

Amberger Kaolinwerke Eduard Kick GmbH & Co. KG
General Terms of Sale and Delivery

1. General

1. All deliveries shall occur on the basis of the following General Terms of Sale and Delivery. These are part of all offers and agreements and shall be considered as accepted for the duration of all of the business relationship by placing an order or by accepting the delivery. Differing general terms, which have not been acknowledged expressly in writing, shall not be binding on us even if we did not expressly dissent to the application.
2. Orders shall become binding on us upon our written confirmation, delivery without reservation or issuing an invoice, delivery note or a similar document. Our sales agents are only entitled to solicit offers, not however to enter into contracts on our behalf.
3. There have been no oral agreements outside of this contract.
4. The following terms and conditions shall apply only towards businesses according to Sec. 14 German Civil Code.
5. Our offers are always not binding unless our order confirmation indicates differently.

2. Prices – Payment Terms

1. Unless provided for differently in the order confirmation, the prices shall apply ex works without packaging for transport purposes; this will be charged separately. The statutory VAT is not included in the prices; it shall be shown separately on the invoice in the amount provided for by law on the day of issuing of the invoice.
2. Payment shall occur without any deduction within 30 days after invoice date. Deduction of prompt payment rebates shall require a separate written agreement.
3. If the Buyer is in default with a payment we are entitled to declare as due all our accounts receivable. If a payment time has been exceeded we are further entitled to request the granting of a security or prepayment. Due money claims shall bear interest of 8 % above base interest rate. We reserve the right to bring forward claims for reimbursement of further damages.
4. The Buyer may only set off his claims against our claims if his claims are undisputed or finally adjudicated; a retention right can be exercised only if based on claims out of the purchase contract.

3. Delivery

1. Delivery times and delivery periods, which can be agreed upon in a binding or not binding manner, have to be indicated in writing. Delivery periods shall start to run with conclusion of the contract.
2. We shall be liable according to the statutory provisions if our default with a delivery is based on a violation of contract by intentional or grossly negligent behaviour for which we are responsible; we shall be responsible for fault of our representatives or our auxiliary persons. If the default in delivery is not based on an intentional violation of contract for which we are responsible, we shall be liable only for the foreseeable typically occurring damage. We shall further be liable according to statutory provisions to the extent the delay in delivery for which we are responsible is due to a negligent or intentional violation of an essential contract duty; in that case the liability for damages shall be restricted to the typically foreseeable damage. Otherwise we are liable in case of delay with a delivery for each complete week of default for an amount of 3 % of the value of the delayed delivery, not exceeding 15 % of the value of the delayed delivery, as contractually agreed amount of damages.
3. Force majeure and events, which hinder us without our fault temporarily (such as strike, lockout, business interruptions, inclement weather or traffic obstruction, delay in the delivery with raw materials or machines, war or public instructions) to deliver the goods sold at the agreed point in time or within the agreed time period, entitle us to delay the delivery for the time of the hindrance plus an adequate time period to restart production. If such hindrances cause a delay in delivery of more than four months, the Buyer may rescind the contract. Other rights for rescission shall remain unaffected.
4. The Buyer shall be obliged to accept delivery of the good sold. If the Buyer is in default with acceptance we shall be entitled to demand reimbursement of damages caused thereby.
5. If the Buyer or a transport company instructed by him picks up the good sold agreed upon dates must be observed punctually. If the date to pick up goods which have been indicated to be ready for shipment is not met, we are entitled to otherwise dispose of the material on the next day. The Buyer shall bear all cost caused by the delayed picking up or delayed making available of transportation possibilities. If in case of contracts about delivery in instalments the agreed delivery periods and dates are not met by the Buyer, we shall after expiry of a reasonable additional time period be entitled to deliver the remaining goods, to rescind the not yet fulfilled part of the contract or to request damages instead of performance.
6. We shall be entitled to partial deliveries. They shall be considered as individual contracts unless the partial deliveries cannot be used by the Buyer without the remaining deliveries. If the order is for deliveries in several partial deliveries, the Buyer shall call for delivery of the goods in about even quantities over the delivery period and accept such deliveries. If in such cases the acceptance time is not expressly stipulated a reasonable time period shall be considered as being agreed.

4. Transfer of Risk

1. The risk shall in case by sending of the good pass to the Buyer when the good is given to the person undertaking the transportation or when the good for the purpose of being sent left the storage facility of the Seller.
2. We shall enter into a transport insurance only upon request of the Buyer which must be brought forward in a timely manner and at the cost of the Buyer.

5. Liability for Defects

1. Statements as to condition and durability and other statements shall only then be considered as independent guarantees if they as such have expressly been agreed and named. We do not assume liability for defects for the final products to be produced out of the components to be delivered by us. Specifically we shall not be liable as to functions and possibilities for use of such products. Use, application and further production of these products occur outside of our possibilities of control and are therefore exclusively the responsibility of the Buyer. Our consulting as to application technology occurs according to best knowledge, shall however only be considered as non-binding indication. Also as to potential intellectual property rights of third parties the Buyer shall not be freed from his own analysis whether the products delivered by us can be used for the intended procedures and purposes.
2. The statute of limitation for defects in case of newly produced goods shall be one year. The sale of used goods shall always occur under complete exclusion of any liability for defects.
3. The claims of the Buyer to remove defects shall initially be restricted to a claim for additional performance, this means removal of the defect or delivery of another good. We have the right to choose between removal of the defect or delivery

of another good. If the removal of the defect or the delivery of another good has failed the Buyer shall have the right to either reduce the purchase price or to rescind the contract. The removal of the defect shall be considered as having failed if and insofar as a reasonable time period granted to us for the additional performance has expired without result. The requirements to exercise the right to rescind the contract shall be governed by Sec. 323 German Civil Code.

4. We shall be liable according to the statutory provisions if the Buyer brings forward damage claims which are based on deceit, intent or gross negligence, including deceit, intent or gross negligence of our auxiliary persons. Insofar as we are not confronted with an intentional violation of contract the liability shall be limited to the foreseeable, typically occurring damages. All other liability for damages shall be excluded; insofar we shall specifically not be liable for damages which do not occur to the good delivered, unless a violation of life, body and/or health is given.
5. In case of removal of the defect we shall bear all costs connected therewith, especially transportation cost, travel cost, labour cost and material cost unless the costs are increased by the fact that the good has been moved to another place than the place of delivery.
6. The claims of the Buyer for damages require that the Buyer meet his duties to inspect and give notice of a defect discovered as contained in Sec. 377 German Civil Code in an appropriate and timely manner.

6. Recourse of Businesses

1. If the Buyer sells the good sold within his business to a consumer and has to take back this good because of defect or has to reduce the purchase price, the Buyer shall be able to bring forward his claims for defects against us without setting a prior notice period.
2. The Buyer may further request reimbursement of the expenses which he had to bear in relation to the consumer if the defect brought forward by the consumer existed when the risk passed to the Buyer. Expenses shall include without limitation transportation cost, travel cost, labour cost and material cost.
3. The Buyer shall within that business recourse not have a claim for damages.
4. The duty of the Buyer according to Sec. 377 German Civil Code shall remain unaffected by the above provisions.

7. Reservation of Property Clause

1. The good delivered shall remain our property until payment in full of all our claims out of the purchase contract. If the Buyer is a merchant in the sense of the German Commercial Code we retain ownership in all goods delivered until all payments out of the business relationship are received.
2. The Buyer shall be entitled to sell the goods delivered in the course of his ordinary business; he assigns however already now to us all of his accounts receivables up to the final invoice amount of the purchase price owed by him (including VAT), which shall accrue to him out of the sale against his customers or third parties, and this irrespective of the question whether the good delivered was sold with or without processing. The Buyer shall remain entitled to collect these account receivables even after the assignment. Our right to collect the accounts receivables ourselves shall remain unaffected. We undertake not to collect the accounts receivables ourselves as long as the Buyer fulfils his payment obligations as provided for in the contract and no application to open insolvency proceedings has been filed. If one of the above mentioned situations occurs the Buyer shall upon our request give us all information necessary to collect the assigned accounts receivables and shall give us the according documentation and shall inform the debtor (third party) in question about the assignment.
3. The processing or change of the good delivered shall always occur on our behalf. If a good delivered is processed together with other goods which are not in our ownership, we shall become co-owners of the new good in the relation of the value of the good delivered by us to the other goods processed at the point in time of processing. To the good which came into existence by processing otherwise the same provision shall apply as to goods delivered under a reservation of property clause. If the good delivered is mixed with other goods which are not in our ownership so that they cannot be divided again, we shall become co-owner of the new good according to the value of the good delivered by us to the value of the other goods mixed. If the mixing occurs in a way that the good of the Buyer is to be considered as main good, it shall be considered as being agreed that the Buyer transfers to us co-ownership pro rata. The Buyer shall possess the co-ownership or sole ownership created on our behalf.
4. In case that the value of the securities exceed the accounts receivables to be protected by more than 20 % we shall upon request of the Buyer release securities granted to us to an according extent. We have the right to choose which securities to surrender.

8. Changed Relationships of the Buyer

1. If the financial circumstances of the Buyer deteriorate considerably, for instance because lasting attachments or other enforcement measures occur, or if the Buyer makes use of the goods delivered under reservation of property clause outside of the course of ordinary business or if he enters into liquidation we shall be entitled to declare as due all our accounts receivables, to purchase back any drafts at the expense of the Buyer and to continue to deliver only against prepayment or granting of a security.
2. In case of payment interruption or overindebtedness of the Buyer or in case of the application for the opening of insolvency proceedings over his assets we shall be entitled according to our decision either to make use of the above rights or to rescind the contract according to statutory provisions.

9. Data Protection

We shall be entitled to electronically store and process all data concerning the Buyer which have a connection with the business relationship for the purposes of the implementation of the contract taking into account the provisions of the Federal Data Protection Act.

10. Competent Court – Place of Performance – Applicable Law

1. Place of performance for all deliveries is the delivery site or the storage facility. For all other rights and duties place of performance is the seat of our company in 92242 Hirschau.
2. To the extent the Buyer is a merchant in the sense of the German Commercial Code or a legal entity of public law or a special property established under public law Frechen shall be place of jurisdiction. We shall in such case be entitled to sue the Buyer at his seat.
3. This contract shall be subject exclusively to the laws of the Federal Republic of Germany. The UN sales law shall not apply.
4. In case of that provisions of these General Terms of Sale and Delivery are invalid, the validity of the remaining provisions of this contract shall remain unaffected. Invalid provisions shall be replaced by the statutory provisions.