

General Terms of Sale of ESK CERAMICS GMBH & CO.KG and its Associated Companies



1. Generally:

- 1.1 All our supplies and services as well as all agreements concluded with us are exclusively subject to the following terms of sale. General terms and conditions of the purchaser which contradict or deviate from our conditions of sale and to which we have not given our express consent are not valid even if we do not expressly object to them. In case of existing business relations, our conditions of sale also apply for all future agreements.

2. Offer, Conclusion of Agreement:

- 2.1 Our offers are subject to change and non-binding. We are entitled to accept the offer of agreement inherent in the order within two weeks after receiving the order. All stipulations made between us and the purchaser for the purpose of the performance of the agreement are set down in writing therein.

3. Delivery, Default:

- 3.1 We are entitled to make partial deliveries as far as the purchaser must reasonably accept this according to the circumstances of the individual case. Payment shall be due for such partial deliveries upon receipt of the respective invoice.
- 3.2 In the event delivery is delayed, the purchaser may set us a reasonable grace period, after whose unsuccessful expiration the purchaser is entitled to withdraw from the agreement of sale through written notice or to request damages instead of performance.
- 3.3 At our request the purchaser is obligated to state within a reasonable period of time whether he withdraws from the agreement due to the delay in delivery, seeks damages instead of performance or insists on performance.

4. Return of Loan Packaging:

- 4.1 In the event of delayed return (meaning in the event normal unloading times are exceeded) of loading equipment, loading tanks and other loan packaging we reserve the right to charge the purchaser for the costs incurred by us.

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5. Prices:

- 5.1 Unless otherwise expressly agreed, prices are calculated "ex works," excluding packaging and plus delivery and shipping costs as well as plus any applicable Value-Added Tax.
- 5.2 Unless specific prices are agreed upon, our list prices valid on the day of dispatch shall apply. We reserve the right to modify the list prices after conclusion of the agreement. Should these modified prices be higher than upon conclusion of the agreement, the purchaser shall be entitled to withdraw from the agreement with regard to the quantities yet to be delivered within 14 days after notification of said price increase.

6. Payment:

- 6.1 The payment shall be made in Euro to one of our bank accounts indicated on the reverse side.
- 6.2 In case of delay in payment, interest for default shall be charged in the amount of 8% above the respective base interest rate, but at least 12%. We reserve the right to claim further damages. If the interest we claim is higher than the statutory interest for delayed payment, the purchaser has the right to prove lesser damages just as we have the right to prove that greater damages were incurred.
- 6.3 In case of delay in payment and reasonable doubts as to purchaser's solvency or credit worthiness, we are - without prejudice to our other rights - entitled to require collateral or payment in advance for outstanding deliveries. In the event of serious breach of agreement by the purchaser for which the purchaser is to be held responsible, we are entitled to consider all our claims arising from the business relation as due.
- 6.4 Bills of exchange and cheques shall be accepted upon separate agreement and only by way of payment. All expenses incurred in this regard shall be borne by the purchaser.
- 6.5 Only uncontested or final and absolute claims shall entitle the purchaser to set-off or withhold payment.

7. Force Majeure and Industrial Action:

- 7.1 Events of Force Majeure or industrial action, in particular strikes, lockouts, operation or transport interruptions, including at our suppliers, shall suspend the contractual obligations of the affected parties for the period of the disturbance and to the extent of its effects. Should the delay caused exceed a period of 6 weeks, both parties shall be entitled to cancel the agreement with respect to the scope of performance affected by such delays. No further claims exist.

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8. Defects:

- 8.1 The purchaser shall examine the goods promptly after delivery with respect to any defects and object to recognizable defects. Sample processing shall also be performed if this can be reasonably expected of the purchaser. Failure to proceed in the aforesaid manner shall result in the goods being considered as accepted.
- 8.2 Complaints must be made within 8 days after receipt of the goods, in case of hidden defects, however, complaints must be made promptly on discovery, yet within one year after receipt of the goods at the very latest. Said complaints shall only be taken into consideration if and when made in writing and with the relevant documentation attached. To comply with the time limit it shall be sufficient if the complaint is sent in good time.
- 8.3 If the purchaser requests subsequent performance due to a defect, we are entitled to choose whether we remove the defect ourselves or deliver a defect-free object as a replacement. The right to reduce the price or cancel the agreement in the event of unsuccessful subsequent performance shall remain unaffected.
- 8.4 Where complaints are justified, the goods may only be returned to us at our expense if after we receive notice of the defect we do not offer to collect or dispose of the goods.
- 8.5 If increased costs arise because the purchaser has transferred the goods to a place other than his commercial place of business, we shall charge the purchaser for the increased costs in connection with the remedying of the defect, unless the transfer corresponds to the intended use of the object.
- 8.6 Damage claims and claims for reimbursement of expenses shall remain unaffected as far as not excluded by para. 9.
- 8.7 All claims due to a defect are subject to a limitation period of one year after delivery of the object, unless we maliciously did not disclose the defect. No warranty is given for used objects. The statutory limitation period for objects which are used for a building in accordance with their usual manner of use, and which cause the defectiveness thereof, shall remain unaffected.
- 8.8 The rights of the purchaser under §§ 478, 479 German Civil Code remain unaffected.

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9. Liability:

- 9.1 Our liability is excluded, regardless of legal grounds. This shall not apply in the event of intentional actions or gross negligence by us or our legal representatives or agents or in the event of breach of material contractual duties.
- 9.2 In the event of a slightly negligent breach of material contractual duties, our liability is limited to the average immediate damage typical of such agreement and foreseeable from the type of the goods.
- 9.3 Our liability for damages due to injury to life, the body or health, the liability based on a guarantee and under mandatory statutory provisions, in particular the Product Liability Act, remain unaffected.

10. Reservation of Ownership:

- 10.1 The goods that have been sold remain our sole property until all our outstanding accounts receivable from the business relation with the purchaser have been paid in full. The Purchaser is authorized to dispose of the purchased goods in the ordinary course of business, in principle, or to process the goods. In the event of conduct in breach of agreement by the purchaser, we are entitled to revoke the power of disposal and processing and to take back the purchase object. Taking back the purchase object shall not constitute cancellation of the contract, unless we expressly declared cancellation of the contract. After taking back the purchase object, we are entitled to realization of the purchase object; the realization proceeds shall be credited against the purchaser's debts, minus reasonable realization costs.
- 10.2 The purchaser is obligated to handle the purchase object with care. If maintenance and inspection work is necessary, the purchaser must regularly perform such work at its own cost. Reservation of ownership and power of disposal and processing, as laid down in clause 10.1, also apply to the full value of the manufactured goods produced by proceeding, mixing and blending or combining our goods. In each case we qualify as the manufacturer. In cases where the goods are processed, mixed and blended, or combined with those of a third party and where the ownership of the latter continues to exist, then we acquire joint ownership in proportion to the invoice value of those processed goods. If security rights of a third party are in fact or in law below that share, the difference will be to our benefit.

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- 10.3 If the purchaser resells our goods to third parties he hereby assigns the resulting payment claim - or in the amount of our joint share therein (see para. 10.2) - to us. In the event the parties agree on a current account, the respective balance amounts shall be assigned. The purchaser shall be entitled, in principle, to collect such claims. The Purchase is only authorized to make assignment of these claims - even only for the purpose of collection by way of factoring – with our express written consent. Our right to collect the claim ourselves shall remain unaffected thereby. However, we undertake not to collect the claim as long as the purchaser meets his payment obligations based on the proceeds earned, does not delay payments, no petition is made for the initiation of insolvency proceedings and payments are not suspended. However, if that is the case, the purchaser's right to collect the claims shall expire and we are entitled to request that the purchaser disclose to us the assigned claims and their debtors, provide all information necessary for collection, surrender the relevant documents and notify the third-party debtors of the assignment.
- 10.4 The purchaser shall immediately give notice to us of any levy of execution, attachment or any other seizure of the goods and receivables by any third party.
- 10.5 If the value of the collateral exceeds our accounts receivable by more than 10% then we will upon demand by the purchaser release collateral to a reasonable amount at our own choice.
- 10.6 If the laws applicable in the territory in which the goods are located after delivery do not allow for reservation of ownership, but allow the Seller to reserve other similar rights to the delivery item, the purchaser shall provide us with such other equivalent security. The purchaser undertakes to assist us in the fulfillment of any form requirements necessary for such purpose.

11. Place of Fulfillment, Applicable Law and Jurisdiction:

- 11.1 The originating point of the goods shall, in each case, be the place of fulfillment for the delivery. Kempten shall be the place of fulfillment for payment.
- 11.2 Exclusively the laws of the Federal Republic of Germany shall apply between the parties. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 11.3 If the purchaser is a merchant or does not have a general place of jurisdiction in Germany, the place of jurisdiction is our registered office. We shall, however, have the right to bring a claim against the purchaser at his general place of jurisdiction.

Kempten, January 2005