmation. These terms and conditions shall also apply to future deliveries and services. Deviating terms and conditions of the ordering party shall be contradicted. For products that are specifically made to order, the contract shall be regarded as concluded after our written confirmation, even if clarification still needs to take place regarding execution, which could influence the delivery period and price. We reserve the right to sole ownership of the documents belonging to the offer (copies, drawings, description, etc.). Disclosure to third parties – even excerpts – shall only be permitted with our prior, written consent. For raw materials, as well as electro-technical and mechanical accessories and for own manufacturing, the DIN standards apply and the well-established tolerances or standard commercial regulations. We are entitled to make partial deliveries.

2. Prices

If nothing has been otherwise agreed, the prices shall be stated ex factory or warehouse, exclusive of packaging, or with agreed delivery, free site, by HGV on a negotiable road, approaching at ground level, plus applicable VAT.

3. Payments

To the extent that nothing is otherwise agreed, our invoices shall be payable 30 days after invoicing, without deductions. For orders of more than EUR 15,000.-, the ordering party must pay 30% of the order sum upon order confirmation, 30% after the expiry of one-third of the contractually agreed delivery period, another 30% after the expiry of two-thirds of the contractually agreed delivery period and the remaining payment after acceptance and final invoicing, without deductions. Notwithstanding provisions of the ordering party which state otherwise, we shall be entitled to offset payments against other, still outstanding claims. If costs and interest have already been incurred, we shall be entitled to initially apply the payment to the costs, then to the interest and finally, to the main claim. A payment shall only be regarded as having taken place, when we are able to dispose of the amount. In case of cheques, the payment shall only be regarded as having taken place, when the cheque is redeemed. If the ordering party should enter into default, we shall be entitled to charge interest of 8% above the respective base interest rate of the European Central Bank, from the relevant point in time, subject to the assertion of a higher loss, to be verified. If we should become aware of circumstances, which put the ordering party's creditworthiness into question, or if he discontinues his payments, we shall be entitled to accelerate the entire remaining debt, even if we have accepted cheques. In this case, we shall be entitled to demand an advance payment or collateral, or withdraw from the contract.

A right of retention by the ordering party, as long as it does not relate to the same contractual relationship, as well as offsetting with disputed or undisputed, legally established claims, is excluded. We shall be entitled to reject the exercising of a right of retention due to provision of collateral – also by bank guarantee.

4. Reservation of ownership

All deliveries shall take place subject to retention of ownership. The delivered goods shall remain our property until full payment of the purchase price and all existing claims, which we have acquired from the business relationship with the principal/ordering party.

If the principal/ordering party is a merchant, in addition to the claims from paragraph 1, the delivered goods shall also remain our property until full payment of the existing and future claims, which we acquire from the business relationship with the ordering party or principal. If the realisable value of the collateral items exceed 110% of the secured claims, the principal shall be entitled to a right of release. The limit for the creation of a right of release is at 150% of the estimated value of the collateral.

If the delivered goods are processed into or combined with a new item by the principal or ordering party, the processing or combining shall take place on our behalf. A right of ownership by the principal or ordering party pursuant to Article 959 BGB [German Civil Code] is excluded.

Pledges/security assignments are inadmissible. The principal must use all means to prevent above mentioned access by third parties and notify us about this in good time.

Upon processing with other goods, which do not belong to us, we shall acquire co-ownership of the new items according to the proportion of the value of the goods delivered by us and the other goods, at the time of processing or combining. The new item shall be regarded as retained goods within the meaning of these terms and conditions.

The principal/ordering party now already assigns his claims to us from an onward sale of the retained goods. This also applies to mixed or combined goods, in respect of the value as per the portion delivered by us.

If the goods delivered by us should become a component of a third party's property, the principal/ordering party now already assigns to us the remuneration claim accruing to him against the third party, in the amount of our payment claim.

The agreement to deliver the retained goods directly to the end customer/its execution does not mean consent to onward sale of the retained goods. This shall be/will be regarded as granted after payment of the purchase price.

5. Delivery and performance period

Delivery dates or periods, which can be bindingly or non-bindingly agreed, must be in writing. We shall not be responsible for delivery and performance delays due to force majeure and events, which not only temporarily made delivery significantly more difficult or infeasible for us – these particularly include strike, lockout, official orders, etc., even if they occur with our suppliers or our sub-suppliers, even with bindingly agreed periods and dates. Such events entitle us to delay the delivery/performance by the duration of the hindrance, plus an appropriate start-up period, or entirely or partially withdraw from the contract, to the part not yet fulfilled. If the hindrance should last for longer than three months, the ordering party shall be entitled to withdraw from the part of the contract that is not yet fulfilled, after setting an adequate grace period. Compensation claims by the ordering party are excluded. We can only call upon the mentioned circumstances, if we have immediately notified the ordering party. If we are responsible for non-compliance with bindingly promised periods and dates, or if we are in default, the ordering party shall be entitled to flat-rate default compensation in the amount of 0.5% for each full week of default, however, a maximum of up to 5% of the invoice value of the deliveries and services affected by the default, whereby we reserve the right to prove that the ordering party did not incur a loss of this amount. Claims beyond this shall be excluded, unless the default is due to premeditation or gross negligence. We shall be entitled to provide partial deliveries and partial services at any time, unless the partial delivery or partial service is of no interest to the ordering party. Compliance with our delivery and performance obligations requires the timely and proper fulfillment of obligations by the ordering party. If the ordering party should enter into acceptance default, we shall be entitled to demand a flat rate of up to a quarter of the purchase price, to be offset from a further compensation claim, however without its verification, whereby the ordering party shall reserve the right to prove that we incurred no loss or a smaller loss. In the event of acceptance default, the risk of accidental deterioration and accidental loss shall transfer to the ordering party.

6. Shipping and transfer of risk

Risk shall transfer to the ordering party upon handover of the goods to the shipper or freight carrier, not later than as soon as the shipment has left the factory, even if shipping takes place using or HGVs. Goods which are notified as being ready for shipment on time must be immediately called. Otherwise, we shall be entitled to store the goods at our discretion, at the expense and risk of the ordering party, and invoice them, as though they had been delivered. (The costs for storage of station can be seen in the "Storage Costs Price Sheet"). With freight-free delivery, the means of transport must immediately be unloaded by the ordering party. Waiting times are always for the account of the ordering party, who must also bear the costs and risk of unloading, stacking/storage, in case of default. The ordering party shall be responsible for transportation to the place of use and storage. The recipient appearing at the delivery location for the ordering party shall be regarded as authorised to bindingly accept the delivery.

7. Installation

Prior to the extent that we are mandated with installations, we shall be entitled to assign the installations to third parties, at our discretion. This company or person shall also be entitled to carry out the installation and delivery, if applicable, on their own behalf and for their own account. The agreed installation price requires that all preparations have been made on site for the implementation of smooth-running installation. Auxiliary workers and materials, such as lifting equipment, electricity, water, etc. are to be provided by the ordering party. Hole cutting works and bricklaying, erection and dismantling of scaffolding, as well as installation work, are to be carried out by the ordering party, at his expense and risk. For use of own employees during installation, the ordering party shall not be entitled to demand compensation or deductions from the agreed installation price, without an explicit, written agreement.

8. Erection

Prior to starting erection, all necessary advance work must have progressed sufficiently by the ordering party or principal, such that erection can be carried out immediately after the arrival of the builder and without disruption.

Rules regarding the accessing of properties, reinstatement and compensation for field or road damage are the responsibility of the principal and for his account. The specified installation prices apply under the condition that heavy transport and crane vehicles can move unhindered and without danger.

On the basis of local regulations, it can already become necessary to transport ballast weights separately with smaller mobile cranes (from 40 tons). The extra costs resulting from this are not included in the offer price and shall be passed on according to actual time and materials. All extra costs incurred due to hindrance of the transport and crane vehicles to the building site and at the building site, as well as all extra costs incurred due to unsuitable parking spaces, shall be borne by the principal/ordering party.

In the offer, the necessary mobile crane size for setting up the transport weight is listed, with a specified distance between the middle rotating assembly of the crane arm to the middle of the station on the transport vehicle, as well as to the final parking space, without realising the mobile crane, as a contractual component.

It is the responsibility of the principal/ordering party that the mobile crane and the transport vehicles can be driven directly to the foundation pit and the mobile crane can be set up with its supports. If this should not be possible, the principal/ordering party must immediately notify this, however, not later than 8 calendar days prior to the agreed delivery date. The necessary extra costs will be taken into account when issuing the invoice and are a fundamental component of the contract. If it is only determined on the building site during installation that the distances are exceeded and a larger mobile crane will therefore be required or the erected crane will need to be relocated, the corresponding higher costs will be taken into account when invoicing and are already a component of the contract upon conclusion. The proper realisation of the building pit is also usually the responsibility of the ordering party/principal (at least with individual modules). If necessary, the building must be protected by means of drainage pursuant to DIN 4095, among others, in case of impinging water and slope locations.

9. Warranty

For possible defects to material and deliveries, we shall be held liable as follows, as long as the ordering party has not arbitrarily authorised changes or corrections: The warranty period shall amount to 1 year, however for hardware and electro-technical accessories, 6 months, calculated from transfer of risk. Notification of defects – identifiable within 8 days after receipt of the goods – must be immediately be provided in writing. We shall be obligated, at our option, to repair or replace all defective parts within the warranty period, free of charge. If supplemental performance within an adequate period cannot be carried out or is refused by us, or if a repair does not result in rectification of defects and the ordering party cannot be reasonably expected to accept another repair, the ordering party shall have the right to reduce remuneration by means of a declaration to us. If building services are involved, the right to withdrawal from the contract is excluded. The supplemental performance obligation does not extend to a) defects, which have occurred as a result of natural wear and tear, faulty commissioning, faulty or careless handling, improper stress, on the basis of incorrect or non-punctual protective painting, as a result of other influences (e.g. magnetic fields), defective installation and assembly work by third parties, who act on their own behalf and for their own account, as well as non-compliance with the installation instructions; b) defects, which are caused due to changes or repairs carried out by the ordering party or third parties without our prior consent; c) lacking lightfastness of plastic coatings; d) supplied parts, which are subject to excessive, natural wear and tear, as a result of the material quality or type of use. The ordering party must provide us with adequate opportunity and time to carry out supplemental performance. For parts, which are not manufactured or processed by us, the relevant DIN regulations shall apply, as well as the guarantee conditions of the respective manufacturers/suppliers.

Further claims by the ordering party on the basis of defective delivery and performance are excluded, particularly regarding compensation for consequential damage, such as production and utilisation stoppage, as well as foregone profit. This shall not apply to damage to life and limb and for losses based on grossly negligent and premeditated breach of duty. For a breach of duty which is not a defect to the delivery object or installation, the right to withdraw from the contract is excluded.

10. Liability

To the extent that nothing is specified otherwise above, we and shall be held liable for vicarious agents and legal assistants of the ordering party from positive violation of a contractual duty, from the infringement of duties during contract negotiations and from illegal acts, as follows:

a) Liability for personal injury shall be based on the statutory provisions.

b) Liability for material and financial losses is excluded.

The liability exclusion under b) shall not apply if losses have been caused by us due to grossly negligent breach of duty or are based on premeditated or grossly negligent breach of duty by our legal representative or our legal agents.

11. Applicable law, legal jurisdiction, partial invalidity

For these business terms and conditions and the entire legal relationships between us and the ordering party, the law of the Federal Republic of Germany shall apply. The Hague Convention dated 1 January 1967, regarding the standardised laws on international purchase and the UN Convention dated 11 April 1980 regarding contracts for the international purchase of movable goods shall not apply. If the ordering party is a registered merchant within the meaning of the German Commercial Code, a legal public law entity or a public sector special fund – also for law suits regarding cheques and promissory notes – Karlsruhe is the exclusive legal jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same legal jurisdiction shall apply if the ordering party has not general legal jurisdiction in the Federal Republic of Germany at the time of the law suit being initiated. However, we are entitled to call upon any legally responsible court of law. If a provision of these Terms and Conditions or a provision within the context of other agreements should be or become invalid, this shall not affect the validity of all other provisions or agreements.