

Standard Terms and Conditions

Mutual trust and a sound cooperation form the foundation of a long-term business relationship. In the interest of the uniform and efficient handling of transactions, however, it is necessary to agree on the following Standard Terms and Conditions.

I. Scope of Application

The following terms of delivery apply exclusively to all our sales, other deliveries and services provided, insofar as the party ordering is a merchant in the sense of the German Commercial Code (HGB) or an entrepreneur in the sense of Sec. 14, German Civil Code (BGB). Divergent terms or counter-confirmation issued by the party ordering are binding on us only if and insofar as we have given our express written consent to such terms. In particular, silence in response to such divergent terms or counter-confirmation issued by the party ordering shall not be considered acknowledgment or consent. Such divergent terms and counter-confirmation issued by the party ordering are hereby expressly rejected.

II. Conclusion of Contract

1. Our offers are non-binding and subject to change. This also applies where we provide catalogues, technical documentation and other product descriptions or material to the buyer - also in electronic form - to which we retain both title and copyrights; in particular, the prices of precious metals are subject to change.
2. Placing of an order for goods by the buyer shall be deemed to be a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept such contractual offer within 2 weeks of having received it.
3. The binding order received by employees, placed by telephone, e-mail, fax or in writing, shall be deemed accepted when the order has been confirmed by us in writing, by fax or e-mail.
4. The delivery period shall be individually agreed and/or indicated by us upon acceptance of the order. Conclusion of contract shall be subject to the proviso of correct and timely deliveries made to us by our suppliers. This only applies where we cannot be held responsible for failure to deliver, especially where we have entered into a congruent covering transaction with our supplier. The customer shall be promptly informed if the performance is unavailable. Any advance payment shall be reimbursed without undue delay.

III. Price and Payment

1. Our prices apply, unless otherwise agreed, ex works including loading at works, EXW according to INCOTERMS 2010 (www.iccwbo.org/incoterms), yet exclusive of packaging, freight, transport insurance and VAT in the amount required by law.
2. The weight upon dispatch as established by the delivery works or at our warehouse shall be decisive for the presentation of accounts.
3. The terms of payment shall be agreed separately and individually for each contract concluded.
4. Should legitimate doubts as to the payment ability and/or creditworthiness of the party ordering arise after acceptance of the order, we shall be entitled to require advance payment or the furnishing of appropriate collateral prior to delivery, or to withdraw from the contract. In this case no claims for damages shall accrue to the party ordering.
5. Payment deadlines and discount deadlines shall commence on the invoice date. Cash discounts have to be agreed in writing. Bills of exchange and cheques will only be received as conditional payment and without a guarantee. The buyer shall bear the costs of payment transactions. The date on which received monies are actually credited to our bank account determines whether or not payments are timely.
6. The customer is in default no later than 30 days after the goods are received and the invoice issued. During the default period the purchase price shall be subject to interest at the applicable statutory default interest rate. We reserve the right to claim further damage owing to default. In relation to merchants and traders our claim to the commercial default interest (Sec. 353, German Commercial Code (HGB)) shall remain unaffected. Furthermore, in that case we reserve the right to provide outstanding deliveries solely against advance payment or furnishing of appropriate collateral. If the party ordering ignores a reasonable extension we grant for advance payment or for furnishing of collateral, we are entitled to refuse to provide performance. We are also entitled to prohibit the resale of the goods in our ownership or co-ownership and to require that they be returned to us promptly at the expense of the party ordering, or that joint possession be granted without undue delay. Insofar as permitted by law, such a request shall not be deemed withdrawal from the contract. Apart from this, in this case the party ordering shall refrain from any disposal of the goods to which title is retained, which could adversely affect our rights.
7. Rights to make a set-off and rights of retention shall accrue to the party ordering solely if its counter-claims have been established by final judgment, are undisputed or have been acknowledged by us. In addition, the party ordering is only entitled to exercise a right of retention insofar as its counter-claim is based on the same contractual relationship.



IV. Deliveries, Performance, Delivery Date, Dispatch, Passing of Risk

1. Delivery dates and delivery periods shall be individually agreed and indicated by us upon acceptance of the order. In case of warehouse sales we only deliver subject to the reservation of timely, complete and flawless delivery provided to us. Modifications to orders shall result in the cancellation of agreed dates and set periods; they have to be agreed anew.
2. Deliveries prior to expiry of the delivery period are permitted. The date on which notification of readiness for dispatch is provided is deemed the delivery date, otherwise the day on which the goods are dispatched. We are entitled to provide partial deliveries.
3. Should we be unable to comply with agreed delivery deadlines owing to force majeure, we shall inform the buyer without undue delay and at the same time indicate the prospective new delivery deadline. In that case the delivery deadline shall be extended by the duration of the impairment plus a reasonable ramp-up period. The following events are equivalent to force majeure: Industrial action, lockouts, official interventions, shortage of energy and raw materials, transport bottlenecks, impairments of operations through no fault of our own also affecting our own suppliers, e.g. due to fire, water or machinery damage as well as all other impairments that, when reasonably considered, occurred through no fault of our own and could not be prevented by exercising the care expected of us in our own matters. If the new delivery deadline cannot be met and if delivery is impossible, we are entitled to withdraw from the contract. Where a delivery date or a delivery deadline is agreed with binding force, and if such delivery date or delivery period is exceeded by more than 8 weeks due to occurrences mentioned in Clause IV para. 3, the party ordering shall also be entitled to withdraw from the contract with regard to the part not yet performed.
4. Goods shall be requested from us in writing or by telephone at an early point in time enabling timely delivery and/or collection. If the ordering party exceeds the call-up deadlines, we shall be entitled to withdraw from the contract having granted a reasonable extension, and to require damages.
5. Unless otherwise agreed, goods shall be dispatched by us uninsured at the risk and expense of the party ordering. We reserve the right to choose the transport route and the means of transport. The risk shall pass to the customer upon handing over of the goods to the party ordering, the haulage company, the freight carrier or the enterprise chosen to perform the shipment, and no later than when the goods leave the works. This also applies where we have assumed the delivery. Transport damage shall be recorded immediately on the delivery note / bill of lading and notified promptly in writing. The damage should be recorded on a photo for documentation purposes. We shall take out transport insurance solely upon the specific request and at the expense of the party ordering. In case of a delay in delivery as a result of complete or partial default on payment by the party ordering, causing us to exercise our right of retention, or for other reasons for which the party ordering is responsible, the risk shall pass to the party ordering no later than the date on which notification of readiness for dispatch is provided. The costs of damage resulting from this including additional expenditure (e.g. warehouse storage costs) shall be borne by the party ordering.
6. The party ordering shall dispose correctly of packaging of the goods to be delivered. We do not take back packaging, it becomes the property of the buyer; this does not apply to reusable pallets.

V. Warranty

1. The goods we deliver shall be examined carefully without undue delay after arrival at the party ordering. They are deemed accepted unless a complaint of defects is provided to us in writing within 5 working days of arrival at the buyer's, and definitely prior to being resold, processed, consumed or mixed. If a defect was not discernible during a timely, careful examination, such hidden defects shall be notified to us in writing within 15 working days of delivery. In order to avoid any further damage, further processing of allegedly defective goods shall be stopped without undue delay. Claims accruing to the party ordering based on defects presuppose that the party ordering complies properly with its obligations to examine goods and provide notification of defects. The written agreements made between the buyer and the supplier concerning the qualities of the goods constitute the primary basis of our liability for defects. In the absence of agreements on qualities, the question whether or not there is a defect shall be judged on the basis of the statutory provisions (Sec. 434(1), second and third sentences, German Civil Code (BGB)). We assume no liability for public statements made by the manufacturer or by other third parties (advertising statements). Since the contractual goods undergo a chemical and physical modification during their further processing by the buyer, the parties agree that the vendor shall not assume a warranty for the contractual goods already processed by the buyer or for derived products.
2. If, despite the care we exercise, the goods delivered have a defect that already existed at the time the risk passed, then at our discretion we shall fulfil the warranty initially by rectifying the defect, by repairs or by providing a replacement. In order to ascertain and rectify defects, the party ordering shall grant us the time and opportunity necessary according to equitable discretion, and in particular shall hand over the allegedly defective goods for examination purposes. We shall bear the expenses required for examination and rectification purposes, especially transport and travel costs, the costs of work and materials (not: assembly and dismantling costs), if there is in fact a defect. However, if the buyer's request for rectification of defects proves to be unjustified, we may require the buyer to reimburse the resulting costs. If a further attempt at rectification or repair fails and if the buyer cannot be expected to accept further attempts, or if rectification or delivery of a replacement are impossible, the buyer may at its discretion reduce the purchase price or withdraw from the contract. However, no right of withdrawal accrues in case of an insignificant defect. Goods about which a complaint has been made may not be processed. No claims based on defects shall arise in case of insignificant differences from the agreed qualities, insignificant

impairments of usability, damage caused after the passing of risk by careless treatment, unsuitable means of operation, defective processing or external influences. If we fail to comply with the obligation to rectify or repair defects or to provide a defect-free replacement, the party ordering may choose to withdraw from the contract insofar as the breach of contract is not merely minor, especially insofar as a defect is not merely minor, or may reduce the purchase price, having granted us a reasonable grace period. The same applies where a rectification or repair attempt fails and where the party ordering cannot be reasonably expected to accept further attempts, or where rectification, repairs or provision of a replacement are impossible. If the party ordering chooses to withdraw from the contract owing to a defect in title or a material defect following failed rectification or repair, no claim for damages shall accrue to that party based on the defect. This does not apply if the breach of contract was caused fraudulently. More extensive claims for damages accrue to the party ordering based on defects or in connection with defects or breaches of duties, no matter on what legal ground, solely under the provisions in Clause VI unless they are claims for damages based on failure to comply with a guarantee given.

VI. Exclusion and Limitation of Liability, Limitation Period

1. Unless otherwise stated in these Terms including the following provisions, we warrant that the goods correspond to the specifications in the order confirmation or otherwise agreed in writing. A divergent quality implicitly agreed or customary is excluded, as is the suitability of the goods for a certain purpose.
2. In case of ordinary negligence we are liable for all claims for damages made against us for a culpable breach of duties, no matter on what legal ground, especially for impossibility, default, defective delivery, positive breach of contract, breach of duties during contractual negotiations or based on tort, solely in case of a breach of material duties jeopardizing the purpose of the contract. Apart from this our liability for ordinary negligence is excluded. The above limitations on liability shall not affect the customer's claims based on product liability. Nor shall the limitations on liability apply to injuries to life, limb or health for which we can be held responsible, or in case of the customer's death.
3. The exclusion of liability according to para. 1 above applies accordingly to our boards, statutory representatives, executive and non-executive employees and other vicarious agents.
4. The above provisions in paras. 1-2 do not apply where we have fraudulently concealed a defect or in case of claims accruing to the customer under the German Product Liability Act (Produkthaftungsgesetz). The customer may only withdraw from the contract owing to a breach of duties not constituting a defect if we are responsible for such breach of duties. The unreserved right of the buyer to terminate the contract (in particular pursuant to Secs. 651 and 649, German Civil Code (BGB)) is excluded. Apart from this the statutory requirements and legal consequences apply. We are not responsible for damage or loss arising after the risk has passed. This applies especially to damage caused by unsuitable vehicles or loading equipment, by third-party residue in vehicles or by inappropriate conduct by the freight carrier during loading and unloading.
5. Damages claims of the customer based on a defect shall become statute-barred one year after delivery of the goods. This does not apply where we can be accused of gross fault, in case of injury to life, limb or health for which we can be held responsible, or in case of the customer's death.

VII. Retention of Title

1. In accordance with Sec. 455, German Civil Code (BGB), we retain title to all goods delivered (goods subject to retention of title) until all our claims arising from business relations with the party ordering, including claims arising in future from subsequently concluded contracts and including any claims to recourse or indemnification based on bills of exchange or cheques, have been settled. This also applies to a balance in our favour where individual or all claims accruing to us have been included in a current account and the balance has been established.
2. The processing or rearrangement by the party ordering of the goods that are subject to retention of title always takes place on our behalf as the manufacturer. The retention of title extends to items newly created by combining, mixing or processing our goods. The party ordering now assigns its rights to the new items to us. Where the ownership rights of third parties continue to exist where our goods are processed, combined or mixed with their products, we shall obtain co-ownership in proportion to the value of the processed item at the time of processing, combining or mixing. If the party ordering combines or mixes the goods subject to retention of title with principal products of third parties against payment, it hereby assigns to us its claims for remuneration against that third party. We accept such assignment.
3. The party ordering is entitled to resell the goods subject to retention of title within the context of proper business operations. The party ordering now assigns its claims arising from such resale to us up to the amount of our outstanding receivables. The party ordering is authorized to collect claims arising from the resale provided it duly satisfies its liabilities towards us. The party ordering shall disclose the assignment to buyers and shall provide us with the information and documents required in order to assert our rights against such buyers. The authorization to process or sell goods that are subject to retention of title shall end upon revocation by the vendor due to a lasting deterioration in the buyer's financial situation, at the latest when the buyer discontinues its payments and upon filing of a petition for or the commencement of insolvency or composition proceedings against its assets.
4. If the value of the collateral furnished to us that can be realized in case of an enforcement event exceeds our secured claims by more than 10%, we shall release collateral of our choice at the request of the party ordering.
5. The party ordering shall notify us in writing without undue delay about all access obtained by third parties to goods subject

to retention of title or claims assigned to us (e.g. seizure or attachment). Where the third party is not able to reimburse us for court or out-of-court costs incurred for a lawsuit in order to secure ownership, the party ordering shall be liable for the loss we incur.

6. The buyer shall store the goods subject to retention of title for the vendor free of charge. The buyer shall insure the goods subject to retention of title against the usual risks such as fire, theft, water and burglary to the customary extent, at its expense. The buyer assigns the rights arising from the insurance to the vendor, which accepts such assignment.

VIII. Data Protection

1. Data required for the handling of transactions shall be electronically stored by the vendor and treated in confidence. Credit checks shall take the interests of the buyer meriting protection into account and shall be conducted by correspondingly authorized enterprises in accordance with the statutory provisions on data protection.

2. The vendor warrants that persons entrusted with the handling of transactions at its enterprise will also comply with the provisions mentioned in Clause VIII para. 1 above. We would like to point out, however, that owing to the structure of the internet, breaches of data privacy can occur during the online handling of business transactions, on which Emailleschmelze und Glasurenfabrikation Josef Opavsky u. Sohn, Inh. H. Kropp Dipl.-Ing. (FH) GmbH, Vallendar, has no influence.

IX. Final Provisions

1. Place of performance is Vallendar unless otherwise agreed above.

2. The law of the Federal Republic of Germany applies to the exclusion of uniform international law, in particular the provisions of the UN-CISG.

3. The exclusive, also international venue for all disputes and/or lawsuits arising from each transaction to which these Terms and Conditions apply, is Vallendar. We are however also entitled to file suit at the general venue of the buyer.

4. Should individual provisions of the contract with the customer including these Terms and Conditions be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The partially or wholly invalid provision shall be replaced by a provision the economic outcome of which comes as close as possible to that of the invalid provision.

As at: April 2015