

# GENERAL TERMS AND CONDITIONS FOR BUSINESS CUSTOMERS



The present General Terms and Conditions shall exclusively apply between the company Gmundner Keramik Manufaktur GmbH, Keramikstraße 24, A-4810 Gmunden, Austria, on the one hand, and its contractual partners (hereinafter referred to as the Customer), unless agreements to the contrary have been made in the order confirmation of the company Gmundner Keramik Manufaktur GmbH. These general terms and conditions are only valid for customers that are legal companies. The receipt of General Terms and Conditions of the Customer shall not have any legal effectiveness either, unless they are explicitly accepted in writing by Gmundner Keramik Manufaktur GmbH.

## I. Offers:

1. Offers, no matter if in writing, oral or by telephone, shall always be subject to change and shall require a corresponding order confirmation on our part to become legally effective.

2. As a general rule, offers shall not become binding orders for us before they have been confirmed by us in writing.

3. Upon confirmation of the order, a contract shall be deemed concluded in accordance with the present General Terms and Conditions.

## II. Delivery Times:

1. We shall make every reasonable effort to ensure that delivery dates are met as best as possible; the delivery times specified in the order confirmation, however, shall not be deemed to be fixed dates. In any case of default on our part, any withdrawal from the contract may be declared only if the Customer has set a period of grace of at least four weeks by registered letter.

2. Partial deliveries shall be permitted.

3. If the Customer does not accept the delivery in due time, the Customer shall reimburse any additional expenses caused by this fact, including in any case of coincidence.

## III. Transport Costs – Packaging:

1. Any and all costs and charges associated with transport and packaging shall be borne by the Customer, unless any other written provisions have been made.

2. Packaging shall be performed at our discretion. It shall not be taken back, unless any special regulations exist in this respect. Our ARA no. (Austrian existing substance recycling code) is: 2896.

3. We shall not assume any liability in any case for the nature and condition of the packaging.

## IV. Prices:

1. Depending on the note on the respective price list, our prices shall be understood to be “gross prices including the statutory value added tax”.

2. If list prices are agreed upon, the list prices applicable on the day of delivery shall be invoiced.

3. Any modification to the explicitly agreed prices shall be permitted in case of any increase of the material and labour costs as well as in case of any modification to or new introduction of object-related or other taxes, charges, etc. In addition, the Customer shall bear any modified transport and other costs of third parties and shall accept any subsequent modifications. This shall include, in particular, any additional costs due to fuel price increases, toll charges, other forwarding costs, etc.

4. Any technical amendments, which represent improvements to the products and are reasonable for the purchaser, shall remain reserved.

## V. Terms of Payment:

1. The invoice shall be payable within a period of thirty days from the date of invoice without deduction. The timeliness of the payment shall be determined by the date on which the amount is credited to our bank account.

2. In any case of non-compliance with the date for payment, the Customer shall immediately fall into arrears.

3. In any case of default of payment, the Customer shall pay default interest in the amount of 9,4% above the respective secondary market yield including sales tax, plus all ancillary costs (reminder charges, debt-collection agency fees, lawyer's fees and other charges).

4. Payments shall initially be set off against costs, then against interest and then against capital.

5. Cash discount shall be granted to the invoice amount, but only if and to the extent that we give a corresponding assurance in writing. No cash discount shall be granted on acceptances and bills of exchange. The granting of any cash discount shall be excluded until all previous claims due have been paid.

6. Upon payment by acceptances (term of not more than three months) to whose acceptance, 30 (thirty) days after the date of invoice at the latest, we reserve the right from case to case, the entire cash discount expenses shall be to the detriment of the Customer. Payments made by bills of exchange or cheque shall not be regarded as fulfilment before they have been cashed, without us having any obligation to any presentation or protesting in due time.

7. The day of receipt of payment with regard to all means of payment shall be the day on which we are able to dispose of the amount.

## VI. Retention of Title:

1. Until full payment of all claims to which we are entitled against the Customer, including any and all ancillary claims (interest, reminder expenses, lawyer's fees and other charges), all goods delivered by us shall remain in our ownership (extended retention of title).

2. In any case of default of payment, we may, after previous reminder, collect all goods delivered by us.

3. The Customer shall be obliged to notify us without undue delay of any access by third parties to the goods subject to our ownership, even in the case that such access will only take place in the future. Moreover, the Customer shall also point out to those third parties who actually access or intend to access our goods that said goods are in our ownership. Any costs of interventions shall be borne by the Customer.

4. As long as any claim on our part exists, we shall be entitled to request information from the Customer at all times to know what goods subject to retention of title are still in the Customer's possession, where they are located and to what customers the remaining goods delivered by us have been sold according to quantity, nature and number, etc. We shall be entitled to inspect the goods subject to retention of title on the Customer's premises at any time at the place where they are located and, in the case of any risk to our rights, to take said goods back into our possession without further ado and then to resell them or use them for any other purpose while maintaining any and all of our rights to compensation for damages including claims based on non-fulfilment, default and costs of the return transport. The assertion of the claim for surrender shall not be deemed to be any withdrawal from the contract.

5. The Customer may resell the delivered goods within the regular course of business. The Customer shall hereby assign to us, by way of security, all claims to which the Customer is entitled now or will be entitled in the future in this respect. The Customer shall hereby already accept the assignment of all claims existing now or arising in the future. The Customer shall be obliged to record such assignment in the Customer's books and to notify us accordingly.

## VII. Defects:

1. Defects must already have occurred at the time of hand-over to the Customer / freight forwarder. Defects must be notified in writing (also by telefax) or by telegraph within a period of eight days, to the exclusion of any other warranty claims and claims for compensation for damages, after collection or receipt of the goods by the Customer. In the event of any justified warranty claims, we shall be the only ones to have the right to choose between conversion, price reduction and improvement.

2. Any further claims of the Customer, especially for compensation for damages based on any violation of the obligation to subsequent improvement or replacement delivery, even for indirect damage, loss of profits, etc., shall not exist.

3. The Customer shall not be entitled to withhold or set off payments, even partially, due to defects.

4. To the extent that any goods of second-rate quality are offered, we will not assume any warranty for such goods.

5. Any and all warranty claims and claims for compensation for damages shall become time-barred three months from the date of delivery, even in the case that a timely notification was made in accordance with Clause 1, unless any extension of the time limit has been agreed upon in writing. To the extent that we are obliged to perform any replacement delivery, the time limit for replacement deliveries shall be six months from the date of receipt of the complaint by us.

## VIII. Compensation for Damages – Product Liability:

1. We shall be liable for any claim for compensation for damages of any reason whatsoever only in case of intent or gross negligence.

2. The liability in accordance with the Product Liability Act shall be excluded; the Customer shall waive, in particular, any recourse claims, if applicable, and, apart from that, shall be obligated to indemnify and hold us harmless against and from such title.

## IX. Place of Fulfilment – Place of Jurisdiction:

The place of fulfilment shall be Gmunden; the place of jurisdiction shall be Wels in Upper Austria. As a general rule, the application of Austrian substantive law shall be agreed upon; German law shall apply only to the retention of title and all associated issues. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

## X. Transfer of Risks:

1. The risk shall be transferred to the Customer / freight forwarder once the goods leave our production site. The goods shall thus be deemed to travel at the Customer's risk, with the Customer himself or herself being responsible for taking precautions for proper transport and its insurance.

2. Once the respective delivery is ready for dispatch, and if dispatch or acceptance is delayed for any reasons not attributable to us, the risk shall already pass to the purchaser at the beginning of the day of said readiness for dispatch.

3. We shall not be liable in any case for any damage and loss of the goods during transport. Until such time as the goods are handed over to the Customer / freight forwarder, the Customer may take out transport insurance with us at a price of currently 1.35% of the net invoice value. Only in this case shall we be obligated to replace any goods damaged during transport by the freight forwarder, with the Customer assigning to us in advance any of his or her claims against the freight forwarder.

## XI. Severability Clause:

In any case of invalidity of individual provisions of the present General Terms and Conditions, the remaining parts shall remain in force.

## XII. Prohibition of Assignment:

The Customer shall not be entitled to assign any claims against us or to encumber such claims in any other manner whatsoever.

## XIII. Prohibition of Set-Off:

The Customer shall not be entitled to set off own claims against our claims.

## XIV. Miscellaneous Provisions:

1. Any and all sales documents, such as catalogues, samples, price lists and the like, which have come into the purchaser's possession shall remain in our ownership and shall be returned to us upon request. Any reproduction of models shall be prohibited and shall result in the obligation to pay compensation for damages, at least, however, to pay a contractual penalty in the amount of € 15,000.00 for each individual case without us being obliged to furnish any evidence of damage.

2. By accepting our offer, the natural persons designated within the meaning of the Data Protection Act shall be deemed to agree that any data subject to data protection may be stored and processed electronically. Any separate notification to the parties concerned will not be made.

3. Our products shall be delivered in a quality that corresponds to goods of good merchantable quality in accordance with our screening policies (first choice). Production-related minor defects shall be permitted to the extent that they do not interfere with the overall picture of the product.

4. We reserve the right to any minor changes to decorative designs, colouring and shaping. Typographical errors creep into every catalogue time and again. We would like to apologise for this and cannot assume any liability in this regard. Minor dimensional tolerances shall not create any right to complain.