

Conditions of Sale and Delivery

§ 1 General

These conditions of Delivery and Terms of Payment shall be a component part of all offers and contracts regarding deliveries and services by the seller. Deviating agreements in terms of business shall only become binding if they have been confirmed in writing by seller. The contract language shall be German.

§ 2 Offers, Delivery and Passage of Risk

- Offers shall be subject to change until the conclusion of the contract. Prices shall be understood ex supply works.
- Brickwork products are homogeneous bulk goods and subject to natural variations in raw material. Due to the characteristics of ceramic production, no responsibility is accepted for colour variations. Any dimensional, weight, colour and similar data, as well as samples shall be only non-bidding framework data, unless they are explicitly defined in the purchase contract. Minor deviations shall not entitle the buyer to complaints. Reference is made to the Technical Data Sheets. All products shall be manufactured specially for an order. The right to make design or manufacturing changes shall be reserved. The same shall apply for subsequent deliveries.
- The risk shall pass to Buyer upon loading.
- The stipulated delivery shall be at the Buyer's cost and risk. Its prerequisite shall be that the unloading place can be travelled on by heavy tractor trailers and that there is a suitable possibility for unloading. Buyer shall be liable for resulting damages if these prerequisites are missing. This shall also apply if the delivery vehicle is not immediately or not properly unloaded for reasons which Buyer is responsible for.

§ 3 Delivery Time, Delivery Obstacles, Cost Increases and Acceptance

- Binding delivery schedules shall require our written confirmation. If no due date is agreed upon, delivery shall be within 6 months.
- Unforeseeable force majeure and other unforeseeable unusual events – which may also include, *inter alia*, shortage of material, energy, labor forces and transport space, also production disorders, including defective firing, labor disputes, suppliers' exceeding delivery schedules, traffic delays, and official injunctions, etc. Due to which the Seller is unable to meet his delivery or supply obligations – shall be reason for Seller's full release from obligation of supply or service for the period of their being effective or in case of the impossibility of delivery or service. If delivery or service is impossible, Seller shall be entitled to rescission from the contract without payment of damages – irrespective of § 7 of these Conditions of Sale and Delivery. Seller shall immediately notify Buyer in the event of such case.
- The parties shall renegotiate the price in case of cost increases – in particular for energy and personnel – which occur between contract conclusion and delivery and which were not foreseeable in their extent and render adherence to the stipulated price unacceptable.
- Within the scope of statutory obligations, Seller shall accept packaging marketed by him back into his production facilities as far as they are emptied and not soiled and will be delivery sorted by the Buyer or at his costs respectively. Seller shall be obligated to make the ordered goods ready for shipment at the due dates agreed upon in writing. Buyer shall be obligated to completely accept the order volume.
- Delays by Buyer in meeting his contractual obligations (in particular in terms of the payment of any possibly provided down-payments or other financial conditions) shall entitle Seller to defer the delivery schedules for a period which is equivalent to the delay by Buyer, irrespective of all other rights to which Seller is entitled under the contract.
- In the event that Buyer does not meet the terms of payment for current deliveries or for deliveries already effected, Seller shall also be entitled to stop delivery, in addition to the annulment of the contract.
- In the event that goods ready for shipment cannot be delivered for reasons which the Seller is not responsible for, Seller shall be entitled to invoicing after the expiration of 15 days from the notification of readiness for shipment of the goods. The stipulated terms of payment shall then be effective. The goods shall be warehoused on behalf and for the account

of Buyer. In case of storage by Moeding Keramikfassaden GmbH, a fee in amount of EUR 2.00 per pallet of stored goods shall be invoiced for every month started. In case of external storage, we shall charge the actual costs incurred plus a handling fee by us. Against payment of the indicated storage costs to be paid by bank transfer to the bank account specified by Seller, Seller shall be responsible for the goods being stored such that they will be protected from wear. With the exception of this promise, any liability, third-party liability, or assumption of risk on the part of Seller shall be excluded with regard to the stored goods.

- In the event that Buyer, for whatever reason, asks for a deferment of the entire delivery or of only a part, or if he causes the deferment or even the failure of the delivery either at least actively or, respectively, by omission, Seller shall be entitled – in correlation with § 4 and irrespective of any other right – to stop the goods by means of storage at Seller's or respectively, at a third party, and to charge Buyer with the following contract penalties, as of the notice of availability:
 - No contract penalty shall be charged for the 1st month of storage.
 - From the 2nd and up to the 4th month of storage, a contract penalty shall be charged in the amount of EUR 2.00 per pallet of stored goods, for each month started, in addition to the storage costs.
 - Starting with the 5th month of storage, a contract penalty in the amount of EUR 5.00 shall be charged per pallet of stored goods, for each month, in addition to the storage costs.
 The contract penalty shall be charged in view of the financial expenditures to be borne by Seller with regard to the missed delivery. Furthermore, Seller shall be entitled to have the delivery made at any moment or, in any event, to demand acceptance of the goods upon first request. Moreover, any further right by law or under the contract shall be applicable.

§ 4 Payment

- The purchase price shall be paid upon receipt of the goods. Delivery shall be only up to the upper limit of the credit limit.
- If no date of required payment has been agreed upon, the invoices shall be due an payable 30 days after the date of invoice without deductions.
- Unless otherwise indicated, the amount of cash discount shall be calculated on the invoiced value of the goods, unpackaged, ex works.
- Checks or bills shall only be accepted on account of performance. Buyer shall bear the discount, bank charges and costs for remittances, letters of credit, bank guarantees, and the like.
- Seller shall be entitled to charge Buyer, as of the date of payment delay, the customary bank interest, at least however, interest in the amount of 8 percentage points above the corresponding basic interest rate by the Central European Bank. We shall reserve the right to claim further damages.
- In case of reasonable doubt in Buyer's credit worthiness, in case of payment delay or insolvency, Seller shall be entitled to make additional deliveries only against cash in advance, to make all outstanding – even deferred – payment amounts due and payable immediately and demand immediate cash payment or that security be furnished, also for discounted bills.
- Buyer may only claim a right of retention if it relies on the same contractual relationship and the claim is uncontested or unappealably determined. He may also offset only with uncontested or unappealably determined counterclaims.

§ 5 Complaint, Warranty

Buyer shall immediately inspect the delivered goods. Seller shall be notified in writing of any obvious defects, volume differences or wrong deliveries at the least within one week; in any event, however, prior to any combining, mixing or processing. The packing slip shall be enclosed with the complaint. Seller shall be given the opportunity to jointly determine the notified complaints and be present for sample taking for material testing. Drivers and field personnel shall not be authorized to accept complaints. Unaffected shall be § 377 HGB (Commercial Code).

- Unless otherwise agreed upon, the appropriate DIN standards shall be decisive. Variations, changes or tolerances within the scope of the DIN

standards shall present only insignificant deviations from the agreed upon quality. There shall be no complaints possible either for such minor damages, colour variations or efflorescences which occur in the manufacture, transport or the processing of ordinary ceramic products which do not considerably impair their standard usability, or for customary breakage.

2. In case of a justified complaint within the stipulated time, Seller may, at his option, either make improvement free of charge or render the service new. If replacement deliveries or, respectively, improvements fail or require inordinate expenditures, Buyer may – irrespective of any damage claims according to § 7 – rescind the contract or, after installation – only demand a reduction of the purchase price.
3. In case of justified complaint within the stipulated time, Seller may, at his option, either make improvement free of charge or render the service new. If replacement deliveries or, respectively, improvements fail or require inordinate expenditures, Buyer may – irrespective of any damage claims according to § 7 – rescind the contract or, after installation – only demand a reduction of the purchase price.
4. In case of justified defects, Buyer may retain payments only to an extent which is responsibly related to the defects which occurred. If the complaint was made although there is obviously no defect for the Buyer, Seller shall be entitled to demand that the expenditures which he incurred will be replaced. Defects in partial deliveries shall not entitle to the rejection of the remaining delivery, unless Buyer has no interest in the remaining delivery due to the defects of the partial delivery.
5. Material defects claims shall be statute-barred in 2 years. In case of the remedy of defects, we shall be obligated to bear all expenditures required for the purpose of the remedy of defects, in particular transport, labor and material costs, as far as they will not be increased due to the fact that the purchased matter was taken to another location than the place of performance.

§ 6 Reservation of Ownership and Safeguarding of Claims

1. The delivered goods shall remain in Seller's ownership (reserved goods) until payment of all claims existing due to the business relationship and of all claims still to be incurred in connection with the purchase object.
2. Processing, combination or mixing by Buyer shall be provided on Seller's order without Seller being obligated thereby. As far as Seller does not acquire already ownership or co-ownership by the force of law, Buyer shall assign to Seller now already co-ownership – at the value of the reserved goods – in the object resulting therefrom an shall safeguard it for Seller as reserved goods with the care of a businessman.
3. If Buyer sells reserved goods or built them into a real estate property, he shall now already assign to Seller the claims resulting therefrom at the value of the reserved goods, with all rights, including the right of granting a collateral mortgage with priority before the rest. If Buyer is the owner of the real estate property, the advance assignment comprises to the same extent the claims resulting from the sale of the real estate property or of real property rights. This advance assignment shall also extend to balance claims by Buyer.
4. Under the prerequisite of the transfer of co-ownership and the claims, as well as with the reservation of revocation, Seller shall authorize Buyer to sell reserved goods un usual business transactions, to process them an to collect assigned claims. Buyer shall not be authorized to other disposal, in particular pledging, security transfer, or further assignment.
5. Buyer shall be obligated to immediately notify Seller about any type of access by third parties to the reserved goods or the claims assigned, as well as to provide him with the information and documents required for prosecution of the action.
6. If Buyer does not meet his obligations versus Seller or if justified doubts in his credit worthiness arise, Buyer shall surrender the reserved goods to Seller upon request and disclose the assigned claims, with a simultaneous cancellation of his collection authorization and provide Seller with all documents and information which are required for the collection of these claims. In this case, Seller shall herewith be authorized by Buyer to inform the customers about the assignment and collect the claim himself.

7. If Seller takes back the products in the exercise of his right of reservation of ownership, a rescission of contract shall only exist if Seller explicitly declares this. Seller can satisfy himself from the repurchased reserved goods by direct sale.
8. Upon Buyer's request, Seller shall be obligated to release granted securities at the Seller's choice, as far as their value increases his claims by more than 10 %.

§ 7 Other Damage Claims

1. Damage claims and claims for repayment of expenses by Buyer (hereinafter: damage claims) shall be excluded, for whatever legal reason, especially because of breach of obligations under the contract relationship and illicit acts.
2. This shall not apply if there is absolute liability, e.g. according to the *Produkthaftungsgesetz* (product liability law), in cases of intent, in cases of gross negligence, for injury of life, limb or health, for breach of essential contract obligations: However, the damage claim for the breach of essential contract obligations as well as the claim for replacement of the damage instead of performance shall be limited to the contract-typical, foreseeable damage, unless there is intent or gross negligence or if there is liability due to the injury of life, limb or health. Any change of the burden of proof to the Buyer's disadvantage shall not be connected with the above provisions.
3. As far as Buyer shall be entitled to damage claims according to this paragraph, they shall be statute-barred with the expiration of the limitation periods applicable for defect claims according to § 5.5.

§ 8 Place of Performance and Place of Jurisdiction

Place of performance shall be the place of business of the supply works. Seller's place of business shall be the place of performance, even for check, bills, and instrument litigation if the prerequisites of § 38 ZPO (Code of Civil Procedure) are complied with. German law shall apply to the contractual relationship, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

§ 9 Validity for Consumer Goods Purchase

For legal transactions which do not relate to either the operation of the trading business of a merchant, nor a legal entity under public law or special assets under public law, these Conditions of Sale and Delivery shall be used in accordance with the following:

1. § 2.3 shall not apply for sale to destination (§ 474 para. 2, in combination with § 447 BGB (Civil Code)).
2. The negotiation about a price increase which is possible according to § 3.3 shall have the prerequisite that there are at least 4 months between contract conclusion and the agreed upon delivery time.
3. § 5.4 shall apply with the condition that 5 percentage points above the corresponding basic interest rate of the Central European Bank can be charged.
4. The obligation of notification of § 5.1 shall apply for all obvious defects, volume differences or wrong deliveries. The statutory provisions apply for all other complaints. § 5.1 shall not be applied. Much rather, Buyer shall notify any obvious defects, volume differences or wrong deliveries at the latest on day 15 after delivery of the goods at the Buyer's; on-time sending of the notification shall be sufficient to comply with the above period of notification. The statutory provisions apply for all other complaints.
5. § 6.5 shall apply in accordance with the statutory limitation provisions.