

# General Terms and Conditions

## Section 1 General

The General Terms and Conditions form part of all quotations and contracts for deliveries and services of the Vendor. These terms and conditions also apply to all future business between the contracting parties.

Our General Terms and Conditions apply exclusively.

We do not recognise the Purchaser's contrary terms and conditions or those that differ from our terms and conditions of business or sale and delivery unless we have expressly consented to their validity in writing.

Our conditions of sale and delivery also apply if we carry out the delivery without any reservations in the knowledge of the Purchaser's contrary conditions or conditions which differ from our terms and conditions of business.

## Section 2 Subject of the contract (quality agreement)

(1) Unless otherwise stipulated in writing, the Parties agree that the quality of the products to be delivered corresponds to the relevant DIN standards. The Vendor does not guarantee the quality description, unless a guarantee is expressly agreed and it is confirmed in writing by the Vendor.

(2) Brick products are homogeneous bulk materials produced via a natural firing process. Models of all types and sizes, samples, illustrations, and descriptions are therefore only approximate.

(3) The Parties agree that the quality of coarse ceramic products shall not be affected by minor faults (e.g. breakages common to the trade) or colour variations during production, transportation or processing. Provided these do not significantly impair normal usability, the delivered goods conform to the contractual quality.

## Section 3 Quotations

(1) Quotations are subject to change without notice until the contract is concluded. Prices are ex factory.

(2) The Vendor's employees are not authorised to make additional oral agreements or provide oral promises that extend beyond the content of the written contract.

## Section 4 Delivery

(1) In principle, delivery shall take place ex factory. Delivery to the Purchaser shall only take place if it is agreed in writing in the contract and then at the expense of the Purchaser. For deliveries involving heavy loads, the Purchaser shall ensure that the place of unloading can be accessed and that suitable unloading options exist.

(2) Binding delivery dates must be expressly agreed in writing.

(3) Delivery times shall be extended in the event of disruptions for which the Vendor is not responsible during the course of business of the Vendor or his supplier, particularly strikes and lock-outs as well as acts of extreme violence due to an unforeseeable event to which no fault can be attributed to the Vendor or his supplier.

If these disturbances lead to impossibility of performance, the Vendor can withdraw from the contract after immediately informing the Purchaser of the impossibility. In such an event, the Vendor must reimburse the Purchaser for services already performed.

## Section 5 Payment

(1) In the event of delivery or acceptance, payment must be made in full.

(2) If he has not effected payment, the Purchaser shall be in arrears without further statements by the Vendor at the latest 30 days after the due date.

(3) Cheques or bills of exchange are only accepted on account of performance. Discounts, bank charges and costs are borne by the Purchaser.

(4) The Purchaser can only lay a lien if it is due to the same contractual relationship.

(5) The Purchaser can only offset claims with counterclaims that are uncontested, or contested yet on which decisions can be made, or legally established.

## Section 6 Notice of defects and claims arising from defects

(1) Unless otherwise arranged in a contract or in these General Terms and Conditions, the statutory provisions apply to claims arising from defects.

(2) The Vendor must enable notified complaints to be jointly established and be present for the removal of materials for examination.

(3) The Vendor shall only pay compensation under the terms of Section 7.

(4) Claims arising from defects against the Vendor must be made immediately by the Purchaser and cannot be transferred.

(5) If defects exist, the Purchaser is not entitled to lay a lien unless the delivery is clearly defective. In such an event, the Purchaser is only entitled to retention by withholding an amount in proportion to the defect(s) and the anticipated costs of remedy (particularly of a defect). The Purchaser is not entitled to enforce claims and rights caused by defects if the Purchaser has not made payments when due and the due amount (including any payments made) is reasonably proportionate to the value of the delivery and/or work subject to defects.

## Section 7 Compensation and withdrawal

(1) The Vendor is only liable for damage if it arises from a deliberate or grossly negligent breach of duty by the Vendor, his legal representatives or his vicarious agents.

(2) Notwithstanding this restriction, i.e. in the event of a (simple) negligent breach of duty by the Vendor, his legal representatives or his vicarious agents, the Vendor is liable for damage from injury to life, body or health.

(3) The Vendor is liable above and beyond Section 1 for a (simple) negligent breach of fundamental contractual duties by the Vendor, his legal representatives or his vicarious agents, although liability in this event does not extend to non-standard and unforeseeable damage.

(4) In addition, the Vendor is also not liable under the provisions of the German Product Liability Act.

(5) The Purchaser is not entitled to withdraw from the contract if said right is based on a defect in the object of sale, as far as it is based on a breach of duty not represented by the Vendor.

## Section 8 Reservation of title

The delivered goods remain the property of the Vendor until receipt of all payments due under the contract from the Purchaser (reserved goods).

## Section 9 Miscellaneous

(1) Unless otherwise agreed in the contract, the place of performance is the place of the supply plant.

(2) The contract shall be governed by German law, without recourse to the UN Convention on Contracts for the International Sale of Goods.

(3) Additional oral agreements are invalid. Additional written agreements, changes, additions and other agreements are only valid if effected by the management or in writing by the management's authorised representatives. Statements by other persons are only valid if confirmed in writing by the management.

(4) If a provision of these General Terms and Conditions is invalid, the remaining provisions remain unaffected. The invalid provision shall be replaced by a valid provision which comes legally closest to the economic purpose of the invalid provision. The same applies to any gaps in the provisions of the contract.

## Additional regulations for contracts with companies

### Section 10 Area of application

The General Terms and Conditions contained in the following paragraphs apply to companies, legal entities of public law and public fund assets. They do not apply to consumers.

### Section 11 Delivery and transfer of risk

Notwithstanding Section 4 (1), the following regulations apply to delivery and transfer of risk:

(1) Delivery is ex factory.

(2) The risk is transferred on consignment to the Purchaser.

(3) An agreed delivery takes place at the Purchaser's expense and risk. For deliveries involving heavy loads, the Purchaser shall ensure that the place of unloading can be accessed and that suitable unloading options exist. The Purchaser is liable for any damage arising if these requirements are not met. The Purchaser is also liable for damage arising if the delivery vehicle, for reasons which he must substantiate, is not immediately unloaded or is improperly unloaded.

### Section 12 Prices

Additionally, and notwithstanding the preceding paragraphs, the following applies:

(1) If increases in costs, particularly those for energy and staff, occur between the conclusion of the contract and delivery, the extent of which could not have been foreseen and as a result of which adherence to the agreed price would not appear to be justified, the Parties will renegotiate the price.

(2) The prices exclude the legal value added tax at the time of invoicing.

### Section 13 Payment

In addition to Section 5 and notwithstanding Article 321 of the German Civil Code, the following applies: If it emerges after conclusion of the contract that a claim for payment by the Vendor is at risk due to the Purchaser's defective performance (e.g. doubts concerning creditworthiness), the Vendor is entitled to subject further deliveries against prepayment only, to stipulate that all outstanding claims – including deferred claims – are due immediately, and to demand immediate payment in cash or surety, including for discounted bills.

### Section 14 Notice of defects and claims arising from defects

Notwithstanding Section 6 (1), Article 377 of the German Civil Code (duty to examine and requirement to give notice of defects) applies. However, the defect must be notified in writing and within one week at the latest. In addition to Section 6 (2), (3) and (4), the following applies:

(1) With the exception of claims for damages arising from injury to life, body or health, claims arising from defects become statute-barred one year after delivery of the object, provided a longer limitation period does not take precedence under Article 479 of the German Civil Code.

(2) If the Purchaser enforces supplementary performance, the Vendor can choose between replacement and rectification.

(3) The Purchaser shall bear the expenses required for the purpose of supplementary performance, should they increase as a result of deliveries conveyed to a place other than the Purchaser's branch, unless the conveyance corresponds to his intended use.

### Section 15 Reservation of title

Notwithstanding Section 8, the following applies:

(1) The delivered goods remain the property of the Vendor until payment of all existing claims from the business connection and the remaining claims in respect of the object of sale (reserved goods).

(2) The Purchaser processes, combines or mixes on behalf of the Vendor, without obligating the latter. In so far as the Vendor has not already acquired ownership or joint ownership by virtue of the law, the Purchaser herewith transfers joint ownership of the resulting object to the Vendor to the value of the reserved goods and holds it for the Vendor with professional care as reserved goods.

(3) If the Purchaser disposes of reserved goods or installs them in a property, he herewith transfers to the Vendor the resulting claims to the value of the reserved goods with all rights, including the first-ranking right to grant a cautionary mortgage. This also applies if the Purchaser acquires joint ownership. The Purchaser is entitled to process and dispose of the reserved goods in the ordinary course of business, provided he is not in arrears. The Purchaser is not entitled to other disposals, particularly pledging, transfers by way of security or other transfers. However, the Vendor authorises the Purchaser to collect claims assigned to the Vendor for invoicing in his own name. This authorisation can only be withdrawn if the Purchaser does not properly fulfil his payment obligations. If the Purchaser owns the property, the advance assignment covers to the same extent the resulting claims from the disposal of the property or of property rights. Advance assignment also extends to the Purchaser's balance claims.

(4) The Purchaser is obliged to inform the Vendor immediately of every type of third party access to the reserved goods or to assigned claims, and to provide information to the Vendor concerning the prosecution of an action.

(5) If the Purchaser does not fulfil his obligations towards the Vendor, or if justified doubts emerge about his creditworthiness, the Purchaser must at the Vendor's request return the reserved goods and disclose the assigned claims, and give the Vendor all the necessary documents and information to collect these claims.

(6) At the Purchaser's request, the Vendor is obliged to release securities granted of the Vendor's choice, provided their value exceeds the Vendor's claims by more than ten percent.

### Article 16 Place of jurisdiction

The place of jurisdiction, including for checks and actions on bills of exchange, is Kleve in Germany, provided the requirements exist under Article 38 of the Code of Civil Procedure.