

# GENERAL TERMS OF SALE AND PAYMENT OF SAINT-GOBAIN BUILDING DISTRIBUTION DEUTSCHLAND GMBH

## 1. General

These terms of sale and payment are legally binding for all our business relations, sales and other legal transactions. Divergent purchasing terms of the customer are hereby expressly rejected. Apparent mistakes, typing errors and miscalculations are not binding for us.

## 2. Offer

Our offers remain non-binding with respect to prices, quantities, delivery periods and availability of the goods. In particular, rights are reserved with respect to prior sale as well as correct and punctual delivery to ourselves. Should the delivery be completed more than 2 months after conclusion of the contract, we are entitled to increase the agreed price, insofar as the valid prices of our suppliers or other costs applying to our goods (including public charges) increase between conclusion of the contract and delivery. The price increase shall become effective as soon as we have informed the customer about it in writing. The documents and details associated with our offer as well as any other sales documents, insofar as they are not described as binding, are only to be regarded as approximate values. The same applies to details of production plants. Models and drawings remain our property.

## 3. Order confirmation

Orders, agreements, composition specifications and guarantees, among other things, require our express written confirmation in order to become legally effective. A guarantee of condition will only be provided by us in exceptional circumstances and must be expressly described as such. Orders become binding on receipt of our order confirmation or through our delivery. Complaints about confirmations must be asserted immediately, at the latest within a week, in writing.

## 4. Delivery

### 4.1 General

Delivery is effected at the expense and risk of the customer. At the latest with the loading of the goods on the means of transport the risk is transferred to the customer. Goods which are not accepted will be stored at the expense and risk of the customer. Partial deliveries are permitted; they will be regarded as separate deliveries. The selection of the transport route and the means of transport is expressly reserved by us.

A delivery, paid or unpaid, to a construction site, a store or to another place named by the customer, includes the delivery without unloading on condition that there is a public road that can be used by a heavy articulated vehicle. Should the delivery vehicle leave the public road on the instructions of the customer, he shall then be liable for any damage which may occur. Insofar as own or external personnel help with unloading, on principle, this happens at the risk of the customer. Unloading must be effected immediately and correctly by the customer.

The risk of accidental damage, deterioration and the loss of the goods is transferred at the latest on delivery to the delivery address provided by the customer, insofar as the goods are delivered during the usual business hours (Mon. - Fri. 06.00 to 20.00 hrs, Sat. 06.00 - 18.00 hrs.) and the customer had been previously informed about the probable delivery date. The customer must ensure that on delivery of the goods, they can be received by the customer.

### 4.2 Delivery dates and delivery periods

In principle, details of delivery times are subject to confirmation. Delivery periods are valid subject to correct and punctual deliveries to ourselves. We can only be held liable for punctual delivery in the event of faults of our own or of our vicarious agents. We cannot be held liable for the faults of our suppliers. We undertake, however, to assign any possible claims for compensation against the supplier to the customer.

Unforeseeable exceptional circumstances such as industrial actions, official measures, traffic hold-ups or other cases of force majeure release us for the duration of these effects or, in the case of impossibility, in full, of the duty to deliver.

In the event of a delay in our performance or the impossibility of performance by us, claims for compensation by the customer are excluded unless they are a result of deliberate intent or gross negligence on the part of ourselves or one of our legal representatives or vicarious agents.

In the event of a delay on the part of the customer in his obligations towards us, we shall be entitled to amend a firmly agreed delivery date in writing in such a way that the delivery period is extended by the length of time of the delay.

### 4.3 Packaging

The goods are packaged and delivered in the manner customary in the trade. Pallets as well as special forms of packaging will be charged separately. The return and compensation for such packaging material will only be made in the event of immediate post-free return in defect-free condition subject to the deduction of adequate costs for handling.

### 4.4 Transport and breakage insurance

Insurance against damage in transit, transport losses or breakages will only be taken out in the express request of the customer and at his expense and on his invoice. Damage in transit and shortfalls in delivery must be ascertained immediately on receipt of the shipment by official railway inventory control or similar evidence and certified on the accompanying documents (consignment note, delivery note etc.).

## 5. Customer complaints and liability for defected goods

Obvious defects should be reported to us immediately in writing, at the latest, however, 10 days after delivery, and at all events prior to installation or processing. Deviations between the delivered and the ordered quantities or the type of delivery that are apparent on the delivery note are obvious deficiencies. Complaints relating to hidden deficiencies must be made immediately by the customer, at the latest, however, within 10 days after discovery or attaining knowledge of them. Further obligations of the buyer in accordance with § 377 HGB remain unaffected.

## 6. Warranty

We provide a warranty for the freedom of the delivered goods from material defects according to the condition agreed upon in the order confirmation.

Goods which, due to circumstances which occurred temporarily prior to the time of the actual transfer of risk, are ascertained to be either unusable or considerably impaired with respect to their usability, justify the choice for us, at our reasonable discretion, between an improvement free-of-charge and a new delivery.

Replaced goods shall become our property. On principle, contractual claims or liability for material defects lapse 1 year after the transfer of risk, insofar as longer periods are not mandatorily specified by act of law, particularly in accordance with § 438, Par. 1 No. 2 BGB (Buildings and materials for buildings), § 479 BGB (claim of recourse) and § 634a Par. 1 No. 2 BGB (construction defects).

We accept no liability for damages which – without us being responsible for them – have occurred for the following reasons:  
unsuitable or improper use, faulty assembly or start-up of operation by the customer or third parties, natural wear and tear, faulty or careless handling, unsuitable operation, unsatisfactory construction.

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unsuitable or improper use, faulty assembly or start-up of operation by the customer or third parties, natural wear and tear, faulty or careless handling, unsuitable operation, unsatisfactory construction.

The replacement goods and the improvement are subject to the warranty up to the expiry of the warranty period for the originally delivered goods.

Further claims of the customer, in particular claims to compensation for damages, which did not occur to the item delivered itself, are excluded unless they are a result of deliberate intent or gross negligence for which we are responsible. Possible claims arising from the product liability law because of loss of life, physical injury or damage to health, the assumption of a guarantee or a procurement risk, remain unaffected by this.

We accept no liability for manufacturer and product details in product data sheets, manufacturer and supply lists, catalogues or other documents from our suppliers presented by us and also do not assume any obligation to provide advice in this respect.

## 7. Liability for secondary obligations

Insofar as the delivered goods cannot be used by the customer for the contractual purpose as a result of omitted or defective execution of proposals and consultations prior to, or after, conclusion of the contract, as well as other contractual secondary obligations, under the exclusion of further claims of the customer, the provisions for warranty and cancellation shall apply correspondingly.

## 8. Right of the customer to cancel the order

8.1 In the event of a delay in execution of the order, the customer is only entitled to withdraw from the sales contract after the granting and expiry of an adequate extension under an express announcement of the refusal to.

8.2 Furthermore, the customer is entitled to cancel the contract if following an adequate extension granted to us for the improvement or substitute delivery with respect to a defect for which we are responsible in accordance with these sales and payment conditions, we culpably fail to meet the agreed delivery date.

The customer also has a right to cancellation if the improvement or substitute delivery by us is objectively or subjectively impossible.

## 9. Returns

Goods supplied by us from our stock assortment may only be returned in faultless condition on receipt of our written consent and carriage paid. The value of the returned goods will be credited less appropriate repurchase costs of at least 20%, whereby as a minimum amount 30.00 Euros will be retained. The following goods are excluded from returns: special orders and goods which were produced specially at the request of the customer (commission goods), goods with limited durability as well as batch articles. In winter months the return of goods which endangered by frost is excluded.

## 10. Payment

### 10.1 Terms of payment

Our invoices are due for payment immediately and are payable without a discount within 30 days after the invoice date. Cash discounts are only granted if this is specifically agreed upon in writing. A mandatory prerequisite for the granting of a cash discount is that all previous invoices – with the exception of invoices for which our customer has justifiable objections – have been settled. For cash discount invoices, the net invoice amounts shown after deduction, for example, of discounts, freight, returned goods credit notes, among others, are applicable.

Bills of exchange will only be accepted as a means of payment in exceptional cases and only following corresponding written agreement. On pallets and services, discount - except in the case of explicit written agreement - will not be granted. Cheques and bills of exchange will only be credited following encashment, assignments of claims after payment. The claims and their due date remain unaffected until then. The receipt of payments can only be accepted against duly confirmed invoices.

A refusal or withholding of payment is excluded if the buyer was aware of the defect or other ground for complaint. This also applies, if he was unaware of this due to gross negligence, unless we have fraudulently concealed the defect or other reason for complaint or have provided a guarantee for the condition of the object.

A setting off or the assertion of a right of retention is only permitted only with counter-demands which are undisputed or legally established. A right to retention arising from previous or other transactions of the current business connection cannot be asserted.

### 10.2 Delay in payment and creditworthiness

Following the expiry of the 30-day period we will calculate interest on arrears at the legal rate. We expressly reserve the right to assert further claims for damages. Irrespective of the term of bills of exchange and similar which may be received our claims become due immediately, insofar as the terms of payment are not observed or circumstances become known to us which, in accordance with our decisions taken at our reasonable commercial discretion, are likely to diminish the creditworthiness of our customer. In these cases, furthermore, we reserve the right, irrespective of further legal rights only to execute outstanding deliveries against cash in advance or to demand special securities. Under the above-mentioned preconditions we can also set off advance payments/price safeguarding payments of the customer, which he has made for specific objects against open claims.

**We are authorized to obtain information about the creditworthiness of our customers from Schufa Holding AG. The customer is in agreement that for the purposes of checking his creditworthiness under compliance with the legal regulations, in particular of the data protection law, we may obtain information from data or information pools operated by third parties, insofar as these are properly registered with the responsible data protection authority and are not prohibited. We are authorized to provide such data or information pools with data about behaviour of the customer which is not in accordance with the terms of the contract, such as, for example, delay in payment, cancelled direct debits, notices to pay a debt etc.**

## 11. Reservation of title

11.1 Our deliveries are carried out exclusively under the condition of the extended and expanded reservation of title. The ownership of the delivered goods is only then transferred to the customer, when he has fulfilled all his liabilities towards us. For transactions against a running account, the retained ownership is deemed as security of our balance claim. The handling, processing, assembly or other utilization of goods delivered by us and still in our ownership, shall be regarded as having been carried out by our order is carried out. Should the goods delivered by us be mixed or connected with other goods, then the customer transfers his ownership or co-ownership of these mixed goods or the new good to us with the coming into effect of these terms of sale and payment and shall keep them safe for us with due business diligence and free of charge. The customer may only sell the delivered product in the course of ordinary business transactions and not agree on any prohibition of assignment with his customers. Furthermore, he is obliged to impose our reservation of title on his buyers. Impairments of our rights, particularly attachments, among others, must inform us or notify us immediately in writing.

11.2 The customer assigns all claims to us with all secondary rights and securities, which result for him from future disposals of goods delivered by us, against his buyers up to the complete settlement of all our claims, namely up to level of the invoiced amount for the goods delivered by us and sold by the customer plus 35%. Similarly assigned are all claims of the customer which become due to him for service or work performances for the product delivered to him in connection with the processing or the installation of the goods delivered to him as well as claims which accrue to the customer through the connection of the delivered goods with a property against a third party. Should retained goods be installed as an essential component by the customer in his own property, then the customer already now transfers the revenues to be attained from the disposal of the property plus 35% to us. The assignment in advance also extends to current account balances. If the value of the assignments and securities together exceeds our total claims by more than 35%, then we undertake, at the request of the customer, in this respect to release corresponding securities at our option.

11.3 At our request, the customer is obliged to inform his buyer of the assignment and to provide us with the necessary information for the assertion of our rights against the buyer, in particular the names and addresses of debtors and construction sites. We are also authorized to inform the buyer of our customer of the assignment. The customer is authorized to collect the assigned claim on our behalf, however, only as long as he meets his financial obligations towards us in accordance with the terms of the contract. The authorization of the customer to collect the claim may be revoked by us at any time. Processing, assembly, installation in a property or other utilization are regarded as a disposal in the sense of these terms of sale and payment. In the event of delay in payment or significant deterioration in the financial situation of the customer, we reserve the right to redemption and collection of the goods which remain in our ownership. The collection of the retained goods by us is regarded as a declaration of our resignation from the contract with respect to the collected goods. The customer grants us the right to enter his premises for the purpose of labelling or removal of the delivered goods. The customer shall bear the costs of redemption.

## 12. Co-liability

Fulfillment of the contractual obligations to deliver with handing over of the product and confirmation of the handing over by signature of the client or end consumer occurs at a direct supplying of the client or end consumer agreed on the delivery note. Number 5 of these conditions is applicable.

## 13. Surcharge for low volume purchases

For orders below an invoice value of 60.00 Euros we allow ourselves to impose a surcharge of at least 10.00 Euros.

## 14. Applicable law / Place of jurisdiction

14.1 For the business relationship including the claims arising from cheques or bills of exchange, German law is applicable under exclusion of the UN Sales Convention on the International Sale of Goods (CISG).

14.2 Place of jurisdiction is Frankfurt am Main. We are also entitled, at our discretion, to sue our customer at his general place of jurisdiction or at the seat of our branch office from which the contract was concluded.

## 15. Final provisions

15.1 The ineffectiveness of individual contractual provisions does not affect the validity of the rest of the contract, which must then be supplemented analogously. Agreements which deviate from these terms of sale and payment must be confirmed by us in writing, otherwise they are invalid.

**15.2 Der The customer is in agreement that, under compliance with the legal regulations, we register, store and process product, order and personal data in our data processing system. This also includes the transmission of this data in accordance with §§ 15 ff. of the German Stock Corporation Law (AktG).**