



## **General Terms and Conditions of Purchase of Saint-Gobain Ceramic Materials GmbH, Am Bahnhof 16, D-56414 Steinefrenz**

As of: January 2020

### **Section 1 Scope**

(1) All purchases and orders by the der Saint- Gobain Ceramic Materials GmbH ("**Buyer**") from commercial entities in the sense of Section 14 BGB (German Civil Code), a legal person under public law or a special asset under public law ("**Seller**") (collectively "**the Parties**") are subject exclusively to the Buyer's General Terms and Conditions of Purchase (the "**General Terms and Conditions of Purchase**").

(2) Regardless of whether the GTCP are explicitly agreed again, they shall also apply to all the Buyer's future purchases and orders. The version current when the contract is concluded shall always apply. The Buyer shall immediately inform the Seller of new versions of the General Terms and Conditions of Purchase.

(3) The Buyer shall not recognise the Seller's terms and conditions where these contradict or deviate from the General Terms and Conditions of Purchase, unless it has explicitly agreed that they should apply. The General Terms and Conditions shall apply even if the Buyer accepts a delivery or other service from the Seller without reservation or provides a contractually agreed service without reservation in full knowledge of terms and conditions on the part of the Seller which contradict or deviate from the General Terms and Conditions.

### **Section 2 Business preparation, conclusion of contact, other declarations**

(1) Regardless of whether a contract comes into being or not, expenses incurred by the Seller for visits, drafts, samples, templates, cost estimates, offers etc. in the course of business preparation shall not justify a cost obligation or other liability on the Buyer's part.

(2) The Buyer's orders are always non-binding until submission or confirmation in text form by the Buyer. The Seller must inform the Buyer of any obvious errors (e.g. typing or mathematical errors) and gaps in the order, including the order documents, before accepting the order for the purposes of correction and/or completion; otherwise, the contract shall not count as concluded.

(3) Legally significant declarations and notices which the Seller has to submit to the Buyer or a third party require the written form.

(4) The Buyer and Seller may only use the business relationship for advertising ("referencing") with the other business partner's written consent.

### **Section 3 Delivery and performance period**

The delivery and performance times specified in the order are binding. If it looks unlikely that the Seller will be able to comply with agreed delivery or performance times, it is obliged to inform the Buyer of this immediately in text form.

### **Section 4 Delivery, documents, transfer of ownership**

(1) Unless otherwise agreed, deliveries shall be "Delivered At Place" (DAP; Incoterms 2020) to the location given in the order.

(2) All deliveries must be accompanied by a delivery note providing the date (date of issue and shipment), content of the delivery (item number and quantity) and the Buyer's order ID (date and number). Separately to the delivery note, the Buyer must on request be sent a dispatch note with the same content. The Buyer is not responsible for delays in processing or payment resulting from breaches of the above conditions.

(3) Subcontracts for deliveries and services may only be awarded with the Buyer's written consent, except for insignificant deliveries, marketable parts or insignificant ancillary services.

(4) Devices must be delivered along with a technical description and user manual in German, and software products with the full documentation (especially the operating instructions). Programs tailor-made for the Buyer must also be delivered along with the source code for the program.

(5) Ownership of the goods shall be transferred to the Buyer on payment at the latest. Any extended or expanded reservation of title is excluded.

(6) Where deliveries and services are not provided by the Federal Republic of Germany, but rather from another EU Member State, the EU VAT ID no. should be given.

## Section 5 Prices and terms of payment

(1) The price given in the order is binding and applies unless otherwise agreed for DAP deliveries. All prices include statutory VAT, even if this has not been separately indicated.

(2) Unless otherwise agreed, the price includes all the Seller's services and ancillary services (e.g. assembly, installation) and all ancillary costs (e.g. proper packaging, transportation costs including any transport and liability insurance). The Seller must take packaging material back at the Buyer's request.

(3) Unless otherwise agreed, the agreed price shall fall due for payment within thirty calendar days from the completion of the delivery and service (including any agreed discount) and receipt of a proper invoice. If the Buyer pays within fourteen days, it is entitled to deduct 3% from the net invoiced amount.

(4) The Buyer can only process invoices if they provide the order number given in the order; the Seller shall be responsible for any consequences of failure to comply with this obligation, unless it proves that it was not at fault.

(5) The Buyer shall not owe any interest on maturity. The Seller's claim for the payment of default interest shall remain unaffected. Legal regulations apply to the beginning of default on payment. In every case, however, a reminder by the Seller shall be required.

(6) The Buyer shall have rights of offsetting and retention as well as the defence of an unfulfilled contract within the statutory scope. The Buyer is in particular entitled to retain due payments while it has claims against the Seller arising from incomplete or defective services.

(7) The Seller is only entitled to offset or retain payments if and insofar as its counterclaims are uncontested or have been made legally enforceable, or its counterclaims are based on the same contractual relationship.

## Section 6 Safety and environmental protection

(1) The Seller's deliveries and services must comply with all statutory provisions which apply within the Federal Republic of Germany (especially those relating to safety and environmental protection, such as GefStoffV (Hazardous Substances Ordinance), ElektroG (Electrical Equipment Act) or GPSG (Product Safety Act), and the safety recommendations of the various responsible German professional bodies and associations (e.g. VDE, VDI, DIN). All relevant certificates, test certificates and evidence must be supplied free of charge without a request being made.

(2) In particular, the delivery of substances, concoctions or products which are banned from manufacture, use or sale by German law is prohibited. If the goods to be delivered are hazardous substances, this should be indicated in the Seller's offer, whereby the corresponding safety data sheets (in German or English) should be sent to the Buyer when the offer is made.

(3) The Seller bears sole responsibility for compliance with statutory occupational safety and work safety provisions, applicable accident prevention regulations and the Buyer's special safety regulations during the delivery process and provision of services, and must seek information from the Buyer in good time regarding the existence of any such safety regulations. If the manufacturer has issued safety instructions, these must be delivered free of charge along with the goods.

## Section 7 Buyer documents

The Buyer shall retain right of ownership, copyrights and any commercial property rights to illustrations, drawings, templates and other documents (the "**Documents**"). This also applies to documents not explicitly marked as "confidential". Before forwarding documents to third parties, the Seller must obtain the Buyer's explicit written consent.

## **Section 8 Defect guarantee, Seller's liability for compensation**

- (1) The Seller owes defect-free deliveries and services, and in particular compliance with agreed specifications and guaranteed characteristics. Deliveries and services must be carried out according to the state of technology and safety requirements must be complied with.
- (2) In the event of a defect, the Buyer shall have all the statutory claims. In particular, the Buyer is entitled to demand that the Seller rectify the defect or deliver a new item, according to the Buyer's preference. The Buyer explicitly reserves the right to compensation, including compensation instead of performance, for every degree of fault and in full.
- (3) Those product descriptions which have become objects of the relevant contract or have been incorporated into the contract in the same way as the General Terms and Conditions of Purchase shall count in each case as agreements on quality in the legal sense. It makes no difference in this respect whether the product description comes from the Buyer, the Seller or the manufacturer.
- (4) Otherwise than in Section 442 (1)(2) BGB, defect guarantee rights shall apply without limitation even if the Buyer was unaware of the defect when concluding the contract due to gross negligence.
- (5) The Seller shall bear the costs it incurs for the purposes of testing and repair, even if it turns out that the goods were not actually defective. The Buyer's liability for compensation in the event of an unjustified demand for rectification of a defect shall remain unaffected if the Buyer knew, or did not know due to gross negligence, that no defect was present.
- (6) If the Seller fails to fulfil its repair obligation within a reasonable period set by the Buyer, the Buyer shall be entitled to rectify the defect or procure a replacement at the Seller's expense, or to enlist third parties to do this. If the Seller's efforts at repair have failed or are not acceptable to the Buyer (e.g. due to particular urgency, risk to operational safety or the threat of disproportionate damages), or the Seller seriously and finally refuses to make such efforts, there is no need for a period to be set; the Buyer shall inform the Seller immediately, or if possible beforehand, that it is carrying out the repair or replacement itself or having it carried out by third parties.
- (7) The limitation period is 36 months, calculated from the day of delivery according to Section 4 (1) and/or acceptance. Longer legal limitation periods shall remain unaffected.
- (8) The Seller shall be liable for compensation for each degree of fault and in the full amount according to the statutory provisions.
- (9) The commercial obligation to inspect and report any defects is subject to the legal provisions (Sections 377, 381 HGB (German Commercial Code)) on the following proviso: The Buyer's obligation to inspect is related to defects which become apparent on external inspection of the incoming goods, including delivery notes, by the Buyer (e.g. damage in transit, defective or under-delivery) or which can be identified by spot checks in the Buyer's quality control procedures. If acceptance is agreed, no obligation to inspect shall apply. In all other respects, it shall depend on the extent to which an examination is feasible in the ordinary course of business, taking into account the circumstances of the case. The Buyer's obligation to report defects discovered later shall remain unaffected.

## **Section 9 Supplier's redress**

- (1) In addition to the claims for defects, the Buyer shall be entitled without limitation to its legally determined rights of recourse within a supply chain (supplier's redress according to Sections 445a, 445b, 478 BGB). In particular, the Buyer is entitled to demand from the Seller exactly the kind of supplementary performance (repair or replacement delivery) which the Buyer owes its customer in the individual case. The Buyer's statutory right to choose (Section 439 (1) BGB) is not limited by this.
- (2) The Buyer's claims from supplier's redress shall apply even if the defective goods have been further processed by the Buyer or another commercial entity, e.g. by installation in another product.

## **Section 10 Product liability, insurance**

- (1) Where the Seller is responsible for damage to a product, the cause lies within its domain and organisational area and it is externally liable itself, it is obliged to release the Buyer from any third-party compensation claims at the first time of asking.
- (2) Within the scope of its release obligation, the Seller must also reimburse any expenses, according to Sections 683, 670 BGB or according to Sections 830, 840, 426 BGB, arising from or in connection with a recall action carried out by the Buyer. The Buyer shall, where this is possible and reasonable, inform the Seller if the content and scope of the recall measures to be carried out and give it the opportunity to take up a position. Other legal claims shall remain unaffected.
- (3) The Seller is obliged to take out and maintain product liability insurance with a flat insured amount of at least 5m euros per personal/material damage event. Further compensation claims on the part of the Buyer shall remain unaffected.

### **Section 11 Property rights**

- (1) The Buyer shall ensure that no third-party rights are breached in connection with its delivery.
- (2) If a suit is brought against the Buyer by a third party in connection with such rights, the Seller is obliged to release the Buyer from such claims at its first written request; the Buyer is not entitled to make agreements without the Seller's consent, and in particular to reach a settlement.
- (3) The Seller's release obligation covers all expenses which the Buyer necessarily incurs due to or in connection with the third-party suit, unless the Seller can prove that it is not responsible for the breach of obligation on which the breach of property rights is based.
- (4) The limitation period for these claims is 36 months, calculated from delivery according to Section 4 (1) and/or acceptance.

### **Section 12 Export control**

(1) The Seller must fulfil the applicable requirements of national and international export, customs and foreign trade law for all goods to be delivered and services to be rendered. The Seller must obtain any necessary movement or export permits, unless applicable export, customs and foreign trade law obliges not the Seller, but the Buyer or a third party to apply for these permits.

(2) The Seller must provide the Buyer as soon as possible, but at the latest 10 days before the delivery deadline, with all information and data which we require in order to comply with applicable export, customs and foreign trade law, movement and imports as well as in the case of resale of goods and services, especially for every good and service:

- the Export Control Classification Number (ECCN) according to the U.S. Commerce Control List (CCL) or the designation "EAR99" if the item is subject to the U.S. Export Administration Regulations. If the item is subject to the United States Munitions List or otherwise to the International Traffic in Arms Regulations (ITAR) we likewise request the list position;
- all correct export list positions (if the item does not fall under an export list position, this should be indicated with "AL: N");
- the statistical item number according to the current item classification for foreign trade statistics and the HS (Harmonized System) Code;
- the country of origin (non-preferential origin) and
- where requested by the Buyer: supplier declarations on preferential origin (for European sellers) or certificates for preferences (for non-European countries) ("export control and foreign trade data")

(3) In the event of changes to the origin or characteristics of the goods and services or the applicable export, customs and foreign trade law, the Seller must update the export control and foreign trade data and share them with us in writing as soon as possible, but at the latest ten days before the delivery date. The Seller shall bear all expenses and damages which we incur due to missing or inaccurate export control and foreign trade data.

### **Section 13 choice of law and place of jurisdiction**

- (1) The law of the Federal Republic of Germany shall apply, to the exclusion of UN Sales Law (CISG).
- (2) The place of performance is the Buyer's seat of business.
- (3) The place of jurisdiction is the Buyer's seat of business; the Buyer, however, reserves the right to bring a suit against the Seller at its general place of jurisdiction.