

§ 1 General

(1) The terms of sale and delivery are an integral part of all quotations and contracts for performances and services to be provided by the seller. Deviating agreements and terms of business shall only become binding when they are confirmed in writing by the seller. These terms of sale and delivery shall be in accordance with the stipulations laid down under § 10 in the course of non-commercial business.

(2) The general terms of business, delivery, payment, purchase and other stipulations of the buyer, even should these be appended to the order sent to the seller, shall only be legally effective for the seller when reference is made to these in the order and these are expressly recognised in writing by the seller. Contrary conditions shall not be recognised in the case of the concluding negotiations of the seller.

§ 2 Conclusion of contract, products

(1) The quotations of the seller are without obligation. By placing the order the buyer declares his intent to purchase the ordered goods. The seller shall have the right to accept the offered contract provided for in the order within two weeks. Acceptance can follow either in writing or is indicated by delivery of the goods to the customer.

(2) Coarse ceramic products and more especially tile products are homogeneous mass goods produced in a natural firing process. As a consequence, samples of any kind and size, specimens, illustrations and descriptions are to be seen as non-binding examples for inspection. Slight deviations shall give no grounds for complaints.

(3) Details given in catalogues, leaflets, price lists or other printed matter of the seller shall become invalid in so far as the seller publishes a new issue of said printed matter before conclusion of contract.

§ 3 Prices

(1) To be charged are these prices valid on the day the order is placed with the seller plus the respective legislative Value Added Tax as well as any possible respective duty incurred and other possible public authority levies. In so far as nothing to the contrary is to be seen from the price list of the seller or in so far as no other agreement has been expressly reached, the respective prices are to be understood ex works or delivery warehouse loaded free on truck or railway wagon and include the respective usual packaging or the agreed deviating packaging (palleting, foil wrapped and/or strapped). The prices are based on the current general price list valid on the day of ordering.

(2) After conclusion of the contract the seller reserves the right to make reasonable adjustments to his prices in the case of reductions or increases in prices above all, due to changes in wage costs and prices of materials. Such changes will be evidenced for the buyer by the seller to the buyer upon demand.

§ 4 Delivery and transfer of risk

(1) Delivery is made ex works or delivery warehouse, respectively, at the cost and risk of the buyer in so far as nothing has been agreed to the contrary.

(2) In so far as nothing to the contrary has been agreed the risk is transferred to the buyer on loading the goods. The persons commissioned by the buyer to collect the goods and in turn, those persons instructed to carry out this work, such as the truck driver, for example, shall supervise the proper and more especially safe loading of the goods. Complaints in respect of loading must be reported without delay to the responsible yard master of the seller. Safeguarding the load on the transport vehicle is a matter for the person collecting the goods. Damage caused during transportation is a matter for the buyer and any such damage claims are to be lodged and claimed with the person commissioned to make transport.

(3) Should delivery be agreed this shall be at the cost and risk of the buyer. This presupposes access to the unloading point with heavy trucks and the availability of suitable unloading facilities. The buyer shall be liable for any damage incurred should these conditions not be fulfilled. The same shall also apply when the vehicle making delivery cannot be unloaded immediately and properly for reasons for which the delivery vehicle is not responsible.

(4) The packaging brought into traffic will be taken back at the works of the seller in accordance with his legal commitments in so far as such packaging has been completely emptied and is not contaminated and is delivered and sorted by the buyer at his cost.

§5 Delivery time, delivery hindrance

(1) Binding delivery dates shall be subject to express agreement.

(2) Unforeseeable acts of providence, such as shortage of material, energy, labour and lack of transport space, irregularities in production including defective kilning, labour disputes, subcontractors exceeding delivery dates, traffic irregularities and official stipulations, etc., which make it impossible for the seller to fulfil his delivery commitments, shall release him from his commitments and performances for the duration of the effects or should it be impossible for him to deliver or completely fulfil his commitments. In such cases without due consideration to § 9 of these terms of sale and delivery the seller shall have the right to make later delivery or – in so far as the delay makes it impossible for him to provide the performance, he shall have the right to withdraw from the contract without any claims for compensation. In such cases the seller is to immediately inform the buyer as to the occurrence of such an event.

§ 6 Payment

(1) The purchase price becomes due upon receipt of the invoice unless no other terms of payment have been agreed. The purchase price is to be paid without any deductions should nothing have been agreed to the contrary.

(2) The buyer shall be in default at the latest 30 days after receipt of invoice without any dunning by the seller.

(3) The acceptance of a cheque or bill of exchange is only in the interests of fulfilment. Discounts, charges and costs shall be to the account of the buyer.

(4) From the day of default onwards the seller shall have the right to charge the buyer interest at the usual bank rate, but at least interest to the amount of 8 percent points above the respective basic interest rate of the European Central Bank. The seller also reserves the right to claim damages over and above this. The seller can also withdraw from the contract. This shall not apply when the buyer has lodged a justified complaint in respect of the delivery.

(5) In the case of founded doubts as to the creditworthiness of the buyer the seller shall have the right to only make further deliveries against payment in cash in advance and all still unsettled accounts shall become immediately due for payment, even in the case of deferred payments and also have the right to demand immediate payment in cash or provision of guarantees and indeed also for received bills of exchange.

(6) The buyer can only claim his rights of retention should these be based on the one and the same contractual relationship and the claim is not disputed or has been determined to be final. The buyer can only offset counter claims that are not disputed or have been determined to be final.

(7) Payments to employees or representatives of the seller not made in his business rooms shall be considered as not made unless such persons have written powers of collection.

(8) Should the invoice be drawn up at the request of the buyer to a third party named by him and should the buyer request collection of the invoiced amount from third parties by the seller, this shall be only construed as empowerment and not a commitment. In this case such contract partners of the seller shall also still be considered to be the buyer but only to the extent that he shall be released from his payment commitment upon payment by the third party.

§ 7 Complaints, warranty

(1) The buyer shall inspect the delivered goods within one week after delivery and immediately report any found deficiencies, differences in quantities or wrong deliveries to the seller in writing but under all circumstances before installing, mixing or processing the supplied goods. The seller shall be given the opportunity to assess the reported complaints and be present when material samples are taken. The warranty rights of the buyer shall become invalid in the case of deficiencies not reported in due time in so far as these are not concealed deficiencies. This shall not apply in the case of deceitfulness on the part of the seller.

(2) Decisive for the products to be delivered are the pertinent DIN standards in so far as nothing to the contrary has been agreed such as in the case of agreement for delivery of "2nd choice goods", for example. Deviations, changes or tolerances as laid down in the DIN standards shall only be considered to be inconsiderable deviations from the agreed properties. The minimal damage incurred in production, transportation or processing of coarse ceramic products and more especially tile products (for example, sticking, small splinters, pressure points on tight fitting roof tiles or so-called "stacking points"), deviations in colour or bloom defects that do not detrimentally influence the usual usability to any considerable extent do not give any grounds for complaint also in the case of breakage or natural phenomena that can be traced back to external influences after transfer of risk (for example grass or moss collecting on roof tiles).

(3) In the case of justified complaints lodged in good time, the seller can opt to make improvements free of charge, deliver new products or provide a new performance at his own choice. Should respective replacement deliveries or improvements fail or call for an out of relation expenditure the buyer can withdraw from the contract or demand a reduction in the purchase price after installation without consideration to possible claims for compensation in accordance with § 9 of these terms of sale and delivery.

(4) In the case of complaints where there is no doubt about these being justified, the buyer may only hold back payments to such an extent as these are in a reasonable relationship to the given complaints. Should a not justified complaint be lodged the seller shall have the right to demand compensation for the expenditure incurred by him.

(5) Material damage claims are subject to the statute of limitations in so far as these are not a matter of consumer goods sale (§ 10 of these terms of sale and delivery) 1 year after delivery in so far as no promise has been made by the seller going beyond this. The term of limitation in the case of regress delivery in accordance with §§ 478, 479, Federal German Civil Code [BGB] shall remain unaffected by this.

§ 8 Retention of title and safeguarding claim

(1) The delivered goods shall remain the property of the seller until settlement of all claims arising out of the business relationship and any still given claims in connection with the object of purchase (goods subject to retention of title).

(2) Processing, installation or mixing of the goods by the buyer shall be at the order of the seller without any commitments arising for him out of this. In so far as the seller has not obtained property rights or co-ownership as a result of legislation, the buyer has already transferred co-ownership rights to the seller to the thus ensuing object and shall protect said object as goods subject to retention of title for the seller with the care of an orderly merchant.

(3) Should the buyer sell the goods subject to retention of title or install same on a plot of land, the buyer already assigns the thus resulting claims to the goods under retention of title with all rights including the right to be granted order of priority over the rest in respect of a security mortgage taken out on the property. Should the buyer be owner of the property the assignment covers the given claims arising out of the sale of the property or property rights to the same extent. Assignment in advance shall also cover the claims for balance of payment by the buyer.

(4) Under the premise that the co-ownership and the claims be transferred, the seller empowers the buyer to sell the goods subject to retention of title rights in the course of usual business, and process same and collect assigned claims. The buyer shall not have the right to make any other disposals, more especially mortgaging, assignment of guarantee or other said assignments.

(5) The buyer shall be committed to inform the seller immediately as to any kind of access by a third party to the goods under retention or of title or assigned claims and also provide him with the necessary information and documents for enforcement of rights.

(6) Should the buyer not fulfil his commitments towards the seller or there are given founded doubts as to the creditworthiness of the buyer he shall hand out the goods under retention of title rights upon demand to the seller. Withdrawal from contract is indicated should the buyer take back the goods under retention of title rights. Moreover, at the same time the buyer in this case shall expose the assigned claims by relinquishing his empowerment of collection and provide the seller with all the documents and information required to collect said claims. In this case the seller shall inform the buyer of the assignment and collect the claims to the extent of the liabilities of the buyer towards the seller.

(7) The seller can satisfy his claims arising from the taken back goods under retention of title by selling said goods himself. The yield is to be credited to the liabilities of the buyer less reasonable assessment costs.

(8) On demand of the buyer the seller shall be committed to release the given guarantees at the choice of the seller in so far as the value exceeds the given claims by more than 10 %.

§ 9 Claims for compensation

(1) Should the seller not have fulfilled his commitments or has refused to make subsequent fulfilment the buyer can only make valid claims for compensation as a result of a deficiency subject to the following conditions. The right of the buyer to make valid claims for damages over and beyond this shall remain unaffected by this subject to the following conditions.

(2) Without due consideration to the given legislation, the seller shall be liable without any restrictions and subject to the liability limitations for loss of life, physical injury and ill health due to negligent or intentional infringement of commitment by legal representatives or agents in so far as this is a matter of liability under the product liability law as well as for damage due to intentional or gross negligent infringements of contract as well as deceitfulness of his legal

deputy or aids for fulfilment. In so far as the seller has given a feature guarantee and/or durability guarantee in respect of the goods he shall also be liable under this guarantee. For damages based on the non-fulfilment of the guaranteed not given directly on the goods, the seller shall only be liable should the risk of such damage clearly concern the characteristics and durability guarantee.

(3) The seller shall also be liable for damage caused by simple negligence as well as when this negligence concerns the infringement of such contractual commitments, the upholding of which is of eminent importance to achieve the purpose of the contract (cardinal commitments). However, he shall only be liable in so far as such damage is typically and associated with the contract and foreseeable. However, he shall not be liable in the case of simple negligent infringements of secondary commitments not significant for the contract. The liability restrictions under sentences 1-3 shall also be valid in so far as the liability concerns legal representatives, executives and other agents.

(4) Excluded is any liability going beyond this without any consideration to the nature of rights of the claim made valid. In so far as liability of the seller is excluded this shall also be applicable for the personal liability of employees, workers, colleagues, representatives and fulfilment agents of the seller.

(5) In so far as compensation claims for damages are given for the buyer in accordance with these paragraphs these shall come under the statute of limitations with elapse of the valid term of limitation for deficiency claims in accordance with § 7 (5) in these terms of sale and delivery.

§ 10 Validity for consumer goods purchase

Should the buyer be a consumer and the regulations under §§ 474 et seq. Federal German Civil Code [BGB] for the purchase of consumer goods be applicable the terms of sale and delivery shall apply subject to the following stipulations:

- (a) The possible adjustment in price in accordance with § 3 (2) presupposes that at least 4 months are between the conclusion of the contract and the agreed time of delivery. Should the increase be more than 5 % of the agreed price, the buyer shall have the right to withdraw from the contract.
- (b) § 4 (3) shall be replaced as follows:
"Should the buyer be a consumer and it has been agreed to supply this shall be at the cost of the buyer. The risk of accidental going under and accidental deterioration of the sold objects shall also be transferred to the buyer in the case of mail order only upon transfer of the object to the buyer. Acceptance shall have no bearing on this should the buyer be in default as far as acceptance of the goods is concerned. Delivery presupposes access to the unloading point with heavy truck and suitable unloading facilities. The buyer shall be liable for any damage incurred should these conditions not be fulfilled. This shall also apply when the delivery vehicle cannot unload at once or not properly for reasons for which he is not responsible."
- (c) § 6 (4) this shall be applicable to the extent that 5 percent points above the respective basic rate of interest of the European Central Bank can be charged.
- (d) § 6 (6) Sentence 1 (partial exclusion of the retention of title rights) cannot be applicable.
- (e) § 7 (1) shall not be applicable
- (f) § 7 (3) Sentence 1 shall be replaced as follows:
"Should the buyer be a consumer he has initially the choice as to whether subsequent fulfilment is to be made by subsequent improvements or by replacement delivery. However, the seller shall have the right to refuse to accept the time selected for subsequent fulfilment should this only be possible at out of proportion costs and an other kind of subsequent fulfilment is still possible without considerable disadvantages for the consumer."
§ 7 (3) Sentence 2 shall be applicable unaltered.
- (g) § 7 (4) Sentence 1 shall not be applicable, § 7 (4) Sentence 2 shall be applicable unaltered.
- (h) § 7 (5) shall not be applicable.
- (i) § 8 (1) is to be replaced as follows:
"The supplied goods shall remain the property of the seller until payment of all demands arising out of the delivery contract."
- (j) § 9 (5) shall not be applicable.

§ 11 Final clauses

(1) Place of fulfilment for both delivery and payment of the purchase price is Neufahrn/Lower Bavaria, Federal Republic of Germany.

(2) Place of jurisdiction also for cheque, bills of exchange and document processes for contracts with companies, foreign contract partners, juridical persons under public law and funds of the government is Neufahrn/Lower Bavaria, Federal Republic of Germany.

(3) German law shall be applicable for the contractual relationship under exclusion of the agreement of the United Nations for contracts on international

goods traffic (CISG).

(4) Should one of the clauses to hand be or become ineffective this shall have no effect on the other clauses; rather more such shall remain binding for both seller and buyer in all other respects. This shall not be applicable should keeping to the clause concerned be unreasonably hard for one of the parties.