

Conditions of Sale for Refractory Materials and Equipment

§ 1 General Provisions / Prices, Terms of Payment

1. Our deliveries, services and offers are rendered exclusively on the basis of these terms of business. We do not recognize any Buyer's terms adverse to or deviating from our Conditions of Sale unless we expressly agree to their validity. These Conditions of Sale thus apply to all future business relations even if no express agreement to this effect is made again.
2. Declarations of acceptance and all orders must be confirmed by us in writing to attain legal validity. Said confirmation may also be rendered by fax or e-mail.
3. We retain title and copyright for images, drawings, calculations and any other documents.
4. The legally applicable value-added tax is not included in our prices; where applicable, it is stated separately on the bill in the amount legally valid on the billing date.
5. Unless the confirmation of order stipulates otherwise, the net purchase price is due and payable within 30 days from the bill date. If the Buyer defaults on payment, we shall be entitled to charge default interest in the amount allowed by law. If we prove damage or loss from the late payment above and beyond this, we shall also be entitled to assert a claim for compensation for same.
6. Owing to the conditions prevailing in the manufacture of refractory materials, we reserve the right to exceed or fall short of the confirmed supply quantity by at most 5% (excess units/excess quantity). The Buyer agrees to accept and pay for the excess units/excess quantity.

§ 2 Time of Delivery and Performance

1. A prerequisite for us meeting delivery and performance obligations is that the Buyer duly performs its obligations on time.
2. If we are overdue with a delivery owing to gross negligence for which we are responsible or owing to intent, the Buyer shall be entitled to demand default compensation equal to ½% for each full week in default but up to a total of at most 5% of the net amount billed for the deliveries and services affected by the delay, unless otherwise stipulated in the supply agreement. Any claims above and beyond this are excluded. In the event of ordinary negligence no claim at all may be asserted.
3. We are not responsible for delays in delivery and performance attributable to force majeure and to events that make it substantially more difficult or impossible for us to render delivery even if binding deadlines and dates have been agreed. Said events include in particular strikes, lockouts, directives from the authorities, war, insurrection, breakage or misfiring, fire or water damage. Said events entitle us to postpone the delivery or performance for the duration of the impairment plus a reasonable startup period or to withdraw from the agreement as a whole or in part owing to the not yet performed portion thereof.

§ 3 Passing of the Risk

The place and time the risk is passed to the Buyer are based on the agreements in the given contract of sale in accordance with INCOTERMS in their current valid version. If the contract of sale lacks clear provisions on risk bearing as defined in the INCOTERMS, the risk passes to the Buyer as soon as the shipment is handed over to the person responsible for transporting the goods, at the latest, however, as soon as the shipment has left our factory/warehouse or the factory/warehouse of the suppliers contracted by us or the latter's sub-suppliers. If shipment becomes impossible through no fault of our own, the risk passes to the Buyer upon notification that the goods are ready for shipment.

§ 4 Buyer's Rights in the Event of Defects

1. We undertake and warrant that the products are free of manufacturing and material defects. The warranty period lasts 6 months and begins on the date of delivery.
2. The Buyer must lodge a written complaint about defects immediately, at the latest however, within one week of receiving the object of delivery. Defects not detected within this period despite careful examination must be reported to us immediately in writing after their discovery.
3. If we are to blame for the defect in the sold object, we are entitled to choose either to remedy the defect or to make a substitute delivery.
4. If we believe the defect cannot be remedied or a substitute delivery cannot be made for whatever reason or if these actions otherwise fail, the Buyer is entitled once to demand its choice of either having the contract be cancelled or having the purchase price be reduced.
5. Further warranty and/or compensation claims on the part of the Buyer on whatever legal grounds are excluded to the extent permitted by law. We thus bear no liability for damage not incurred on the object of delivery itself; in particular, we bear no liability for lost profits or other financial losses sustained by the Buyer.
6. The above limitation of liability does not apply if the cause of damage/loss is attributable to intent or gross negligence or in the event of non-compliance with the product definition to the extent that the Buyer was to be protected by virtue of the agreed product properties specifically against damage/loss of the kind sustained.

7. Any further liability for compensation beyond the liability set down in § 4.4 and § 4.5 above is excluded regardless of the legal nature of the asserted claim.

§ 5 Retention of Title / Pledging as Collateral Security

1. We retain title to the goods delivered to the Buyer until the purchase price is paid in full and until all claims existing at the time of delivery in connection with or arising thereafter from the supply agreement relationship are satisfied.
2. In the event of a default on payment or a substantial deterioration in the Buyer's financial circumstances or the initiation of any kind of insolvency proceedings, we shall be entitled to demand the return of the goods without withdrawing from the contract. The same applies if after delivery is made, well-founded doubts arise in our minds as to the Buyer's ability or willingness to render payment.
3. The Buyer shall be entitled to resell the delivered good, to process it and to attach it to and/or mix it with other objects. The Buyer transfers to us claims of any kind arising from this action in an amount equal to our account receivable against the Buyer plus 20 %. We herewith already accept this assignment. The same holds true for all compensation claims, in particular those arising from insurance agreements owing to the loss of or damage to the goods. The assignment becomes null and void as soon as our claims against the Buyer are paid in full. In the event of the resale, attachment, processing and conversion or mixing of the delivered goods, the Buyer agrees to make a suitable and legally valid notation immediately in its accounts regarding the above assignments of its rights to us. Failure to do so constitutes grounds for compensation claims.
4. If the goods sold subject to the reservation of title are attached to or mixed with other objects, we become co-owner of the new object proportional to the relative value of the connected or mixed objects. If the Buyer acquires co-owned shares therein through attachment, processing or mixing of the goods sold subject to the reservation of title, it will assign these shares to us in a suitable and legally valid manner, in particular through suitable indications in the case of the impracticability of physical handover. Failure to do so constitutes grounds for compensation claims.
5. If the value of all rights to protection against risk to which we are entitled under these provisions exceed by more than 20% the value of all secured claims, we shall forgo an appropriate part of the said rights at the Customer's request.
6. If the retention of title is not legally valid under the law prevailing in the territory to which the goods are delivered, the means of security corresponding to retention of title in said legal territory shall apply. If the Buyer's involvement is required to bring about or receive such rights, the latter shall immediately undertake all the necessary measures for doing so on request.
7. The Buyer is not entitled to pledge the goods as collateral security or to transfer title to them by way of security until the goods are paid up in full. Levies of execution by other creditors must be reported to us immediately.

§ 6 Termination of Contract

We are entitled to terminate the contract if insolvency proceedings were instituted against the Buyer's assets, if the Buyer ceases making payments, or if the Buyer's financial circumstances deteriorate substantially, provided said termination is allowed by law.

§ 7 Other Provisions

1. All the Buyer's claims against us become statute-barred at the latest one year after the arrival of the goods at the Buyer's unless shorter statutory periods of limitation are stipulated contractually or under the law.
2. These Conditions of Sale and all legal relations between us and the Buyer shall be subject to the law of the country in which our registered office is located, unless otherwise expressly agreed in writing.
3. The INCOTERMS valid at the conclusion of this agreement shall apply but the provisions in these Conditions of Sale shall take precedence.
4. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the international private law norms under the law agreed upon pursuant to § 7.2 above are explicitly excluded.
5. Our registered office is agreed to be the sole legal venue. However, we are also entitled to take legal action at the legal venue with jurisdiction over the Buyer's registered office.
6. Our registered office is also the place of performance unless otherwise stipulated in the supply agreement.
7. If a provision in these Conditions of Sale or a provision in other agreements with the Buyer is or becomes invalid, this invalidity will not affect the validity of all other provisions or agreements.