

General Terms of Procurement of ESK Ceramics GmbH & Co. KG and its Associated Companies



1. General Conditions:

- 1.1 The following general terms of procurement shall exclusively apply for all our procurements, regardless of whether they are purchases, work orders or other procurements. In case of existing business relations, they also apply for all future contracts.
- 1.2 The supplier's general terms and conditions shall apply only insofar as we have given our express written consent thereto. Neither the acceptance of a delivery or service, nor the settlement of any payment etc., shall constitute an acknowledgement of the general terms and conditions of the supplier.
- 1.3 We are bound to our orders for two weeks. For the purpose of the acceptance, the supplier has to send us a signed duplicate of our order.

2. Offer:

- 2.1 All deliveries and services have to comply with the relevant laws, regulations and other legal provisions in particular concerning, security, accident prevention and environmental protection. All deliveries and services must comply with the current state of the art at the time of the delivery.
- 2.2 All necessary and standard documentation, documents, descriptions and plans are included in the respective order. To these as well as to all deliveries and services we have an unrestricted right of use.

3. Prices, conditions of payment

- 3.1 The price shown in the order is binding. In the absence of any different written agreement, the price includes delivery "free of charge to the given address", including packaging. The return of the packaging requires special agreement.
- 3.2 The legal sales tax is included in the price.
- 3.3 We can process invoices only if these indicate the order number, as set out in our order ; the supplier is responsible for all consequences arising from non-compliance with this obligation, to the extent he does not prove that he is not responsible for such non-compliance.
- 3.4 Provided that nothing other has been agreed upon in writing, we pay the purchase price within 14 days, calculated from delivery and receipt of invoice, with 2% cash discount or net within 30 days after receipt of invoice.
- 3.5 We are entitled to set-off rights and rights of retention within the legal scope.

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4. Delivery time:

- 4.1 The delivery time shown in the order is binding.
- 4.2 The supplier is obliged to inform us immediately, in writing, if circumstances occur, or become identifiable to him, resulting from which the agreed delivery time cannot be met.
- 4.3 In case of delay in delivery, we are entitled to make all legal claims. In particular, we are entitled to claim damages in lieu of the performance and to withdraw from the contract, following unsuccessful expiration of an adequate period of notice. If we claim damages, the supplier is entitled to prove that he is not responsible for the violation of obligation.

5. Passing of risk:

- 5.1 Provided that nothing other has been agreed upon in writing, the delivery has to be free of charge to the given address.
- 5.2 The supplier is obliged to indicate our order number on all shipping documents and delivery notes; in case of failure we are not responsible for any processing delays.

6. Defects:

- 6.1 We are obliged to examine the goods for possible quality and quantity defects within an adequate period of notice; the notification is given in good time if it is received by the supplier within five working days, calculated from the receipt of goods or, in case of hidden defects, from the time of discovery. No co-responsibility on our part is established by our examination of plans, documentation, documents or other performances of the supplier and our warranty claims remain unaffected by such.
- 6.2 We are entitled in full to statutory warranty claims; in any case we are entitled to demand from the supplier removal of the defects or replacement, at our option. The right to claim damages, in particular in lieu of performance, remains explicitly reserved.
- 6.3 The supplier is responsible for deliveries and services which he provides through sub-suppliers, in exactly the same way as for his own deliveries and services.
- 6.4 In case of defects, the statutory period of limitation begins again after their rectification; this applies also for parts which are functionally connected with the defective part and for which a harmful influence through the defective part cannot be excluded.
- 6.5 In case of notification in good time, the statutory limitation of our claims is suspended, as long as the supplier has not finally dismissed said claims in writing.
- 6.6 The limitation period is 36 months, calculated from passing of risk.

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7. Product liability, insurance cover:

- 7.1 As far as the supplier is responsible for product damage, he is obliged to exempt us from claims by third parties on first call insofar as the cause stems from his established and organizational sphere, and he is himself liable in relation to third parties.
- 7.2 The supplier is obliged to maintain a blanket product liability insurance with an insured sum of € 10 million per personal injury / damage to material; if we are entitled to further claims, these remain unaffected.

8. Place of performance, place of jurisdiction:

- 8.1 Provided that nothing other is specified in the order, place of performance is our place of business.
- 8.2 The law of the Federal Republic of Germany applies, excluding the United Nations Convention on Contracts for the International Sale of Goods. Provided that the supplier is a merchant, the place of jurisdiction is our place of business; however, we are also entitled to sue the supplier at the court of his place of residence. Trade terms are to be understood as specified by the Incoterms issued by the International Chamber of Commerce in Paris (ICC), in its current version in each case.

Kempton, January 2005