



General Terms and Conditions

Date: September 2020

I. Scope of terms and conditions

The general terms and conditions shall apply to all present and future business relations with the customer, unless the customer is a consumer. Offers, order confirmations, deliveries, performances, etc. provided by us are based exclusively on these terms and conditions, with priority given only to special warranty conditions agreed separately depending on the nature of the performance and delivery. They shall thus also apply to all future business relations, even if not explicitly re-confirmed. At the latest upon acceptance of the delivery, performance, etc., these terms and conditions are considered to have been accepted. Confirmations to the contrary by the buyer are herewith refuted. Any terms and conditions of the customer that deviate from, conflict with or supplement these terms and conditions, even if known, shall not be considered contractually valid unless expressly confirmed.

II. Offers, conclusion of contract and prices

1. Our offers and order confirmations determine our typical contractual obligations and the nature of the delivery, performance, etc. The scope of deliveries and performances is defined in final form in our order confirmation. Supplements, changes, etc. must be confirmed in written or text form by us. Dimensions, weights, diagrams and drawings for execution are only binding if expressly confirmed in writing. Consultation by our office and field service employees is provided to the best of our knowledge and in accordance with generally recognized rules of engineering, otherwise within the framework of normal operating conditions. Such consultations are not binding. We accept no liability for any consulting errors. Proper use of the goods / of the product is the sole responsibility of the customer. Agreed qualities apply only if agreed and confirmed in writing or in text form. They do not release the customer from the obligation to conduct own tests and trials for intended processes and purposes. Such qualities do not constitute guarantees. All statements and information concerning deliveries, performance items, etc., do not constitute agreed qualities and do not release the other party from the obligation to conduct own tests and trials for intended processes and purposes. No guarantees in the legal sense are provided to the customer.

2. Unless otherwise specified, our offers remain valid for 30 days from their dates. The prices listed in our order confirmation apply plus value added tax at the applicable rate. We reserve the right to revoke as yet unaccepted offers if significant price changes of at least 5% occur in the raw material or auxiliary materials markets during this 30 day period.

3. The prices apply ex works. Additional deliveries, performances, etc. will be charged separately. If costs included in the price for raw and auxiliary materials, personnel, and in particular energy costs, change or if new costs accrue related to fulfilment of deliveries, we reserve the right, within the framework of longer-term contractual relationships (with terms

exceeding six months), to revise the pricing taking into account the changes in costs that have come about, subject to the principles of equitable discretion.

4. Customary and reasonable minor deviations in colour, shape, dimensions and weight shall not constitute quality defects.

5. The contract is concluded subject to correct and timely satisfaction of our own requirements by our suppliers. This applies only in the event that we are not responsible for any relevant non-delivery, particularly in case of conclusion of a congruent cover transaction with our suppliers. The customer shall be informed without delay concerning non-availability of the performance. Payment made shall be reimbursed immediately.

III. Property rights, examination of the delivery, performance, etc.

If the other party provides documents, the other party assumes liability for their use so as not to violate any rights of third parties.

IV. Period of delivery and performance

1. The period of delivery and performance shall be agreed in writing. However, it shall not begin before all details of the execution are clarified and both parties agree on all terms of the contract, and refers to completion in the factory. Compliance with these conditions requires the timely fulfilment of the contractual obligations of the customer, in particular the terms of payment and the preconditions to be created by the customer. If these prerequisites of the customer are not fulfilled in time, the period shall be extended for us accordingly. The time of delivery and performance shall be deemed to have been observed if the delivery, performance, etc. has left our registered office by the end of the time of delivery and performance or, in the event that we are prevented from dispatch or acceptance through no fault of our own, is ready for dispatch or acceptance at our registered office. In case of deliveries, services etc. on demand, these must be agreed in writing for each requisition.

2. A reasonable extension of the delivery period shall also be granted if we are prevented from fulfilling our obligations by events for which we are not responsible, such as mobilization, war, civil unrest, natural disasters, riots as well as interventions by sovereign measures, strikes or lockouts or due to the occurrence of unforeseen obstacles and events beyond our will or influence, even if they occur during a delay in delivery, e.g. epidemic or pandemic-related business interruptions or interruptions of the business or supply chain due to official or legal orders. The same shall apply if official approvals or other approvals or information required by the Buyer for the execution of the delivery are not received in time; the same shall apply in the event of subsequent changes to the order by the Buyer. If the delivery, performance etc. becomes impossible or unreasonable for us, we may withdraw from the contract to the extent that it has not yet been fulfilled. The other party shall have the same right with regard to deliveries, services, etc., which it can no longer reasonably be expected to accept due to the delays.

3. If we are in arrears with the delivery and/or performance through our own fault, the customer may, if he proves damages resulting from the delay, claim compensation of up to a

maximum of 0.5% of the delivery value in arrears for each full week of delay, but no more than a total of 5% of the amount in arrears. Other or further compensation claims by the customer are ruled out in cases of delayed deliveries, even upon expiry of a grace period granted to us, unless our delay results from intent or gross negligence. The customer's right to withdraw from the contract after fruitless expiry of a deadline set for us shall remain unaffected.

V. Manufacturing and shipping

1. The test methods normally applied by us shall apply to investigations, whereby the German industrial standards (DIN) are used as a basis. The Quality assurance of the refractory material is carried out in the form of the quality control measures performed statistical quality controls.

2. Certificates of material tests of any kind will only be issued by us if agreed in writing and on the basis of the statistical quality control carried out at our registered office. In case of doubt, only a "certificate of works" (EN 10204) will be issued.

3. A quality control carried out does not replace the obligation to examine and give notice of defects. For the observance of legal, official or other regulations and provisions of our deliveries, services etc. the other part is responsible.

4. The other party shall be responsible for using our deliveries, services etc. properly, storing them properly, if necessary, and protecting them from incompatible influences.

Typical contractual wear and tear shall not constitute a breach of duty on our part. If the customer exports to other countries, including processing by the customer, we shall not be liable for the exportability of our deliveries, services etc. and for the freedom to obtain permits and import into the customer's export countries.

VI. Inspection, approval and dispatch, transfer of risk

1. The risk is transferred to the customer upon dispatch ex works. If dispatch is delayed through the fault of the customer, the risk shall pass to the customer from the day of readiness for dispatch. Deliveries, services etc. accepted prior to dispatch shall be deemed to have been manufactured in accordance with the agreed conditions.

2. If deliveries, performances, etc. which are available to the customer remain on our premises upon delivery or collection for reasons for which we are not responsible, then demands immediate payment in accordance with the agreed payment terms become. The deliveries, services etc. are then at the expense and risk of the customer. This shall not affect our right to demand acceptance.

This shall also apply in cases in which the customer refers to the conditions set out in Section IV 2. sentences 1 and 2 named circumstance.

3. Dispatch shall take place exclusively and always at the risk and on behalf of the customer. Any claims for remuneration, commissions, storage charges, interest, etc. shall be presented

or borne by the customer; in this respect the customer shall always indemnify us from such claims, even if we are the sender.

VII. Billing and payment

1. Weight as determined by us shall be decisive for determining the weight of the deliveries, services etc. In the case of packaging and loading, the weight shall be determined in the customary manner gross for net, i.e. the weight of the deliveries, services etc. including packaging material shall be decisive. At our discretion, the weight may alternatively be determined on the basis of the nominal weight of the packaging units.

2. The costs for packaging shall be borne by the customer. Disposable packaging shall be not taken back by us. Instead, we shall inform the customer of a third party who will treat the packaging in accordance with the statutory, official or other rules and regulations.

3. Invoices are due immediately and are to be paid immediately. We are not obligated, to accept bills of exchange and cheques. The payment shall only be deemed to have been made when in the case of bills of exchange and Checks the redemption and final payment is made.

4. Default of payment shall occur at the latest upon expiry of the set payment period without requires a reminder or other prerequisites, unless it has already occurred before according to the law. The customer shall only be entitled to set off against a counterclaim of the customer which has become res judicata or is undisputed by us. The customer may only exercise a right of retention if his counterclaim is based on the same legal relationship.

VIII. Retention of title

1. We reserve title to ownership of our deliveries, performances, etc., under exclusion of § 449 German Civil Code (BGB) in the respectively valid version, until all our claims from the contract or previous contracts or other legal relationship arising from the business relationship between the parties, in particular resulting from any current account balance, have been regulated.

2. In the event of delay of payment, substantial deterioration of the financial circumstances of the customer, opening of judicial or extrajudicial insolvency proceedings on the assets of the customer, we may, without withdrawing from the contract, at our discretion demand separate storage of the deliveries, services etc. or return of the goods, or take possession of them ourselves or have them taken, whereby the costs incurred, in particular for return transport, shall be borne by the customer. The same shall apply if, after the delivery, performance etc., we have reasonable doubts about the solvency or willingness of the customer to pay.

3. The other party shall be entitled to use the deliveries, performances etc. in the normal course of business operations as long as he is not in default of payment. If new items are created through processing, we shall acquire co-ownership of these items in the course of the processing. Ratio of the remuneration of the affected deliveries, services etc. rendered by us to the value of the new items created by the combination at the time of their creation. The same shall apply accordingly in the case of a combination with items not belonging to us. In

the cases of processing and combination, the other party shall keep the new items in storage for us.

4. The other party is not entitled to pledge the deliveries, performances, etc. or to assign them as security. Seizures by other creditors must be reported to us without delay.

5. As long as the other part is not in default of payment, it is entitled to use the deliveries, services etc. in the ordinary course of business. He hereby assigns to us already now any claims arising in this connection, regardless of whether they are transferred without or after processing and whether they are transferred to one or more buyers. The assigned claims serve as our security in the amount of the value of the respective deliveries, services etc. provided. In the event that the deliveries, services etc. are handed over by the customer together with other items not belonging to us, whether without or after processing, the assignment of the claim shall only apply to the value of our deliveries, services etc.

The customer undertakes to inform us on request of the names of the third-party debtors and the amounts of the claims. Under the conditions stated in item 1, we shall be entitled to inform the third-party debtor of the assignment and to assert the assigned claim.

The other party shall only be entitled to collect assigned claims as long as it fulfils its obligations to us. Cash amounts collected are immediately transferred to our property and must be stored separately. Insofar as our claims are due, the other party shall immediately transfer the collected amounts to us. The other party, however, is not entitled to dispose of such claims by assigning them to third parties.

6. At the request of the customer we are obliged to release portions of the securities as selected by him if the value of securities held by us exceeds the claims by more than 20%.

7. If a granted security is not valid or is eliminated, and if the other party has also not granted further sufficient securities, we may at any time request further securities.

8. The retention of title of ownership and the securities legally held by us shall remain valid until such time as full release from the contingent liabilities we have entered into in the interest of the customer shall be achieved

IX. Warranty, performance disruptions, breaches of duty, material and legal defects

1. In case of defects of materials items or work performed, we undertake warranty obligations if the warranty conditions that take precedence over these General Terms and Conditions and the demands made therein have been complied with by the customer or his agents. The inspection and notification obligations of § 377 of the German Commercial Code apply without restriction to merchants. Obvious defects must be reported by the customer in writing immediately upon their discovery, in any case before processing or installation take place. Complaints regarding weight, count or external properties of the deliveries, performances, etc. may only be issued by the customer without delay, at the latest 14 days after receipt, and in any case before processing or installation. Other legitimate complaints concerning the typical contractual obligations and the nature e.g. of the physical or chemical composition can also only be taken into account if the complaint is lodged in writing immediately after

discovery and before processing or installation. Characteristics of the deliveries, performances, etc. which were inspected and not objected to by the customer before dispatch cannot be made the object of subsequent complaints. After resale, processing or installation, defects that would be detectable after receipt can no longer be made the object of subsequent complaints.

Time guarantees for durability are not issued on principle. Assumption of implied guarantees is explicitly ruled out.

2. Claims arising from any defects in the deliveries, performances, etc. may, unless statistical quality control has been specifically agreed on, refer only to the individual defective items.

If statistical quality control has been agreed upon, it shall be performed on our premises. Each party shall bear the costs as individually incurred

A statistical quality control with a positive result in which a representative of the customer was invited to participate precludes subsequent complaints relating to the tested characteristics of the deliveries, performances, etc. Sampling (for quality control?) must in any case be done according to DIN 1927 and EN 51061 "Testing of ceramic raw materials and other materials, sampling of ceramic raw materials and refractory unshaped products".

If approval inspection by the customer has been agreed upon, this shall be in the form of a statistical quality control at the factory; if the control detects only defects in individual samples that are still within the range of the agreed acceptable quality limit (AQL), they do not entitle the customer to issue a complaint. If the inspection reveals defects beyond the range of the AQL, we shall be obligated – as far as possible – to sort out and replace the defective items. This must be followed by a re-inspection. If defects are then once again detected that are beyond the range of the AQL, or if replacement of the defective items is not possible, the other party may refuse to accept delivery of the entire inspected lot. A statistical quality control with a positive result in which a representative of the customer was invited to participate precludes subsequent complaints relating to the tested characteristics of the deliveries, performances, etc.

If the customer carried out an approval inspection in a form other than a statistical quality control, the other party may only issue complaints regarding defects that were not evident in the approval inspection.

3. If approval inspection by the customer has been agreed upon, this shall be in the form of a statistical quality control at the factory; if the control detects only defects in individual samples that are still within the range of the agreed acceptable quality limit (AQL), they do not entitle the customer to issue a complaint. If the inspection reveals defects beyond the range of the AQL, we shall be obligated – as far as possible – to sort out and replace the defective items. This must be followed by a re-inspection. If defects are then once again detected that are beyond the range of the AQL, or if replacement of the defective items is not possible, the other party may refuse to accept delivery of the entire inspected lot. A statistical quality control with a positive result in which a representative of the customer was invited to participate precludes subsequent complaints relating to the tested characteristics of the deliveries, performances, etc. If the customer carried out an approval inspection in a form other than a statistical quality

control, the other party may only issue complaints regarding defects that were not evident in the approval inspection.

4. In case of disputes regarding compliance with agreed-upon chemical composition or physical properties of the materials, an opinion from the Institute for Rock Metallurgy, RWTH Aachen or the Institute of Rocks and Soils of TU Clausthal-Zellerfeld or Rhineland-Westphalian TÜV Essen or the DIFK German Institute for Refractory and Ceramics GmbH, Bonn, at our discretion, shall prevail. Samples must be taken by the parties in common. The cost of the testing/investigation shall be borne by the losing party.

5. If we perform, at the request of the customer, defect checks, replacement deliveries or reworking and it is subsequently determined that we were not obligated to do so, the other party shall be obligated to pay for such actions under the usual conditions for orders.

X. Limitations of liability

1. In cases of mildly negligent breaches of duty, our liability shall be limited to immediate, foreseeable, average damages typical for the contract according to the type of delivery, performance, etc. involved.

This also applies to mildly negligent breaches of duty on the part of our legal representatives or agents.

2. The above limitations of liability shall not apply to customer claims arising from product liability.

3. Customer claims for damages due to defects shall expire one year from the date of delivery, performance, etc.

4. All of the above limitations of liability, even outside of this section "X. Limitations of liability" do not apply in cases of intent or gross negligence or in case of bodily harm and damage to health or loss of life. The limitations and exclusions of claims and liability in the above-mentioned sections, even outside of this section "X. Limitations of liability", do not affect claims by the customer based on § 439 paras. 2 and 3, § 635 para. 2 of the BGB (German Civil Code) (particularly compensation for installation and removal costs), and recourse claims of the customer as seller based on § 445 a of the BGB.

XI. Data protection

We are entitled to collect, store, change, transfer or use data of the customer obtained by us in the business relationship to the extent the other party can avail itself of these data.

XII. General information

1. The place of performance for our deliveries and performances is our head office. 2. These terms and conditions and all legal relationships between the parties shall be subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 Apr. 1980 (CISG) shall not apply. The text is to be interpreted

in accordance with German law. In the event of discrepancies between the German, English or any other language version, the German version shall prevail.

3. For all disputes arising from the business relationship, if the other party is a qualified merchant, a legal entity under public law or a special fund under public law, the suit must be filed with the court that is competent for our head office. However, we may also file suit against the customer in any court of competent jurisdiction. If one of the parties to the contract does not have a court of general jurisdiction in the Federal Republic of Germany, the court with jurisdiction for our head office shall be competent.

4. If one or more of the provisions of these terms and conditions, or a provision in the context of other agreements, should be or become invalid, this shall not affect the validity of the other provisions or agreements.

Special conditions for the implementation of maintenance, assembly and repair

I. General information

The provisions of the preceding terms and conditions apply. Acceptance of the order may also take the form of execution of the order.

II. Cost estimates

Cost estimates are only binding if made in writing and designated as binding

III. Billing and payment

Work performance, parts used, materials and filling agents will be charged separately, unless a fixed inclusive price has been agreed in writing when placing the order. Where applicable, our respective customer service and spare parts pricelist applies.

Payments are to be made immediately after work execution and delivery of the invoice net cash directly to us or to our agent, provided the latter holds written collection authorization.

IV. Inspection and approval

Inspection and approval of our performance shall take the form of a signature on the order or appropriate form. In the absence of such approval, the performance shall be considered approved upon expiration of 12 working days after written notification of completion of the performance, at the latest, however, upon commissioning of the plant.

V. Replaced parts

Replaced parts become our property unless otherwise agreed when the order is placed.