

General Terms and Conditions of Business for Sale and for Works and Services

BCE Special Ceramics GmbH

- Status 2010 -

1. Applicable conditions/Area of validity

- a) The following General Terms and Conditions of Business apply for all our deliveries (including follow-up orders) and performances exclusively. Deviating conditions of the customer which we have not expressly recognised in writing shall not be binding upon us, even where we have not expressly contradicted the same.
- b) Our General Terms and Conditions of Business only apply to business entities within the meaning of § 310, para. 1, BGB [Bürgerliches Gesetzbuch – German Civil Code].
- c) The provisions in the main contract take precedence over these Terms and Conditions of Business.

2. Offer/Conclusion of contract

- a) Our offers are made without obligation. Details contained in offers and also in documents attached concerning measurements, weights, load-carrying capacity and other product attributes do not represent any guarantees or warranted properties. They only become quality attributes of the object of delivery and an integral part of the contract if they are set out in the confirmation of order.
- b) The contract is only formed through our confirmation of order, but in any event with the performance of the delivery.

3. Price/Price increases/Payment

- a) The prices are quoted ex our business headquarters, excluding packaging costs, and are subject to value added tax which is to be added in the respectively applicable amount. The packaging will be charged at cost price.
- b) We reserve the right, where the delivery is contemplated for a later point in time than two months following the conclusion of the contract, to make a reasonable adjustment to our prices if, following the conclusion of the contract, reductions or increases in costs, in particular by reason of collective agreements, changes in prices of materials or changes in prices at our suppliers occur. Upon request, we shall produce evidence of the same to the customer.
- c) In so far as no agreements to the contrary have been made and the other conditions for the payment falling due have been fulfilled, the price is to be paid without any deduction within 30 days from the date of the invoice.
Any acceptance of bills of exchange or cheques only takes place on account of performance. The discount and bill charges shall be borne by the customer and are immediately payable. The acceptance of a bill of exchange by us does not represent any deferment of the claim on which it is based. We may at any time sue to enforce the claim and levy execution; a bill of exchange is accepted in this respect simply by way of security.
- d) Any set-off by the customer against counter-claims is excluded except where the counter-claims have been judicially determined and are final and legally binding, are undisputed or have been recognised by us. Furthermore, the customer shall only be entitled to exercise a right of retention in so far as its counter-claim is based on the same contractual relationship.
- e) Non-compliance with agreed payment conditions lying within the sphere of responsibility of the customer, not just inconsiderable arrears of payments and also any risk to our claim to consideration through lack of ability of the customer to make payment which only becomes recognisable following the conclusion of the contract shall entitle us to suspend outstanding deliveries and only to perform the same against payment in advance or the provision of security. Should the customer, in the case of jeopardy to our claim to consideration, fail within a reasonable period of time to comply with our demand that it, at its choice, effect payment of the consideration or provide security contemporaneously with the performance, we may, following the expiration of the period, cancel the contract without prejudice to further statutory rights. Any jeopardy to our claim to consideration lying within the sphere of responsibility of the customer shall further entitle us, in so far as we have already furnished our performance, to call all our other claims against the customer arising from the contractual relationship immediately due and payable.

4. Delivery/Force majeure/Transport

- a) The delivery period shall not commence before final clarification of all technical details, and not before receipt of the other documents to be procured by the customer and compliance with the agreed payment conditions. If these obligations of the customer are not fulfilled within the due time, the period shall be extended by a reasonable time, provided we are not responsible for the delay. The delivery period shall be deemed to have been complied with if the customer has, by its expiration, received notification of readiness for despatch, unless the despatch is delayed for reasons for which we are responsible.
- b) War, insurrection, lawful industrial action, decrees by sovereign act, shortages of energy and raw materials, transport disruptions and unavoidable interruptions in operations and also all other cases of force majeure (including at our suppliers) shall release us – in so far as we have not assumed the procurement risk - for the duration of the disruption and in the scope of their effects from the obligation to make delivery.
- c) Risk shall pass to the customer as soon as the object of delivery has been handed over in our warehouse to the carrier; this shall also apply where we bear the transport costs. Where we use our own means of transport, risk shall pass to the customer as soon as the object of delivery has been unloaded by the means of transport at the customer or at the destination.
- d) Should the customer be in default in acceptance, or should it culpably breach its other duties of co-operation, the risk of incidental destruction or incidental deterioration of the object of purchase shall pass to the customer at the point in time at which the latter fell into default in acceptance or of its obligations. We shall also be entitled to demand reimbursement of any damage incurred by us in this respect, including any additional expenses. Further-reaching claims remain reserved.

5. Liability for defects/Damages

- a) A condition of the warranty rights of the customer is that the latter has properly complied with its obligations of inspection and notification of any complaints in accordance with § 377 HGB [Handelsgesetzbuch – German Commercial Code].
- b) In the case of justified complaints, we shall, at our option, repair, replace or newly furnish the respective individual parts or performances – at the option of the customer in the case of recourse against the supplier in accordance with §§ 478, 479 BGB. We shall bear the necessary expenditure for the elimination of the faults, in particular transport, travel, labour and material costs in so far as these are not increased through the fact of the object of purchase having been transferred to another location than the place of performance. Should the subsequent performance not be successful within a reasonable period of time, whereby, as a basic principle, we shall be entitled to two attempts at rectification, the customer may cancel the contract or reduce the price. The customer shall be entitled to claims for damages and claims for reimbursement of expenditure incurred in vain subject to the conditions laid down in Clause 6 c) to i) below.
- c) We may refuse subsequent performance as long as the customer fails to fulfil its payment obligations to us as they fall due in a scope which corresponds to that part of the performance which is free from defects.
Should the complaint have been unjustified, we shall be entitled to demand reimbursement from the customer of the expenditure thereby incurred by us.
- d) We shall be liable in accordance with the statutory provisions for damages for deliberate or grossly negligent breaches of duty, including for deliberate or grossly negligent breaches of duty on the part of our statutory representatives or vicarious agents, and also in the case of impossibility lying within the sphere of our responsibility and in the case of serious breaches of duty.
- e) We shall be liable in accordance with the statutory provisions in so far as we culpably breach fundamental contractual duties.
- f) In the foregoing cases 6. d) and e), and, further, where the customer is entitled to a claim for reimbursement of the damage in lieu of performance, our liability shall be limited to reimbursement of the foreseeable damage typically arising, provided we are not guilty of deliberate intent.

- g) In the event of loss of life, limb or health caused by us, our statutory representatives or our vicarious agents, we shall be liable in accordance with the statutory provisions. The same shall apply in so far as we have given a guarantee for the quality of our goods or the success of the performance or assumed a procurement risk and in the case of liability under the Produkthaftungsgesetz. [Product Liability Act].
- h) Except in so far as provided to the contrary above, our liability is excluded. Further-reaching claims or claims other than those provided for in this Clause 5 of the customer against us, our representatives or our vicarious agents on account of material defects are excluded.
- i) Claims and rights on account of material defects shall lapse by limitation after 12 months, commencing with the delivery of the object of delivery to the customer, except in so far as longer limitation periods are prescribed by statute under § 438, para. 1, no. 2, BGB (buildings and items for buildings), under §§ 478, 479 BGB (recourse against the supplier) and § 634 a, para. 1, no. 2, BGB (defects in the construction work). The limitation period of 12 months shall not apply in cases in which we or our representatives or vicarious agents are responsible for loss of life, limb or health, fraudulent concealment of a defect, in the case of deliberate breach of duty and in so far as we are liable under the Produkthaftungsgesetz [Product Liability Act].

6. Overall liability

- a) Any further-reaching liability for damages than as provided for in Clause 5. above – regardless of the legal nature of the claim asserted – is excluded. This applies in particular for claims for damages arising from breaches of duty in the conclusion of the contract, on account of other breaches of duty or for material damage on account of claims in tort in accordance with § 823 BGB.
- b) For the limitation of all claims which are not governed by the limitation period relating to defects in an item, a preclusive period of 18 months shall apply. It commences as from the point in time of acquiring knowledge of the damage and of the person causing the damage.
- c) The limitation under para. a) also applies where the customer, in place of a claim to reimbursement of the damage in lieu of performance demands from us reimbursement of expenditure incurred in vain.
- d) In so far as our liability for damages is excluded or restricted, this shall also apply in relation to the personal liability for damages of our staff, workers, employees, representatives and vicarious agents.

7. Reservation of title

- a) We reserve title to the object of delivery (reserved goods) and its individual parts and to the documents enclosed with the object of delivery as long as we are still entitled to claims, regardless of what kind, arising from the present or future business relationship with the customer. In the case of running accounts, this reservation of title also serves to secure our respective balance claim.
- b) In the case of default in payment or in the case of a sustained diminishment of the credit-worthiness of the customer, we shall be entitled also without the exercise of the right of cancellation of the contract and without setting an extension of time to the provisional repossession of the reserved goods and the documents at the expense of the customer.
- c) The customer may re-sell the reserved goods in the ordinary course of business. Goods are not sold in the ordinary course of business if the reserved goods are not re-sold under reservation of title. The authorisation shall lapse as soon as the customer falls into default with payment or a subsequent diminishment in its credit-worthiness arises (for example, an application is made for the opening of insolvency proceedings).
The customer assigns to us already now all claims arising from the re-sale of reserved goods together with ancillary and security rights in the amount of the value of the invoice of the reserved goods. The assignments set out above are hereby accepted by us.
Up until the lapse of the authorisation issued above, the customer shall also be entitled to collect the assigned claims. Upon the lapse of this authority, we shall be entitled to notify the buyers of the customer of the assignment, and to collect the claims ourselves. Upon the lapse of the authority to collect the claims, the customer shall furthermore provide us with all information, and hand over all documents which are required in order to assert the assigned claims.
- d) The processing or transformation of the object of delivery by the customer is at all times carried out on our behalf. If the object of delivery is processed with other items which do not belong to us, we shall acquire co-ownership in the new object in the ratio of the value of the object of delivery (invoice end sum, including VAT) to the other items processed at the point in time of the processing. In all other respects, for the object arising through the processing, the same shall apply as for the object of delivery delivered under reservation of title.
If the object of delivery is inseparably mixed with other items which do not belong to us, we shall acquire co-ownership in the new item in the ratio of the value of the object of delivery (invoice end sum, including VAT) to the other items mixed at the point in time of the mixing. Should the mixing take place in such manner that the object of the customer is to be regarded as the main object, it is deemed as agreed that the customer transfers proportionate co-ownership to us. The customer shall hold the sole ownership or co-ownership item thus created in safe custody on our behalf.
- e) Any transfer or assignment by way of security or any pledging of the reserved goods or of the assigned claims is inadmissible. The customer shall notify us immediately in writing of any seizure or other interventions by third parties.
- f) The customer shall hold the reserved goods and documents in safe custody for us at no charge. It shall insure them against the usual risks such as e.g. fire, water damage, theft, and transport damage. The customer assigns to us already now the claims against insurers and third parties arising from any case of damage in the amount of the value of the invoice of the reserved goods affected. We accept this assignment.
- g) Should the value of the security to which we are entitled exceed our claims in total by more than 10 %, we shall be obliged, at the demand of the customer or of any third party prejudiced through our holding an excess of security, to release security of our choice to such extent.

8. Industrial property rights, Drawings, Documents, Tools

- a) We reserve proprietary rights and copyright in all drawings, drafts and documents prepared by us. They are to be treated confidentially, enjoy the protection of intellectual property in accordance with the statutory provisions and may not be disclosed to third parties, in particular competitor companies, or exploited by the customer itself outside the contractual agreements.
- b) Drawings, drafts and documents, which are an integral part of our offer must be sent back if no contract is concluded.
- c) Tools, models and other devices shall remain our property, even where the customer has assumed the costs hereof, either in whole or in part. We shall, however, remain under an obligation not to use these objects for other customers without the consent of the customer.

9. Miscellaneous

- a) Where the customer is a Kaufmann - *businessman* - within the meaning of the Handelsgesetzbuch [German Commercial Code], a legal entity established under public law provisions or a body of special assets established under public law provisions, Mannheim shall be the court venue for all disputes arising either directly or indirectly from the contractual relationship. We shall, however, also be entitled to sue the customer at the court where it is resident.
- b) The law of the Federal Republic of Germany shall apply; the application of the UN Convention on the International Sale of Goods is excluded.
- c) Unless provided to the contrary in the confirmation of order, our registered office shall be the place of performance.
- d) Over- or underdelivery up to 10% of the ordered goods quantity are permissible.
Registered office of the company: 68229 Mannheim; Local court HRB 4149