

General Terms and Conditions for the Märker Group

Valid from 1 March 2017

A. General Conditions

I. Scope

1. These Terms and Conditions will be valid with respect to entrepreneurs as understood in § 14 German Civil Code (BGB). They will be valid for all existing and future business relationships.
2. These Terms and Conditions will be valid for all contractual relationships. For concrete pumping and transporting equipment and services, additional provisions inserted in Section B shall apply.
3. Even if we have cognisance of them, any general terms and conditions differing from, conflicting with or adding to these General Terms and Conditions will not form a constituent part of the relevant contract unless their validity is expressly agreed in writing.

II. Conclusion of contract

1. Our invitations to treat are subject to change. We reserve the right to make technical changes, as well as changes to our products in terms of shape, colour and/or weight, insofar as is reasonable.
2. By placing an order, the customer declares with binding validity that he wishes to acquire the goods that have been ordered and/or to commission the service requested. We will be entitled to accept the contract offer constituted by the order and/or requisition within two weeks. Acceptance can be declared in writing or in text or electronic form, or through the delivery of the goods to the customer. Our order confirmation will be authoritative for the volume of the contractually owed services.
3. Declarations of intent given by us during contract conclusion shall always be subject to proper and timely delivery by our own suppliers. However, this will only apply in the event of incorrect delivery or untimely delivery by our suppliers for which we are not responsible. As necessary, the customer will be informed immediately about the non-availability of the service. In this case, we will immediately refund any consideration that has been paid.

III. Subject-matter of contract

1. Subject-matter of the contract are the goods and services as specified in the instruction form.
2. Where it is ready-mixed concrete that is to be delivered, the object to be supplied is works-mixed ready-mixed concrete - with the use of standard specification cement as the binder, the properties of which are described in the German norm DIN 1045. The concrete quality, as well as all the other properties of the fresh and hardened concrete, will be determined by the information given by the customer in the order. The customer will be solely responsible for the correct choice of concrete quality. Any operation whereby our ready-mixed concrete is pumped and/or transported on the construction site will not form the subject of the purchase contract; unless agreed otherwise, in addition, we will not be liable for the procurement of pumping and transporting equipment or their use.
3. Unless agreed otherwise, lime and cement will be delivered in bulk, using a silo truck.

IV. Execution of the delivery

1. The goods will be delivered either in vehicles driven under our instructions or through collection by the customer.
2. If goods are delivered on our behalf, the customer must ensure that the transport vehicle can approach the unloading point and unload the goods and/or feed them in without hindrance or delay. Moreover, the customer must ensure that, when goods are delivered in bulk, a silo and/or container is available that is capable of receiving the delivery, and that an authorised person is ready to receive the weighbridge ticket, verify that the seals are intact, state which silos and/or containers are to be filled and sign the delivery note.
Any breach of these duties by the customer will entitle us to charge the customer for any additional costs we have thus incurred; in particular, any additional freight costs.
3. If goods are collected by the customer, the vehicle operated to collect materials must strictly comply with the legal requirements for public road transportation. The technical equipment of the vehicle used must also fulfil the legal requirements for transportation, in accordance to the goods transported and accommodate Märker's loading facility requirements. The goods must be collected at our usual loading times, with the submission of the customer's collection instructions and the recipient's details. Even if a specific delivery date has been agreed, the customer will not be entitled to delivery on said date if the vehicle to be used by the party collecting the goods is unsuitable or if there is no such vehicle. It is the customer's responsibility to check prior to departure whether the vehicle is properly loaded, in particular not overloaded, and whether the load is properly secured. These obligations apply likewise to any third party whereby it is the customer's responsibility to ensure compliance.
4. Costs incurred through a subsequent order change will be borne by the customer.

V. Remuneration

1. After receiving the goods, the customer undertakes to pay the purchase price immediately, without any deductions. If other services are provided, the remuneration must be paid immediately, without any deductions, when the customer receives the invoice.

If the customer falls into arrears, during the arrears period, he must pay interest on the sums owed at a rate of 9 % above the base rate. We reserve the right to prove greater loss due to arrears, and assert a claim arising from such loss.

2. A discount at the rates that are valid on the delivery date will only be granted if all the debts payable hitherto have been settled and, in addition, if no further mutually payable bills exist. No discounts will be granted on the portion of the price that represents freight; nor will any discount be granted on payments by bill of exchange or bill of acceptance, which we reserve the right to accept. The sum commanding a discount will be shown on our invoice.
3. Unless agreed otherwise, the prices of services and products are shown in our price lists that are valid at the time when the contract is signed. For all goods, our prices are taken to be freight-prepaid prices plus VAT at the currently applicable statutory rate for the agreed destination, i.e.:
 - a. if goods are delivered by rail, freight-paid railcar at the nearest railway station to the destination;
 - b. if goods are delivered by truck:
 - for packaged goods, freight-paid unloading point.
 - for bulk goods, freight-paid, fed into silo and/or container, and/or free point of use.
 - for ready-mixed concrete and fresh mortar, free construction site.

4. If, according to the agreement that has been made, the customer himself or his forwarding agents collect the goods, freight reimbursements will be made by us, the amount of which will be stated in each case. The freight reimbursements will be made in the light of the most cost-effective and efficient form of transportation. We will be entitled to set reasonable upper limits to reimbursements, and grant only proportional reimbursement for partial loads.
5. For deliveries that do not fill the means of transport involved up to its useful capacity, a reasonable supplement can be charged. Any special costs for which we are billed in connection with the freight, such as weighing charges, local supplements etc., must be borne by the customer.

The customer will only be entitled to set-off if his counterclaims have been legally established as final and absolute, or acknowledged by us. The customer can only exercise a retention right if his counterclaim is based on the same contractual relationship.

VI. Retention of title

1. We will retain ownership of the goods that have been sold up until full settlement of all debt claims that arise out of the business relationship that exists with the customer, including all future debt claims. This will also apply where payments have been made for particular goods that have been specified by the customer.
2. The customer will be entitled to sell on the goods of which we have retained ownership (goods subject to retention of title) in the normal course of business unless a title of retention has been assigned to a third party prior to the sale. The customer will be obliged, with respect to the purchaser, to retain ownership up until payment has been made in full. Moreover, as security for all debt claims – including all those that arise in future - the customer assigns to us in advance all claims to which the customer is entitled against his customer due to the sale of the goods subject to retention of title. We hereby accept said assignment
3. Following the assignment of claims, the customer will be entitled to collect the debt that arises out of the resale. Our collection rights will not be affected thereby. Provided that the customer duly meets his payment obligations, we will not assert the claim ourselves. At our request, the customer shall indicate to us the third party debtor and inform him of the assignment. Our right to notify the third party debtors of the assignment ourselves shall not be affected. The client shall neither assign claims resulting from the sale of goods subject to retention to a third party, nor invoke objections arising from a possibly existing prohibition of assignment, nor agree with the third party debtor on a prohibition of assignment of claims.
4. The customer will be entitled to process, combine or mix the goods subject to retention of title. The goods will always be processed, combined, or mixed by the customer on our behalf and under our instructions. If they are processed, combined or mixed, using objects that are not owned by us, we shall become co-owner of this new product in proportion of the amount of the goods subject to retention of title to the amount of the other goods processed. Clauses 1 to 3 shall apply analogously to the new item of property that has been processed on our behalf and/or our co-owned share. The same will apply if the goods are combined or mixed with others that are not owned by us. If our ownership rights expire through said combining or mixing, the customer hereby transfers to us any ownership rights he acquires when said contracts are signed, in the amount of the value of the goods subject to retention of title. Clauses 1 to 3 shall also apply analogously to the co-ownership rights arising hereby.
5. The customer will have no entitlement to obligations or dispositions in relation to the goods subject to retention of title other than those mentioned in clauses 1 to 4.



6. We undertake to release the existing security at our own discretion insofar as its value exceeds that of the debt claim to be secured by more than 10%.
7. The customer is obliged to notify us immediately if third parties gain access to the goods, in particular, in the case of seizure or any other impairment of our security rights by third parties, as well as any damaging of or the destruction of the goods in question. The customer must hand over to us all the documents that are required in order for us to act, afford us all reasonable support for such procedures and bear any reasonable costs we thus incur.
8. We will be entitled to withdraw from the contract and demand that the goods be returned if the customer conducts himself in breach of the contract, in particular, where payment is delayed or in cases of breach of a duty according to clauses 5 and 7 of this provision.

VII. Passing of risk

1. The risk of the goods accidentally being lost and of their accidental deterioration will be transferred to the customer at the time when they are handed over, and, in a situation of sale by delivery to a place other than the place of performance, upon their delivery to the premises of the carrier or forwarding agent, or a person who has otherwise been designated for the execution of the shipment, or upon their assembly.
2. If the customer delays acceptance, this will be deemed to be handover.

VIII. Warranties

1. We initially warrant that defects in the goods will be corrected at our discretion through a remedy or the supply of substitute goods.
2. If the cure fails, in principle, the customer may choose to demand either a reduction in remuneration (reduction) or that the contract be revoked (revocation). However, if the breach of contract has been only minimal, in particular, if any defects are only minimal, the customer will not have any right of revocation.
3. The customer must inform us in writing of any obvious defects within a period of one week from the time when the goods are received; otherwise, the assertion of a warranty claim will be precluded. The full burden of proving all the preconditions for a claim, in particular, the defect, itself, the time when it was ascertained and the timeliness of the defect notification will rest with the customer.
4. If, on account of a defect of title or quality following a cure that has failed, the customer chooses to revoke the contract, he will not be entitled, additionally, to damages on account of the defect.

If, following a cure that has failed, the customer chooses to exercise claims for damages, the goods will remain with the customer if this can reasonably be expected of him. Except in an instance of bad faith, the amount of the damages will be limited to the difference between the purchase price and the value of the defective goods.

5. In principle, the fitness of the goods will be determined merely by our product specifications and/or, in the case of products of third parties, the manufacturer's product specifications. The customer will not acquire any guarantees as understood in law through us, unless expressly agreed otherwise.
6. If the customer receives from us defective instructions for the use of the product, we will only be obliged to deliver instructions which are free from defects, and, in addition, this will only apply if the defective instructions conflict with the proper use of the product.

IX. Other liability

1. Unless agreed otherwise in these terms and conditions, including the provisions that follow, we will be liable in cases of breach of contractual and non-contractual duties according to the relevant statutory provisions.
2. We and our vicarious agents will be liable for damages – regardless of the legal ground – in instances of wilful intent and gross negligence. In cases of ordinary negligence, we and our vicarious agents will only be liable:
 - a. for losses caused by impairment of health, or bodily injury or death; or
 - b. for losses caused by the breach of a fundamental contractual duty (an obligation the meeting of which renders the due execution of the contract possible in the first place, and on the fulfilment of which the contracting partner duly relies or is entitled to rely); however, in such a situation, our liability will be limited to the compensation of losses that are foreseeable and that typically occur.
3. Nevertheless, the liability restrictions shown in the above paragraph will not apply if we or a vicarious agent maliciously fail to report a defect or have assumed a warranty for the fitness for purpose of the product and/or service. The same will apply to claims on the part of the customer that arise under the Product Liability Act (ProdHaftG).
4. In a case of liability for ordinary negligence, Märker's duty to compensate property damage and any other resulting financial losses will be limited to the limits of indemnity granted by its relevant liability insurance policy, even if it is a matter of a breach of duties that are fundamental to the contract.

X. Limitation

1. Unless agreed otherwise below, the contracting parties' mutual claims will become subject to limitation according to the relevant statutory provisions.
2. As a departure from § 438 Para. 1 no. 3 BGB, the general limitation period for claims arising out of defects of title and material defects will be one year from delivery. If an acceptance procedure has been agreed, time will start to run at the date of said acceptance.
3. If the law relating to the provision of services applies to a service that passes between us and the customer, as a departure from § 195 BGB, the general limitation period for claims arising out of defects in the service concerned will be one year from the commencement of statutory limitation (§ 199 BGB).
4. The following will remain unaffected: statutory limitation provisions relating to real property restitution claims of third parties (§ 438 Para. 1 no. 1 BGB), and, in cases of bad faith on the part of Märker (§ 438 Para. 3 BGB), relating to supplier recourse claims (§ 479 BGB), arising out of the Product Liability Act (ProdHaftG) and relating to the claims for damages stated in IX. clauses 2 and 3. In such situations, only the statutory limitation provisions will apply.
5. The statutory limitation provisions, e.g. for structures and an object used for a structure as per its usual instructions for use that has caused said structure to be defective (§ 438 Para. 1 no. 2 b) BGB) remain unaffected. However, this will not apply to contracts that incorporate Part B of the VOB (Contracting Rules for the Awarding of Public Works Contracts) as a whole. Thus, the provisions of VOB/B (Contracting Rules for the Execution of Public Works) will apply.



6. If we owe the customer damages in accordance with IX. on account of or in consequence of a defect, the limitation periods determined in this paragraph will also apply to concurrent non-contractual claims for damages, unless the application of ordinary statutory limitation (§§ 195 and 199 BGB) gives rise to a shorter limitation period in a specific case. The limitation periods in the Product Liability Act will remain unaffected at all events.

XI. Further use

The customer can only use the results of any tests we have carried out, and any test certificates, test evaluations, test reports and expert opinions that we have prepared, with respect to third parties, with our express consent. This will not apply to requests for information on the part of courts or authorities.

XII. Final provisions

1. Only the German version of the General Terms and Conditions is legally valid and binding, whereby the laws of the Federal Republic of Germany shall apply at all times exclusively with regard to the meaning and interpretation of the terms used in the German contract agreement. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.
2. The place of performance for goods deliveries will be our relevant supplying plant unless agreed otherwise. The place of performance for payments will be our administrative headquarters.
3. The sole place of jurisdiction for all disputes arising out of this contract, including these General Terms and Conditions, will be our business headquarters in Harburg (Nördlingen / Bavaria district court, Augsburg / Bavaria regional court). The same will apply if the customer does not have a general place of jurisdiction within Germany, or if his registered office, domicile or habitual place of residence is not known at the time when proceedings are initiated.
4. Should individual provisions of this contract, including these General Terms and Conditions (Sections A. and B.), be or become ineffective in full or in part, the validity of the remaining provisions will not be affected thereby. The fully or partially ineffective provision should be replaced by a provision the commercial effects of which correspond to the intended effects of the ineffective provision as far as possible.

Abbreviations

BGB	Bürgerliches Gesetzbuch <i>German Civil Code</i>
ProdHaftG	Produkthaftungsgesetz <i>Product Liability Directive</i>
VOB	Vergabe und Vertragsordnung für Bauleistungen <i>Contracting Rules for the Awarding of Public Works</i>
VOB/B	Vertragsbedingungen für die Ausführung von Bauleistungen <i>Contracting Rules for the Execution of Public Works</i>



B. Supplementary conditions for the use of concrete pumping and transporting equipment and services

I. Provision of services

1. If billing on a time basis has been agreed, time will start to run when the concrete pumping and transporting equipment arrives at the agreed use location, and the period will end when it leaves; if differences of opinion arise concerning the service period, the reading on the transporter's tachograph will be authoritative.
2. Märker reserves the right to arrange for third parties to meet its contractual obligations. In such a situation, Märker will remain the customer's contracting partner.
3. Märker can revoke the contract if it is impossible for the company to furnish the services on account of factors that are not attributable to Märker; we will immediately refund any consideration that has already been paid by the customer. Märker will inform the customer immediately if the company is unable to furnish the services.

II. Duties of the customer

1. The customer must undertake all the measures required to enable the concrete pumping and transporting equipment to be put into service and used, and he must promptly obtain any authorisations from the authorities that are required for the commissioning of the concrete pumping and transporting equipment at the use location, in particular, for the blocking of the road or pavement. The customer must ensure that the transporter reaches and leaves the use location without being subject to any hazards: this presupposes a sufficiently secure access road on which heavy goods vehicles can travel without any hindrances. Moreover, the customer must ensure that the construction, shuttering and truss parts can tolerate the continuous stress of the transporting and pumping process. If these preconditions are not met, the customer will be liable for all the losses thus caused, regardless of whether he was at fault or not.
2. The customer must ensure that the concrete is capable of being transported and pumped by the concrete pumping and transporting equipment that is used. He will also be liable for the consequences if incorrect and/or incomplete information is given when it is requested.

III. Special provisions relating to remuneration and payment conditions

1. Märker will make an adjustment to the remuneration in the corresponding amount if, after this contract has been concluded, up until the transferring of the concrete pumping and transporting equipment and/or the provision of services, its own costs, in particular, those relating to personnel and consumables used, increase by more than 5 % if the contract is performed at the earliest four weeks after it has been concluded.
2. Supplements for the provision of services outside normal working hours and/or in cold weather will be agreed individually.

3. If, once the contract has been concluded, it becomes clear that our claim to remuneration is jeopardised by the customer's inability to pay (e.g. through an application for the initiation of insolvency proceedings), we will be entitled to refuse to perform the services in question and to cancel the contract with immediate effect. The right to refuse to perform the services and the right to cancel the contract will lapse if the customer pays the consideration or if another party stands or has stood surety for it. In addition, we will be entitled to revoke the contract according to § 321 Para. 2 BGB. The right to cancel the contract without notice on account of delayed payment will remain unaffected by this provision.
4. With respect to the customer, we are entitled from now on, including when the due dates differ, to employ set-off against such claims as he has against our parent, subsidiary, associated or otherwise affiliated companies.

IV. Security interests

1. As of today's date, in order to provide security for the fulfilment of the claim to payment of the remuneration, the customer assigns to us a priority partial amount for all the debt claims, with all ancillary rights, to which he has entitlement at present and will have entitlement in future, such as they arise from the construction contract in the execution of which the concrete pumping and transporting equipment is used, in the amount of the agreed remuneration plus 20 % of said claims. If security assignments have already been made to other third parties, the assignment will be made in the next available rank. We hereby accept the customer's assignment declarations. At our request, the customer must prove these claims individually, and inform his contracting partner of the assignment that has been made, with the requirement to pay us a sum totalling, at the most, the amount of the relevant remuneration that is due.
2. At any time, we, ourselves, will also be entitled to inform the customer's contracting partner about the assignment and collect the amount of the debt claims. However, we will not avail ourselves of these rights or collect the amount of the debt claims if the customer duly meets his payment obligations.
3. If the customer collects portions of debt claims that have been assigned to us, he hereby assigns to us a priority sum forming part of his residual debt claim in the amount of these debt claim portions. The right to the transfer of the sums that have been collected will remain unaffected.
4. If running accounts are used, our securities will be deemed security for the settlement of our outstanding balance claim. The customer must immediately inform us of a security interest or any other impairment of our rights by third parties. He must hand over to us all the documents that are required in order for us to act, and bear any costs we thus incur.
5. At the customer's request, we will release the securities to which we have entitlement insofar as the latter exceed the remuneration that is still outstanding.