

**Saint-Gobain Ceramic Materials GmbH**  
**Niederlassung Weilerswist**

**General Terms and Conditions of Sale**

**1. General provisions**

These general terms and conditions of sale (the "General Terms and Conditions") shall apply to all agreements entered into between Saint-Gobain Ceramic Materials GmbH, Weilerswist Operation (the "Seller") with any customer (the "Buyer") with regard to the sale of products manufactured and/or sold by the Seller (the "Goods") as well as the performance of any services. They may be subject to subsequent amendments.

By placing an Order (as defined hereafter) to the Seller, the Buyer is deemed to have accepted without reservation these General Terms and Conditions. Unless otherwise expressly agreed in writing in advance by the Seller, these General Terms and Conditions apply to the exclusion of any other terms and conditions set out in the Buyer's Order, its general terms and conditions of purchase or, more generally, in the Buyer's commercial documents, regardless of the date of such terms and conditions or documents.

**2. Offers and Order Confirmations**

A Seller's price offer (an "Offer") is valid for a period of 5 days, unless otherwise stipulated in the Offer.

An Offer shall be binding (and hereafter referred to as a "Binding Offer") on the Seller subject to the receipt by it of a written order (an "Order") from the Buyer within 5 days of the sending of the Offer by the Seller.

After such 5 day period as well as in the absence of an Offer, only a written order confirmation (an "Order Confirmation") issued by the Seller shall be binding on the Seller.

**3. Prices**

Unless an Order is placed by the Buyer within the 5 day period provided for in § 2 above, prices (including packaging charges) contained in the Seller's Offers, catalogues and tariffs are subject to change at any time.

Unless otherwise provided for in the Binding Offer or Order Confirmation, prices of the Goods, VAT and other charges excluded, are quoted "FCA Weilerswist, Germany at Seller's warehouse" (INCOTERMS 2000).

Except for an Order placed within the above 5 day period, prices are firm on the date of the Order Confirmation. However, if a price increase of more than 5% is effective between the date of the Binding Offer or the Order Confirmation and the Delivery Date (as defined in § 5 here below), such Binding Offer or Order Confirmation shall be modified accordingly. In this last case, the Buyer shall be entitled to cancel the Order if the time period between Order or Order Confirmation and delivery is less than four months, except for cases of long term supply agreements.

**4. Weight, quantities and measures**

The indication of the weight, quantities and measures on the Seller's packages, bags, big-bags, etc. is approximate and subject to a tolerance of plus or minus 5%.

**5. Delivery**

The Goods will be delivered in bags, drums, big bags or boxes according to the Seller's practices unless specific packing is requested by the Buyer and accepted by the Seller. Labeling and marking will be printed according to the information requested by the Buyer subject to mandatory laws and regulations.

Unless otherwise provided for in the Binding Offer or in the Order Confirmation, the Goods will be delivered FCA Weilerswist, Germany at Seller's warehouse (INCOTERMS 2000) and the Goods shall be delivered on the date (the "Delivery Date") specified in the Binding Offer or Order Confirmation, subject to the provisions of § 6 here below.

The Buyer shall have to take delivery of the Goods on the Delivery Date or on the date mentioned in the notice sent to this effect by the Seller.

Should the transportation be organised by the Seller, the Seller or carrier's trucks have one and a half hour maximum time in order to unload. After this period, the Seller or carrier shall be entitled to claim costs for waiting time.

Seller's delivery obligation shall at all times be subject to timely and orderly receipt of the Goods from its own suppliers.

Unless otherwise stated in the Binding Offer or Order Confirmation, the Delivery Dates stipulated in these documents, are approximate and for information purposes only. In the event of late delivery, the Seller shall immediately inform the Buyer and specify a reasonable cure period of minimum ten (10) working days.

Except as provided for here below, failure by the Seller to meet the Delivery Dates shall not, under any circumstances, give rise to the cancellation of an Order, nor to any compensation or indemnity of any nature whatsoever.

In the event the delay exceeds ten (10) working days the Buyer shall have the right to cancel the Order.

However, the Buyer is not entitled to cancel an Order if the Goods concerned have been made especially for such Buyer, except if the delay exceeds twenty (20) working days and should seriously prejudice the Buyer. If the Order requires several deliveries, each delivery shall be deemed the subject of a separate contract: a delay to one delivery shall not entitle the Buyer to cancel the remaining deliveries.

**6. Invoicing and payments**

An invoice shall be issued for every delivery at the latest on the date of shipment of the Goods.

Unless otherwise agreed, any Seller's invoices shall be paid within 30 days of their dates of issue. From the due date interest in the amount of 8 % above the respective base interest rate p.a. shall accrue. In addition, any and all amounts owed to the Seller shall then immediately become due in full. Seller reserves all rights to claim further damages for delay.

Any payments made in advance do not give rise to any discount whatsoever from the Seller.

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If an Order involves several deliveries as well as in the event of several Orders binding the Seller, failure to pay for one single delivery or one Order shall authorize the Seller to suspend all deliveries without notice until full payment.

Buyer shall be entitled to offset only insofar as the purchaser's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The purchaser is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

### **7. Title Retention Clause**

Title to the Goods shall remain in the Seller until the price therefore shall have been fully paid, including any outstanding interest or charges or any ancillary cost. In this respect, the delivery of an instrument creating an obligation to pay, such as a letter of credit or a bank draft or any other instrument, shall not constitute payment within the meaning of the present clause; the original claim of the Seller against the Buyer shall remain with all the rights and sureties related thereto, including the retention of title, until said instrument has effectively been paid.

By entering into an agreement with the Seller, the Buyer shall inform its customers or creditors of this title retention clause and shall take all necessary measures so that this clause comply with any applicable laws and regulations. Besides, the Buyer shall authorize the Seller to register, at the Buyer's expense, the retention of title in the official registers, books or any other documents as required by the national legislation in force in the country of the Buyer and/or the destination country of the Goods, and to carry out any of the formalities necessary to make this clause enforceable.

From the effective Delivery Date of the Goods to it and until the transfer of title to the Goods to it as provided for in this *Title Retention Clause*, the Buyer shall ensure, at its own expense, their safe keeping and shall assume any risks and liability in all cases. As a consequence, the Buyer personally undertakes, for as long as the price and related sums have not been paid in full, not to dispose of the Goods by pledging them or granting any other similar rights or guarantees over the Goods. On the contrary, the Buyer undertakes, to constantly ensure that the Goods are clearly identifiable as being the Seller's property and to take out corresponding insurance to cover any risks (including in the event of *force majeure*) which may arise in connection with the Goods until their price has been paid in full.

In the event of default in timely payment of a single invoice, all the Goods in the possession of the Buyer for which the price has not been fully paid may be repossessed by the Seller at the Buyer's own expense and risk and disposed of in accordance with the applicable law. The Goods still in the Buyer's possession shall be presumed to be those for which payment is still outstanding. Any resale of the Goods by the Buyer, before the total price and related sums has been paid in full, shall result in the automatic assignment to the Seller of the claims and rights of the Buyer further to said sale within the limit of the claims and rights of the Seller. The Buyer undertakes to inform the new buyer of this assignment and to communicate, at the first request of the Seller, all the information necessary for the Seller to collect the assigned claims.

In the event of bankruptcy or compulsory winding up or liquidation of the Buyer, the Goods, or, in the event of resale, their price and related sums, may be claimed by the Seller in accordance with the applicable laws and regulations.

### **8. Warranty, Liability**

The Seller warrants that the Goods shall be in conformity with the Binding Offer or the Order Confirmation. The foregoing warranty is exclusive and in lieu of all other warranties, whether oral, written, expressed, implied or statutory. Implied warranties of merchantability or fitness or any other matter shall not apply.

In case of non-conformity of the Goods the Buyer is entitled to alternative performance in the form of delivery of conforming Goods. If such alternative performance has failed, the Buyer is entitled to reduce the purchase price or to withdraw from the contract.

Seller's warranty does not extend to any loss or damage due to improper assembly, storage or handling or failure to comply with the specifications and instructions of the Seller and with any applicable laws and regulations.

Buyer's claims shall not release the Buyer from its obligation to pay the Seller's invoices.

Any claim of the Buyer concerning the weight, quantity, measures and/or any apparent defect of the Goods must be submitted in writing to the Seller within eight (8) working days from the Delivery Date. In no way this obligation releases Buyer from performing the required formalities for claim toward the carrier(s).

Any claim in relation to the quality of the Goods which would not comply with the specifications as resulting from the Binding Offer or Order Confirmation must be notified to the Seller within the same eight (8) working day period.

The Goods shall be deemed irrevocably accepted by the Buyer if no claim has been notified by it within the above eight (8) day period.

The Buyer shall not be entitled to return to the Seller any Good without the relevant Seller's prior written consent.

In case of intent or gross negligence on Seller's part or by Seller's agents or assistants in performance Seller is liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent the breach of contract is unintentionally Seller's liability for damages shall be limited to the typically predictable damage.

Seller's liability for culpable damage to life, body or health as well as Seller's liability under the Product Liability Act shall remain unaffected. Any liability not expressly provided for above shall be disclaimed.

### **9. Force majeure**

The Seller shall not be liable for any damage resulting from the non-performance of a Binding Offer or an Order Confirmation where such non performance is due to events beyond the control of the Seller, such as accidents to machinery, partial or general strikes (including strikes at the Seller's premises or at the Seller's suppliers), lock out, war or threat of war, acts of terrorism, hostilities, riots, embargoes, acts or restrictions of governmental authorities, acts of God, fire, stoppage or unavailability of transportation, supply shortage (in particular of raw materials), and in general all cases of *force majeure*, as defined by the applicable law. The Seller shall be released from its obligation to perform any part of an Order not yet performed on the date of the occurrence of a *force majeure* event as defined above.

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**10. Change in the Buyer's situation**

The Seller shall have the right to require from the Buyer securities for payment before performing any delivery of Goods, including the right to cancel or terminate any Binding Offer or Order Confirmation or contracts in the following cases, which shall not be limitative:

- bankruptcy proceedings, reorganisation plan with creditors (whether amicable or decided by a court) and/or any other procedure evidencing the insolvency of the Buyer.
  - negative advice from the Seller's credit insurer
  - exceeding the permitted credit ceiling
  - failure to respect the payment dates of only one previous invoice
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- litigation of any nature between the Seller and the Buyer,
  - protest of a bill of exchange.

**11. Notices**

Any notice required or permitted hereunder made by either Party shall be in writing and sent by registered mail with return receipt requested at the last address of the other Party or by facsimile or e-mail confirmed by a registered mail with return receipt requested.

**12. Applicable law and disputes**

These general terms and conditions of sale and any related sales agreement shall be governed and interpreted by German laws (including, with regard to international sales, the United Nations Convention on contracts for the international sale of goods of 1980).

For Seller's benefit, the courts at Seller's seat shall have jurisdiction over all disputes arising from sales agreements. However, Seller may also select a different place of jurisdiction.