

General Terms and Conditions of Trade

1. General

In respect to all offers, deliveries and services these General Terms and Conditions of Trade shall be regarded as part of the contract, this applying to all future business relationships without the requirement of any specific agreement or reference. The business associate's Conditions of Sale or Purchase shall only be binding, if and as far as we agree to them in writing; we need not specifically reject them. In regard to any supplied goods, we - before delivery - reserve the right to subject any order to the supplier's particular conditions of trade with our announcement of delivery. If and as far as the business associate does not reject these conditions immediately, they shall govern those parts of the contract that concern the particularities of the supplied goods.

2. Offers, Confirmations

Our offers are not binding. Orders placed verbally or in writing or by any means of telecommunications with our staff, field staff or agents are binding. Orders and sales contracts become binding upon us only, if we confirm them in writing or fulfil them by delivery. Our staff, field staff or agents neither have the authority to conclude contracts nor the authority to alter these terms and conditions of trade. In addition, they are not authorized to accept any payments unless they were provided with a specific written authorization to do so. There shall be no verbal supplements to an agreement; as far as any supplements were agreed upon before the conclusion of the contract, they shall be void herewith; subsequent alterations or amendments shall be valid only when confirmed by us in writing.

Goods once ordered will not be taken back, in particular finished goods, plaster and blended paint. KEIMFARBEN will only agree to a return of goods if a settlement on a respective deduction is reached.

3. Price Quotation, Terms of Payment

The price list valid at any one time shall be binding upon choice of colour and price structure. The amount of delivered goods shall be authoritative for the price calculation. The delivery of blended paint and of goods made to the customer's specifications shall be subject to current prices.

Subsequent reductions of either the ordered amount of goods or of the calls agreed upon may lead to an increase of the specified prices due to additional costs.

All invoices are due for payment upon receipt, regardless of the receipt of the delivered goods and notwithstanding potential warranties. A note on the invoice stating "payable until" (date) shall not affect the immediate maturity of the payment and shall only determine a period of time within which payment can be made without a change in the conditions of payment. As far as the issuer has not stated anything to the contrary on the invoice, invoices may be paid within 8 days with a 2 % discount.

Discountable bills will be accepted on account of payment only when explicitly agreed hereupon.

The discount and other expenses shall be borne by the customer. The crediting of bills or cheques shall be subject to receipt, notwithstanding an earlier due date of the invoiced amount in the case of a customer's default with the payment. The crediting shall state the value of the date on which we have the equivalent at our disposal.

A default occurs according to German Civil Law. Default interests shall be charged according to Article 288 Section 1 German Civil Code (BGB) at a rate of 5 percent above the basis interest rate, regardless of any fault on part of the customer. We reserve the right to claim larger damages caused by the delay. The business associate shall have no right of retention. In the case of a nonmerchant, he shall at best have a right a of retention limited to the same contractual relationship.

The setting off of a claim shall be permissible only if we admit that claim or if that claim has become res judicata against us; in all other instances a set-off shall not be permissible.

The business associate may assign a claim against us only with our written consent. In case of default, we are entitled to withdraw in whole or partially from all uncompleted sales and service contracts without prior notice and/or are entitled to claim further damages. Should any circumstances come to our knowledge, that impair the business associate's solvency or credit standing, we are entitled to demand a provision of security within a period of ten days or pre-payment in whole within the same period. Any periods of delivery agreed upon shall be extended for this time. In the case that our demands are not complied with, we are entitled to withdraw from the contract without fixing a period notwithstanding the occurrence of a default. Conditions of trade agreed upon for certain periods of time shall be void when the customer defaults with other claims on our behalf or when bill and cheque protests or a bankruptcy petition against the customer or an extrajudicial procedure for debt management come to our knowledge.

We may hold the customer's credit standing as being impaired, if the customer pledges any assets to third parties or transfers them by way of security or if third parties gain any pledges on these assets. We are to be informed of any such events and a copy of the record of the seizure shall be handed over to us. In the event that our property is subject to seizure, both the pledgee and ourselves shall be informed immediately in writing.

If payments are suspended or if any bankruptcy petition is filed against the customer or if a bankruptcy court passes provisional orders regarding the customer's assets, all our claims and clearing balances shall become due without any further notice.

4. Securities

4.1 Retention of Title

We retain title to the delivered goods until the purchase price has been paid in full. Furthermore, the title shall not pass until all previous and future deliveries of goods have been paid for, including all other claims resulting from the existing business relationship in addition to all supplementary claims (in the case of cheque or bill payments). This also applies when the goods are stored on property of third parties. As long as the title is retained, the buyer is not entitled to pledge the goods to third parties or transfer them by way of security. The respective possessor and, in any case, especially the buyer shall notify us of any seizures by third parties and shall provide all assistance necessary to protect our rights.

4.2 Title on Processed Products or Substitutes

If the goods delivered under retention of title are processed into movables (e.g. building materials), we will become co-owner of the processed product to secure our unsettled claims with our fraction of the property corresponding to the value of the delivered goods.

The buyer shall be obliged to store the goods carefully on our behalf and shall on specific request store them separately, mark or return them.

If the buyer resells the delivered goods or the items processed from or with the goods or if they are installed in a third party's real estate directly or after further alteration so that they become integral parts of this third party's property, all claims, other rights and subsidiary rights of the buyer against his purchasers or third parties that substitute the delivered goods and processed items will pass on to us without a declaration of assignment as security for all our claims and other rights resulting from the business relationship. This applies especially to the buyer's claim against his clients/customers for being granted a mortgage according to Article 648 German Civil Code (BGB) or other securities according to Article 648a German Civil Code (BGB).

If the buyer insures the purchased good or the item to which the afore mentioned rights refer and if an event insured against occurs, the buyer's claims against the insurance shall herewith be assigned to us without any declaration of assignment. If the value of the securities existing on our behalf exceeds our overall claim by more than 20 %, we shall - on demand of the buyer - be obliged to in so far release securities of our choice.

4.3 Disposal of Goods under Retention of Title

The buyer is entitled to dispose of the items to which the retention of title applies (see 4.1. and 4.2.) only within the boundaries of an ordinary and orderly course of business and only for proper use. This authority to resell, to process and to install those items into real estate owned by the buyer himself or by third parties is subject to the further condition that the hereby arising claims and rights are assigned to us according to 4.2.

The buyer is not entitled to any further assignments of the claims. He is entitled, however, to collect these claims on our behalf, as long as he meets his financial obligations to us or third parties properly. We are entitled to revoke this authority at any time and may notify the third party of the assignment and collect the claim by ourselves. Amounts of money which the buyer has already collected shall become our property immediately; the buyer shall deposit the money on our behalf and transfer it to us without undue delay. The buyer is also entitled to assert subsidiary rights or security interests (e.g. registration of a mortgage), but shall be obliged upon demand to assign these rights and security interests to us.

4.4 Reporting Requirements

The buyer shall be obliged to make available to us all information and documents we may need to protect our property rights or to assert the substitute claims. In particular, the buyer shall - on our demand - provide all names, addresses and places of delivery of the recipients to whom he further delivered the goods and of the persons who are debtors to the assigned claims. Furthermore, the buyer shall provide the dates on which the contracts were performed and any acknowledgements of receipt. On our demand, the buyer shall notify the debtors of the assignment. We may request a document on the assignment issued by the buyer. In the instance that any items are subject to seizure by third parties, the buyer bears all costs for any measures necessary to protect our rights. Potential claims for reimbursement against the third party shall be assigned to the buyer after he has fulfilled his obligations.

4.5 Withdrawal of Goods / Settlement

In the instance that we take back the delivered goods by reason of the retention of title, this action shall be held a rescission of the contract only if we notify the buyer accordingly and explicitly in writing. The retention of title according to these provisions shall continue if individual claims are taken into current account and the balance is struck and approved by us.

On full payment of all our claims resulting from the business relationship, the title in the goods delivered under retention of title shall pass to the buyer ipso jure and all assigned claims shall again be due to the buyer. The property right shall also be valid towards the carrier who receives the goods on order of the customer or on our request.

4.6 Joint Liability of the Customer

In the case that the goods are directly delivered to the builder and the builder is invoiced accordingly, the buyer, being our client, assumes all liabilities for all our claims as joint and several debtor beside the builder. All deliveries shall be passed on with separate invoices so that the deliveries remain distinguishable.

5. Notice of Defects

Complaints in respect of a defect of goods shall be made immediately after receipt of a delivery and shall be explained in detail. If the shipment was carried out by rail, our business associate shall have potential damages ascertained by a railway official at the station of disembarkation.

If we do not carry out the shipment, the reason being either that collection of the goods was agreed upon or that we refrained from the shipment on grounds we cannot be held liable for, the customer shall be notified that the goods are ready for shipment. If the customer or a third party acting on his behalf then examines the goods within a period of two weeks, the complaints in respect of a defect of goods shall be made immediately. Such complaints shall be excluded, if the examination is omitted.

If the customer does not state complaints in respect of a defect of the goods, the goods shall be deemed as having been approved, notwithstanding defects which were undetectable on examination. If such a defect appears later, notice of the defect shall be made immediately after its discovery in writing; otherwise the goods shall be deemed as having been approved also in respect to this defect. These provisions shall apply also, if a good other than agreed upon or an amount of goods other than agreed upon is delivered, unless the delivered goods do not obviously differ so substantially from the goods ordered, that we had to rule out the possibility of an approval by the customer. The customer shall be obliged to maintain the goods he objected to in their condition at the time of the defect's discovery. He shall take care of their provisional safe storage. Without our written consent, he may not process or continue processing or resell the goods he objected to. If the customer acts to the contrary, the goods shall be deemed as having been approved.

6. Shipping, Passing of Risk

Prices are free German frontier for shipments to other countries of destination, if the order exceeds 50 kg/ltr. The customer shall bear all costs for shipments ex factory or ex warehouse, if the order does not exceed 50 kg/ltr.

Collections from our factory shall be subject to a collection discount. The customer shall bear the haulages or any additional expenses due to express deliveries on his request.

The risk - including the risk of a seizure - passes on to the buyer, when the goods are handed over to the forwarder or carrier, at the latest, however, on leaving the factory or warehouse. This applies to all instances, e.g. also to the cases of f.o.b. or c.i.f. contracts. Furthermore, the risk passes on to the buyer on the notice that the goods are ready for shipment, if the delivery is delayed on request of the customer or for reasons we cannot be held liable for. In principle, there shall be no compensation for damages to goods in transit or damages due to frost.

7. Samples

Our samples are authoritative for the delivery. We reserve the right to minor deviations in colour. Upon processing, the delivery and the colours shall be deemed as having been approved. Complaints shall oblige us only to take back the goods and replace them, where possible, provided that (a) the complaint is made before processing and within 8 days of delivery and (b) we have acknowledged the complaint as being justified.

8. Warranty

We only guarantee perfect quality of the delivered goods. We cannot be held liable for the quality of the substrate or the execution of the work. If the delivered goods are defective, our warranty is limited to the right to demand rectification of the defects or, if this proves insufficient or unreasonable, to demand the replacement of the defective goods.

If goods are delivered by third parties, we can be held liable only within the terms of trade of the sub-supplier. Our liability shall be excluded on all other grounds, be it by reason of contract or by reason of law, be it on the grounds of breach of contract, on the grounds of violation of an accessory obligation or on the grounds of lack of due diligence, unless gross negligence or intent can be proven against us. With this provision, all claims to rescission or to a reduction of the purchase price in the case of a defective delivery are also excluded.

The advice we provide on the use of the goods verbally or in writing - including the advice provided by our staff, agents and consultants - shall be free of charge and without obligation. It shall be provided exclusively as part of our sales promotion. We shall not be held liable for the advice, unless gross negligence or intent can be proven against us.

Independent counselling shall only be provided project related and on the grounds of the business associate's specifications in writing. Such counselling shall be subject to a prior liability agreement in writing.

Any advice does not relieve the customer of examining our products as to whether they are suitable for the intended procedures or purposes. Furthermore, the advice does not relieve the customer of determining by himself the consumption of materials through trial painting.

9. Period of Delivery, Right to Withdraw from the Contract

All statements on the period of delivery shall not be binding; they shall be deemed as being approximate times only. The period of delivery commences with the day on which we confirm the order, but not before all details of the sales contract have been clarified. Unforeseeable obstacles or cases of force majeure affecting us or our suppliers shall entitle us to postpone the delivery for the duration of the hindrance. In this case, we shall also be entitled to withdraw from the contract partially or in whole.

We shall also have this right of withdrawal if circumstances underlying the contract change after its conclusion and if the parties would not have concluded the contract or would have done so upon different terms if they had foreseen that change. This shall also apply in cases of reduced creditworthiness as mentioned in sub-section 3.

The customer shall only be able to hold us liable for a delay of delivery, if gross negligence or intent is proven against us.

10. Right to Revocation

As far as the customer has a right to revocation by order of law according to Article 361a of the German Civil Code (BGB), he shall - in the case of its rightful exercise - bear the costs of the return shipment for all orders not exceeding an amount of net 40.- Euro, unless the delivered goods do not correspond to the ordered goods.

11. Storage of Data

We use electronic data processing. All data given to us by the customer in the course of the business relationship or which comes to our knowledge in connection with the customer shall be recorded strictly for business purposes and shall be utilized for maintaining the business relationship.

12. Place of Performance, Place of Jurisdiction

Place of performance for our delivery shall be the place of shipment. Place of payment and place of jurisdiction for both parties to the contract shall be Augsburg, including the place of jurisdiction for all actions on a bill or a cheque. This agreement on jurisdiction shall be exclusive and irrespective of the actual amount of the claims. We shall also be entitled to sue the customer at any other established jurisdiction.

All contractual and non-contractual relationships between the parties shall be governed by German law. The Hague Conventions relating to a Uniform Law on the International Sale of Goods shall not be applicable.

KEIMFARBEN GMBH & CO KG