



# General Terms and Conditions

**Date: March 2018**

## **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. It shall, however, not begin until all details of the execution have been clarified and both parties have agreed to all conditions of the contract, and shall refer to completion at the factory. Compliance therewith depends on timely fulfilment of the contractual obligations of the customer, in particular the terms of payment and the preconditions for which the customer is responsible. If these preconditions are not met by the customer in due time, our deadline shall be extended accordingly. The period of delivery and performance is complied with if the delivery, performance, etc. has left our location by the end of the period of delivery and performance or, in case of non-culpable prevention of dispatch or receipt of shipment, is completed and available at our location. In cases of on-demand deliveries, performances, etc. this must be agreed in writing for each requisition.

2. If we are prevented from fulfilling our obligations due to events for which we bear no responsibility, such as mobilization, war, civil unrest, natural disasters, riots, as well as interventions due to governmental measures, strike or lockout or occurrence of unforeseen obstacles and events beyond our control, even if such events occur during a delay in delivery, the delivery period shall be extended accordingly. The same applies if regulatory approvals or other approvals required for the execution of the delivery or if information to be provided by the customer is not received in time, or in case of subsequent modification of the order by the customer. If delivery, performance, etc. on our part is rendered impossible or unreasonable, we may withdraw from the contract insofar as it has not yet been fulfilled. The same rights apply to the other party with regard to deliveries, performances, etc. the acceptance of which can no longer reasonably be expected due to 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. For investigations, the test methods normally applied by us shall apply, whereby German industrial standards (DIN) shall apply in principle. Quality assurance of the refractory material shall be in the form of the statistical quality controls continually carried out by us at our location.

2. Certificates for material tests of any kind are issued by us only upon written agreement, on the basis of the statistical quality control carried out at our location. In case of doubt, only a "Factory Certificate" (EN 10204) is issued.

3. Realization of quality control is not a substitute for the inspection and notification obligation. The other party shall bear responsibility for the observance of legal, regulatory, or other rules and regulations regarding our deliveries, performances, etc.

4. It is the responsibility of the other party to use properly, store appropriately as needed and protect from incompatible influences our deliveries, performances, etc. Contract-typical wear and tear shall not constitute a breach of duty on our part. If the customer exports to other countries, also including processing by the customer, we shall not be liable for the exportability of our deliveries, performances, etc., or for compliance with the licensing and import requirements for the countries to which the customer exports them.

## **VI. Inspection, approval and dispatch, transfer of risk**

1. The risk is transferred to the customer upon dispatch from the factory. If dispatch is delayed through the fault of the customer, the risk shall be transferred to the customer starting from the date of readiness for dispatch. Deliveries, performances, etc. inspected and approved prior to dispatch shall be regarded as having been manufactured in accordance with the agreed conditions.

2. If deliveries, performances, etc. available to the customer remain on our premises through no fault of ours after delivery, immediate payment may be demanded under the agreed terms of payment. The deliveries, performances, etc. are then transferred to the expense and risk of the customer. This shall not affect our right to demand inspection and approval.

3. Shipping dispatch shall take place exclusively and in all cases at the risk and on behalf of the customer. Any payment claims, commissions, storage fees, interest, etc. must be submitted by / paid by the customer; to this extent, the customer must in all cases exempt us – also as shipping dispatchers - from such claims.

## **VII. Billing and payment**

1. Weight as determined by us shall be the valid basis for determination of the weight of the deliveries, performances, etc. For packaging and loading, determination of weight shall be gross for net weight according to standard commercial practice, i.e. the weight of the

deliveries, performances, etc. including packaging material is decisive. Alternatively, if we so choose, determination of weight can be based on the nominal weight of packaging units.

2. Costs for packaging shall be borne by the customer. Disposable packaging will not be taken back by us. Instead, we shall name a third party to the customer who will process the used packaging material in accordance with the legal, regulatory or other requirements and regulations.

3. Invoices fall due immediately and are to be paid immediately. We are not obliged to accept bills of exchange and checks. Payment shall not be deemed to have been made until bills of exchange and checks have been finally credited.

4. Delay of payment, unless legally applicable at an earlier date, shall apply at the latest after expiry of the set period of payment, whereby reminders or other conditions are not required. Setting off of the invoice sum by the customer is only permitted for counterclaims of the other customer that are legally established or undisputed by us. The customer may only exercise a right of retention if his counter-claim 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 in the financial circumstances of the customer or opening of the judicial or extra-judicial insolvency proceedings over the assets of the customer, we may demand, without withdrawing from the contract, at our discretion, separate storage of deliveries, performances, etc. or their return, or repossess them or have them repossessed, whereby the resulting costs, in particular for return transport, shall be borne by the customer. The same applies if, after the delivery, performance, etc., we come to have well-founded doubts concerning the ability 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 result from processing combinations, we shall acquire co-ownership thereof upon processing in the amounts of the payments for our affected deliveries, performances, etc. to the value of the new goods created by said processing combinations at the time of their creation. The same shall apply to combinations with items we do not possess. In 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 party is not in default of payment, he is entitled to use the deliveries, performances, etc. in normal business operations. Resulting claims shall be ceded to us as of now, regardless of whether they are ceded without or after processing and whether they are to be transferred to one or several purchasers. The ceded claims shall serve as our security in the amount of the value of the deliveries, performances, etc. In the event that the deliveries,

performances, etc. are transferred by the customer together with other goods not belonging to us, whether without or after processing, cession of the claims is valid only in the amount of the value of our deliveries, performances, etc.

The buyer is obliged to inform us at our request of the names of third party debtors and the amounts of the relevant claims. Under the conditions referred to under item 1, we are entitled to inform the third-party debtor of the cession and to assert the ceded claim.

The other party is only entitled to collect ceded claims as long as he fulfils his obligations to us. Collected cash amounts become our property immediately and must be kept separately. To the extent our claims are due, the other party must transfer the collected amounts to us without delay. The other party is not, on the other hand, entitled to dispose of such claims by cession 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. After a justified complaint is lodged, we shall decide at our discretion to grant warranty by repair or replacement. If the order includes delivery and performance of documentation for construction or installation and the other party receives defective installation instructions, we shall only be obligated to furnish installation instructions free of defects, and only if the defect in the installation instructions makes proper installation impossible. The warranty period is one year. Claims by the customer of infringement of contractual obligations are also subject to the one year statute of limitations. The one-year period does not apply if longer periods apply according to mandatory statutory provisions in the respective valid version, or if we are subject to accusations of intent or gross negligence, or in case of bodily injury and injury to health attributable to us, or in the event of loss of life on the part of the customer.

If the other party demands damages after a failed supplementary performance, the customer retains the delivery, performance, etc. if this can be reasonably expected of him. The damages compensation is limited to the difference between the payment and the value of the defective delivery, performance, etc. This shall not apply if we have fraudulently caused the breach of contract.

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, TH 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.

We shall not be held liable for mildly negligent infringement of immaterial contractual obligations.

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.