

# General Terms of Sale, Delivery and Payment for

## Goerg & Schneider GmbH u. Co. KG

### I. General provisions

- (1) All contracts are subject exclusively to our General Terms of Delivery (subsequently: GTC); we do not recognise the Customer's GTC, unless we have expressly agreed to this in writing. Our GTC shall also apply if we meet our contractual obligation without reservation with the knowledge of the Customer's GTC.
- (2) Our GTC shall only apply to any entrepreneur (Sections 310 I, 14 BGB [German Civil Code]), as well as to any legal entity or special-purpose entity organized under public law.
- (3) All agreements made between us and the Customer to amend the contract or for the purpose of performing this contract must be documented in writing as evidence. This shall also apply to supplements. This written form requirement may only be repealed in writing.
- (4) Our GTC shall also apply to all future business with the Customer.
- (5) Our head office is the exclusive international and local court of jurisdiction for all disputes resulting from the contractual relationship and its processing; we may, however, proceed legally against the Customer at the place of their registered office, if we so choose.
- (6) Unless otherwise indicated in the order confirmation, our head office is the standard place of fulfillment for all deliveries and services.
- (7) The contract is subject to German substantive law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- (8) The contract language is German: unless the GTC translated into another language is part of the contract, the German text version is authoritative if there are any contradictions.

### II. Offer and conclusion of contract

- (1) Our offers are subject to change and non-binding. The order must always be placed in writing (also by fax or email). Any errors or misunderstandings arising in the case of verbal orders shall be the Customer's responsibility. The contract either comes into effect by us confirming the order or delivering the goods. If we issue a written order confirmation, any additions, changes, subsidiary agreements or undertakings require our written confirmation to be legally effective.

Descriptions, illustrations, dimensions, weights and other performance data are only binding if this is expressly agreed in writing.

### III. Delivery, partial delivery and late delivery

- (1) Delivery dates and deadlines are non-binding unless otherwise expressly agreed in writing. The delivery deadlines start when the contract is concluded. In the event that contract amendments are agreed afterwards, the delivery date or deadline must be adjusted accordingly. The agreed delivery deadline shall be considered to be complied with if the dispatch of the delivery item has been actioned or the customer has been informed that it is ready for dispatch before the deadline expires.
- (2) Partial deliveries are allowed.
- (3) We shall not be liable for the impossibility of delivery or delays in delivery so long as caused by force majeure or other circumstances which could not be foreseen at the time of the conclusion of the contract (e.g. disruption of business operations of all kinds, strike, lawful lockout, difficulties in the procurement of material or energy supplies [including unusually high price increases due to which we can no longer be reasonably expected to adhere to the contract entered into with the customer], administrative order, traffic disruption, delay in transit, lack of manpower, energy or raw materials, difficulties in obtaining any necessary official authorization, pandemic or epidemic, extreme weather conditions [severe frost, heavy rainfall or periods of hot weather], unforeseen changes in the clay mine [e.g. tectonic shifts] or the omitted, incorrect or untimely delivery of a supplier despite a congruent hedging transaction concluded by us. This shall also apply if one of our suppliers or any of their subcontractors are faced with such difficulties. We may only invoke such an event, if we immediately notify the customer about this impediment of performance and its likely duration. In the event of such an occurrence, the delivery and performance periods validly agreed upon, shall be extended or likewise delivery and performance deadlines shall be postponed by the duration of the disruption plus a reasonable start-up period. Provided that such events substantially hamper the delivery or performance or else render delivery or performance impossible and the duration is not only of a temporary nature, especially if the impediment or disruption lasts longer than three months, we shall be entitled to withdraw from the contract in whole or in part on account of the portion that has not yet been executed. In the event of a rescission of contract, we shall be obliged to refund the customer without delay for any consideration rendered for that portion of the contract which has not been executed.
- (4) If the hindrance lasts longer than three months, the Customer is entitled to withdraw from the contract in terms of the partial non-fulfillment of the contract, after an appropriate grace period has been set.
- (5) In the case of an extended deadline or annulment of our obligations in accordance with Sections 3 or 4, the Customer shall not be entitled to derive any claims.
- (6) Compliance with our delivery obligations requires the timely and due fulfillment of the Customer's obligations, specifically the agreed terms of payment and non-exceeding of the granted supplier credit limit. As long as the Customer is in arrears with their liabilities, we can raise the objection of non-fulfillment of contract and suspend our delivery.
- (7) If we culpably exceed an agreed delivery date, default in delivery shall only be given once an appropriate grace period has been set.
- (8) If the Customer is in default of acceptance, we are entitled to demand compensation for any possible additional expenditure resulting from the unsuccessful offer as well as the storage and maintenance of goods. In this case, the risk of accidental loss or deterioration of the goods shall also transfer to the Customer at the time they get into default of acceptance.

### IV. Dispatch

- (1) If nothing to the contrary has been agreed in writing, dispatch is ex works and/or by free means of transport at the Customer's risk and expense. We reserve the right to choose the transport route and method of transport, if nothing to the contrary has been agreed.
- (2) The risk shall pass to the Customer when the goods are handed over to be delivered to the Customer, to the forwarder commissioned by the Customer, to the carrier or any other enterprise commissioned with the dispatch and from the time they leave our plant at the latest. This shall also apply if we have absorbed other costs, e.g. shipping costs, if nothing to the contrary has been agreed in writing. Damage in transit must be noted on the delivery note and in the case of rail shipment ascertained by the relevant Bahn AG authorities to enforce claims for damages. The goods shall be insured by us against transport, fire and water damage, at the Customer's request and expense.
- (3) If dispatch is delayed due to circumstances beyond our control, the risk shall pass to the customer from the date when the goods are ready for dispatch. However, we are obligated to take out the requested insurance at the Customer's request and expense.
- (4) The customer must return immaculate Euro-pallets in exchange for the supplied Euro-pallets, otherwise they will be invoiced additionally to the Customer. If other pallet systems are used, the regulations applicable for these systems and the prescribed procedures shall apply. If the Customer does not comply with these, any costs incurred as a result shall be at the Customer's expense.
- (5) In the event that delivered articles show obvious material – or manufacturing faults, including transport damage, please report such faults immediately to us or to the transport service provider which has delivered the goods. The failure to file this complaint has however no consequences for your legal claims. Should any defects arise with respect to the items purchased during the statutory warranty period, you have your choice of the legal claims for subsequent performance, removal of defects/ new delivery as well as – assuming all legal requirements have been fulfilled – further entitlement to a reduction or cancellation and compensation for damages, including the reimbursement for the damage as well as reimbursement of expenditure. (see also VII. Warranty)

### V. Prices

- (1) All the prices are net. VAT is also charged at the statutory amount.
- (2) The prices are in euro ex works, if nothing to the contrary is agreed. There are additional charges for packaging and these are invoiced separately.

### VI. Terms of payment, default

- (1) All invoices, even those on partial deliveries, are payable without deduction within 14 days of the invoice date, if nothing to the contrary has been agreed in writing. We are entitled to firstly offset the Customer's payments against their longest outstanding debt, in which case we will immediately inform them of the calculation method.
- (2) Payment is only regarded as settled once the amount is at our disposal; for cheque payment, payment shall only be regarded as settled once the cheque has been cashed and not been reversed

(3) We are not obliged to accept any bills of exchange or cheques for payment. If they are nevertheless accepted, acceptance shall only be effective once they have been honoured. Collection and discount costs are at the Customer's expense; they are payable immediately. We do not accept any responsibility for timely presentation and protest.

(4) If we become aware of any circumstances that call the Customer's credit standing into question, in particular if a cheque is dishonoured or reversed or the Customer ceases payment, we are entitled to immediately invoice the entire unpaid balance. In this case we are also entitled to demand collateral or advance payments in the future.

(5) The Customer is only allowed to offset our claims and withhold payments as a result of their own claims against us, which are undisputed, acknowledged and legally binding.

(6) If the Customer defaults on their payment obligation, we are entitled to demand default interest of 8% above the base lending rate of the European Central Bank, notwithstanding the possible enforcement of more far-reaching damages.

(7) We are not regarded as being in arrears as long as the Customer's fulfilment of obligations towards us, even those from other contracts, is in default.

### VII. Warranty

The warranty period for our products is 2 years. If a case pursuant to Section 438 Para. 1 No. 2 BGB exists, the statute of limitations is 5 years.

We supply a natural product and do not have any influence over its natural composition and suitability for specific uses. A specific quality or promise of its suitability for a specific purpose can only be agreed with us expressly and in writing or in text form. We are not responsible for the use of goods contrary to a previously agreed purpose that was not agreed with us in writing or in text form beforehand. In particular, the use and/or resale of the delivered goods for the animal feed, food and cosmetics industry is neither agreed nor permitted. As in accordance with Section 1, Para. 1 of the 2nd GPSGV [German regulation regarding the safety of toys], our goods are not to be classified as toys. Therefore, it is also not agreed or permitted to declare our goods as toys and to resell them as toys or to use them for the production of toys without our explicit consent.

The handover of samples, patterns, raw material data sheets, etc. shall not provide a quality warranty, but are merely intended to determine the type of goods. In particular, no trial sales contract (Section 454 BGB [German Civil Code]) shall be concluded by handing over samples.

The warranty for the natural product clay and its processing products fireclay, grinding clay and bulks includes faultless delivery within the usual tolerances for raw materials. The prevailing tolerances shall be regarded as agreed for all supplies. The weight determined by the rail or pit staff at the outgoing station or the Office of Weights and Measures' results in the case of deliveries by ship is decisive for calculating the goods' weight. Any weight loss during transport, e.g., due to the goods drying up or other influencing factors, shall not constitute grounds for warranty and damage claims.

With bilateral trading, the Customer must immediately and thoroughly inspect the goods delivered to them or a third party assigned by them and submit a written complaint regarding any obvious and readily identifiable defects within a week from delivery, and before they are processed or blended in every case. Latent defects that cannot be identified during the incoming goods inspection must be notified in writing immediately, one week after they are discovered at the latest. The same shall apply the quality promised in accordance with Section 2 is lacking. With these kinds of business transactions, the inspection, complaint and procedural duties resulting from them are the Customer's main responsibility. All complaints must be addressed directly to management and not to representatives. Section 377 HGB [Commercial Code] applies in all other cases.

After a complaint has been submitted, we are entitled to view the goods and take samples for inspection purposes. The customer must refrain from any use of the supplied goods that may increase the damage until the defect has been determined by us or by an expert commissioned by us.

In the event of disputes regarding the justification of a complaint, a material sample shall be taken jointly and given to a recognised material testing institute for inspection. The result of the expert's opinion and/or analysis shall be binding as an arbitration agreement for both parties. The expertise expenses must be paid by the losing party.

If the substantiated complaint is received on time, the Customer has the right to claim repairs or replacement. The right to repair is limited to the contract value. If the expected repair costs exceed the contract value, only replacement can be demanded. If the subsequent fulfillment is not successful, the Customer may choose between a reduction or withdrawal.

Further claims on the part of the Customer, irrespective of the legal grounds, are excluded. We are therefore not liable for any damages that are not to the delivery item itself, and specifically not liable for any of the Customer's lost profits or any other financial losses. Furthermore, we are not liable for any damages as a consequence of a latent defect for which a complaint was not immediately filed in accordance with Section 377 HGB [German Commercial Code].

This disclaimer shall not apply to any personal injuries or if we are accused of intent or gross negligence and in case of defects in the delivery item when liability exists for personal injury or material damage to privately used objects pursuant to the Product Liability Act. Furthermore, liability shall also be excluded if a Customer files claims for damages instead of performance due to a defect. In cases of minor negligence, our liability is limited to foreseeable damages upon conclusion of the contract. This limitation of liability also shall not apply to personal injuries.

### VIII. Reservation of title

We are granted the following guarantees, which we will release on demand at our own discretion provided that their value sustainably exceeds the accounts receivable by more than 20%, until all invoices (including outstanding account balances from open accounts) which we are entitled to or will be entitled to receive from the Customer for any legal reason have been settled.

We reserve the right of ownership for the goods. Processing or alteration shall always be done on our behalf as producers, but without any obligation on our part. As soon as our (co-)ownership lapses through compounding or blending, it shall already be agreed now that our (co-)ownership of the combined item shall be proportionally transferred to us (invoice value). The Customer keeps our (co-)ownership free of charge. Goods which we are entitled (co-)ownership to shall be subsequently referred to as reserved goods.

The Customer has the right to duly process and sell the reserved goods within the scope of business transactions as long as they are not in default. Pledging or collateral assignments are inadmissible. The Customer shall already fully transfer all the accounts receivable from resale or on any other legal grounds regarding the reserved goods (including all outstanding account balances from open accounts) to us now as security. We revocably authorise the Customer to collect the payments transferred to us on our account and on their own behalf. This direct debit authorisation can only be revoked if the Customer does not duly fulfil their payment obligations.

In the event of access to the reserved goods by a third party, the customer shall point out our ownership and notify us immediately.

Should the customer not comply with the terms of contract, particularly in the case of default, we shall be entitled to demand the return of the reserved goods and, if necessary, demand the Customer's surrender claims against third parties. The withdrawal and seizure of the reserved goods on our part shall not be regarded as withdrawal from the contract.

### IX. Limitation of liability

Outside the scope of Section VII. (Warranty), we are liable for damages that have been caused by intention or gross negligence on our part, in accordance with statutory provisions. We are also liable for personal injuries, irrespective of the degree of blame. Our liability is also governed by law if the Product Liability Act stipulates liability for personal injuries or property damage.

We are only liable for simple negligent damage to items (with the exception of liability pursuant to the Product Liability Act) or property if we are violating a significant contractual obligation as a result. A significant contractual obligation is specifically our delivery obligation as well as non-compliance with a quality promise, which we accepted in accordance with Section VII No. 2, and for the kinds of obligations where non-compliance would undermine the contract purpose. This liability shall be limited to the typical damages foreseeable at conclusion of the contract.

If our liability is excluded or limited, this shall also apply to any personal liability of our employees, co-workers, representatives and agents.

### Note:

We would like to draw your attention to the fact that our accounts are kept using an EDP system, and therefore data received as a result of the business relationship with the Customer is also stored (Art. 6 Para. 1 lit. b Datenschutz-Grundverordnung [General Data Protection Regulation] (formerly Section 28 Para. 1 No. 1 Bundesdatenschutzgesetz [Federal Data Protection Act])).