

Terms of CN Consulting und Baustoff- Vertriebsgesellschaft mbH

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I General – Scope

1. Our terms and conditions of delivery and payment shall apply exclusively. We do not accept any opposing or deviating terms of delivery and payment of the buyer, unless we have expressly agreed to the validity of such terms in writing. Our sales terms and conditions shall also apply even if we perform delivery to the buyer in full knowledge of the existence of terms and conditions of the Buyer which deviate from our general terms of payment and delivery without reservation.
2. Verbal subsidiary agreements/amendments, in particular of this rule, are only valid if they have been confirmed by us in writing.
3. If the customer is a merchant under the terms of the HGB, our terms of payment and delivery terms shall also apply for all future business with the customer.

II Quotation and Delivery

1. Our quotations are subject to change.
 2. In the event of unforeseeable circumstances – such as strikes, lock-outs, operational disruptions, disturbances in the energy supply, traffic delays, delivery problems, shortages of raw materials or any other extraordinary events not within our control – the delivery period shall be extended accordingly, as long as the hindrance is only temporary; but not longer than six months or, if there is an irrevocable impediment to performance, both Parties are entitled to withdraw from the contract without the other being entitled to make any claims against the other.
 3. If we are late in making delivery or default, our duty to pay compensation in the event of ordinary negligence is limited to the foreseeable damages. If the customer is a merchant under the terms of the HGB, claims for damages due to delay or non-performance are excluded in cases of ordinary negligence.
- In all other cases, we shall only accept liability in cases of willful intent, gross negligence or in the event of injury to life, body or health. The preceding provision shall not apply to claims for damages by the customer in the case of an initial inability to perform.
4. If the parties have agreed on delivery “free to site” or “free to warehouse”, this shall be under the proviso of there being an approach road accessible to heavy goods vehicles. The buyer shall be responsible for unloading the goods. The buyer is, in particular, obliged to unload the goods without delay and appropriately. If there are any delays for reasons for which the Customer is responsible, we shall be entitled to charge the buyer for the additional costs resulting from the delay.
- If there is any damage due to instructions given by the buyer or by a third party, which are within the buyer’s sphere of responsibility, in connection with the delivery and/or unloading of the goods, in particular if the delivery vehicle leaves the approach road accessible to heavy goods vehicles, the buyer shall accept liability for this.
5. If the buyer is in default of payment in respect of a previous delivery, which give us reason to believe that our claims on the customer could in any way be at risk, we shall have the right to hold back deliveries, without being obliged to compensate for any damages incurred as a result of the delay.
 6. Compliance with our delivery obligations depends upon the timely and proper fulfillment of the customer’s obligations.

III Prices – Payment Terms

1. Unless otherwise agreed in writing, the purchase price is payable net (without deduction) within 8 days after the date of the invoice, unless a return debit is issued within eight days of receipt of the goods. If a return debit is issued within eight days of receipt of the goods, the customer is already in default on the day of the return debit. If the payment is made via bank transfer the customer is in default from the 8th day after the invoice date. The date the payment is credited to the account of “CN Consulting + Baustoff-Vertriebsgesellschaft mbH”, as stated on the invoice is considered the day on which the amount is settled.
2. Should the customer fall into arrears of payment, we shall be entitled to charge interest in the amount of 8% p.a. above the current discount rate of the Deutsche Bundesbank. If we are in a position to provide evidence of loss on account of delayed payment, which is higher than the interest amount, then we shall be entitled to assert said greater damage. The buyer shall be entitled, however, to prove to us that considerably less damage, or none at all, has arisen as a result of the delay in payment.
3. The customer shall only have the right to off-set any counterclaims in cases where such claims have been found to be legally valid, are uncontested or have been recognized by us. Furthermore, the customer is entitled to enforce exercise a right of retention in this respect if his counterclaim is based on the same contractual relationship.
4. The prices quoted are our current sales prices and are based on the current prices of materials and wages. If a period of more than four months has elapsed between conclusion of the contract and delivery and we are not responsible for the delay, the price and we are not responsible for the delay in delivery, we can reasonably increase the price, taking into account any costs of materials and labour and other ancillary costs incurred. If the purchase price increases by more than 40%, the customer shall be entitled to withdraw from the contract.

IV Warranty and Notice of Defects

1. The quality parameters of the delivered goods shall be in compliance with the test certificates resulting from external inspections and our own tests.
2. The samples and specimens provided to the customer are non-binding samples for inspection, unless we have contractually guaranteed the properties of the specimen or sample. The values and analyses data are approximate figures that they only intended to provide an informative basis for the average final condition of the goods.
3. If there is any defect in the product for which we are responsible, we shall have the right to deliver a substitute.
4. If we are not willing or able to provide a replacement, especially if this results in a delay extending beyond an appropriate period for reasons for which we are responsible, or if the replacement delivery fails for other reasons, then the buyer shall be entitled, at his own discretion, either to withdraw from the contract or to request a price reduction.
5. Unless specified otherwise below, all further claims by Buyer – on whatever legal ground – are excluded. We shall therefore not be held liable for damage not occurring to the delivery item itself.
6. The above liability disclaimer does not apply in case of intent, gross negligence, material contractual obligations on the part of the supplier, or in cases of injury of life, body or health. This shall not affect the customer’s right to withdraw from the contract.
7. If we have negligently breached a material contractual obligation, our liability shall be limited to the foreseeable damage.
8. If the customer is a merchant, the buyer’s warranty rights shall only be deemed to exist if he has satisfied the obligations in terms of examination and notification of defects in a proper manner in accordance with Sec. 377 of the HGB (German Commercial Code). If the customer is not a merchant, the buyer’s warranty rights shall only be deemed to exist if he has given notice of all obvious defects within a period of two weeks from the delivery of the goods, in accordance with Sec. 476 of the BGB (German Civil Code).
9. Goods that have been objected to may not be processed or installed.

V Total Liability

1. To the extent that our liability to compensate for damages is excluded or restricted according to clauses IV.5, 6 and 7 above, this shall also apply to claims arising out of fault or negligence during conclusion of the contract, violation of ancillary duties, and other legal claims, e.g. claims based on manufacturer’s liability pursuant to Sec. 823 of the BGB. This shall not apply to claims according to Secs. 1 & 4 of the Product Liability Act (Produkthaftungsgesetz).
- To the extent that our liability is excluded or restricted, this shall also apply equally to the personal liability of our employees, workers, personnel, legal representatives and vicarious agents.

VI Reservation of Proprietary Rights – Direct Debit Authorization

1. All goods delivered by us remain our property until complete payment of the purchase price, including – if the buyer is a registered merchant – all of our existent current and future claims resulting from the business relationship have been paid in full.
- The customer is obliged to carefully store the retained goods for us free of charge. In the event of breach of contract by the customer, in particular in the event of a delay in payment, we shall be entitled to take back the goods.
2. Any processing or finishing of the retained goods shall not be binding for us as the manufacturer of the goods pursuant to Sec. 950 of the BGB. In the event of processing, mixing or combining of our goods with products made by a third party, we shall acquire co-ownership in such processed goods in proportion to the invoice value of our goods and the invoiced value of the other goods processed or mixed. The new object shall therefore be considered as retained goods.
 3. To secure our claims against him, the customer also assigns to us such claims which arise against third parties due to the connection of the object of sale to property.
 4. Professional vendors shall be entitled to sell the conditional commodity in the due course of business, as long as he meets his contractual obligations to us, in particular the following conditions, punctually. By way of security, the customer already assigns claims resulting from resale of the retained goods to us in full, or for processed/mixed or combined goods, corresponding to the share of our co-ownership.
 5. Further assignment of the claims assigned to us is prohibited without or prior consent. We shall approve factoring if the factoring company ensures that payments for our retained goods, up to the invoiced amount for these goods, are paid directly to us by the factoring company.
 6. In the event of seizures or other action by third parties, the customer shall notify us immediately in writing so that we can lodge a lawsuit in accordance with Sec. 771 of the German Code of Civil Procedure (ZPO). If a third party is unable to reimburse us with the court and out of court costs of a lawsuit pursuant to Sec. 771 of the ZPO, the customer shall be liable for any losses we incur.
 7. We undertake to release the security that we are entitled to, if requested to do so by the client, if the realizable value of our securities exceeds the claims to be secured by more than 10%. We shall be entitled to choose which securities to release.
 8. We are entitled to collect the debt claims assigned to us and/or revoke any direct debit authorization, if circumstances become apparent after delivery, which call into doubt the buyer’s readiness to perform, in particular if the customer does not properly fulfill its payment obligations arising out of the proceeds collected, is in default of payment, has filed a petition for the opening of insolvency proceedings or payments have been suspended. In this case we shall be entitled to demand that the Customer inform us about the assigned receivables and their debtors, provide us with all information necessary for the collection of the debts, hand over to us the requisite documents, and notify the debtors (third parties) of the assignment.

VII Legal Venue – Choice of Law

1. The sole venue for all pecuniary disputes between the supplier and the customer arising out of or in connection with this contract shall be D-21502 Geesthacht, Germany, if the customer is a merchant registered in the commercial register, a public law entity or a special fund under public law. However, we shall also be entitled to bring a claim against the customer at his place of residence.
2. This contract shall be governed solely by the law of the Federal Republic of Germany.

VIII Miscellaneous

If any of these provisions should be invalid, for any reason whatsoever, this shall not affect the effectiveness of the remaining terms.