

## **Argelith Bodenkeramik H. Bitter GmbH Terms and Conditions of Sale, Delivery, and Payment - As of 10/05**

### **I. Validity**

These terms and conditions are valid for all of our contracts, deliveries and other services, for which there is no consumer participation with respect to § 13 of the BGB [German Civil Code]. At the very latest, these terms and conditions are considered to be accepted when our material is received. The terms and conditions of the purchaser do not obligate us, even if we do not explicitly object to them once again upon receipt.

### **II. Offers, Contracts**

- 1) Our offers are subject to change. Contracts and other agreements, such as additional oral agreements and assurances and/or promises made by our sales staff only become legally binding if we have corroborated them in writing. Goods remain subject to prior sale. It is also considered to be a form of written confirmation when the goods are shipped as well as when the invoice is received. The prices for our ex work deliveries are net prices. (Exclusive of applicable value-added tax.)
- 2) The information, drawings, illustrations, technical data, and descriptions of weight, dimensions and services that are presented in brochures, catalogues, circulars, advertisements, price lists, or in the documents pertaining to the offer are considered non-binding unless they have been explicitly detailed in a valid and legally binding way in writing within the order confirmation or unless they have exceeded the purchaser's reasonable and customary tolerances.

### **III. Promotional Literature (samples, color charts), Advertising**

- 1) The samples are considered to be non-binding average samples. There is no guarantee that the color of the ceramic material will be exactly the same as that of the sample due to the ceramic material's inherent properties. Certain color variations are to be expected. Due to technical reasons, even the color charts can also only render an approximation of the different color varieties. Therefore, we recommend that the material batch be inspected at our facility.
- 2) We reserve the right to photograph the constructions built with Argelith products and to use those photographs for advertising purposes.

### **IV. Product Characteristics**

(Color, rating/grade, dimensions, weights and quality)

- 1) In order for the color nuances that could exist between individual deliveries to be evened out at the time of installation, it is important that the construction project have ample product in advance.
- 2) If, after the order has been completed, transportation charges, taxes, customs duties, fees, etc., are introduced or raised, we shall have the right to raise the purchase price accordingly.

### **V. Terms of Delivery and Delivery Dates**

- 1) Terms of delivery and delivery dates are to be considered approximate estimations unless we have given our explicit, legally binding, written consent. The delivery term begins when the order confirmation is received. Accepted terms of delivery are extended by the time period in which the purchaser's account is in arrears, either with respect to this contract or to another contract, plus an appropriate follow-up period.
- 2) If the goods are delivered later than four months after the contract is signed, we shall have the right to charge the current prices at the time of delivery. The same applies in all cases in which wages, operating costs, as well as other expenses, have risen and also when the customer has caused the services to be delayed four months. Insofar as the four month time period has been exceeded, we also have the right to charge the current prices at the time of delivery, so long as the terms of delivery and delivery dates were specified within a timely manner. Orders on demand must be submitted in writing in due time - at the very latest two weeks before delivery.
- 3) We are not responsible for delays in delivery or services as a result of force majeure or other events that would make delivery or services substantially difficult or impossible for the seller, for example: strikes, lock-outs, fuel shortages, fire, transportation embargos, damage to the plant or the transportation, even with respect to terms of delivery or delivery dates which have been agreed upon with binding effect and within periods of delay. The same applies if any of the aforesaid events affects our suppliers or one of their sub-suppliers. Such events grant us the right to delay delivery/service for the duration of the hindrance plus a reasonable amount of time to recover, or the right to withdraw, either in whole or in part, from the contract due to the unfulfilled part thereof.

### **VI. Shipment, Transfer of Risk**

- 1) The goods are delivered packaged.
- 2) In all transactions, the risk (including the risk of confiscation/seizure of the material), is transferred to the purchaser when the material is handed over to the carrier or freight driver, or at the very latest, when it leaves our facility.
- 3) The unloading costs shall be borne by the purchaser. The same also applies to pre-shipping costs of the desired shipment via freight vehicle and to subsequent increased freight payments in case of testing by the SVG [German Motor Transportation Association] if prices were agreed free site.
- 4) We shall have the right to make partial deliveries and deliveries which exceed or fall below the specified amount, so long as that difference is considered to be insignificant according to customary practice.
- 5) As a general rule, we deliver on reusable Euro pallets. The costs of these pallets as well as the costs of special packaging (e.g. seaworthy packaging) will be an additional charge. You shall receive a corresponding credit for all multipurpose Euro pallets that are returned in perfect condition. We are not responsible for any costs incurred because of the wait time due to the means of transportation.

## **VII. Payment, Invoicing**

- 1) Our invoices are payable within 30 days of the date of invoice, with no discount. After this time period has passed, then the purchaser is considered to be in default of payment. A cash discount of 2% is applicable to all payments made within 10 days. A cash discount of 3% is applicable to all payments made via electronic funds transfer. Discounts are granted only if all other previous invoices have been paid in full. Discounts are applied to the net value of the goods (excluding freight, packaging and transportation costs).
- 2) Notwithstanding the purchaser's different terms and conditions, we shall have the right to first apply payments to older debts and to inform the purchaser of how the payment was applied. If the purchaser's account contains both unpaid charges and interest, we shall have the right to first apply the payment to the unpaid charges, then to the interest, and lastly to the principal service.
- 3) Checks and bills of exchange are only accepted as conditional payment if we have explicitly given our consent. Credits from the bills of exchange or checks that have been received as agreed are recorded at their value on the day when we can start disposing of them at nominal value. The receivables and due date are unaffected until that time. The purchaser is responsible for all expenses related to dispute and collection. The reservation of title for the reserved goods expires with a definitive payment via check or bill of exchange according to the provisions regarding the reservation of title as explained in these terms and conditions.
- 4) When payment is in arrears, we shall have the right to charge interest amounting to 8% over the base interest rate as set by the European Central Bank. We reserve the right to file additional claims for damages caused by the delay.  
The seller must prove a higher damage, whereas the purchaser must prove a lesser damage.
- 5) All of our receivables are immediately due regardless of the maturity date of the accepted and credited bills of exchange when the terms of payment are not adhered to or when certain conditions are made known to us, which in our best business judgment, undermine the creditworthiness of the purchaser. Should this be the case, then we shall also have the right, irrespective of any further legal rights, to demand collateral for any outstanding deliveries, to withdraw from the contract after an appropriate time period, or to demand damage compensation due to non-compliance. Accepted terms of delivery are extended by the time period in which the purchaser's account is in arrears, either with respect to this contract or to another contract. We shall have the right, on whatever legal grounds, to offset our receivables against those of the purchaser even if the respective receivables have differing due dates. The entitlement may only refer to the balance.
- 6) In those cases in which the credit-worthiness of the purchaser is in question, in particular when the check is not honored or when the purchaser's suspends his payments, we shall have the right to immediately demand the rest of the remaining debt, even if checks have been accepted. If the consumer cancels his payment before the delivered goods have been paid for in full, then the seller may invoke his rights pursuant to §§ 47, 48 of the Insolvency Code.
- 7) Withholding payment or offsetting due to our possible denial of counterclaims is not permissible, unless the receivable is declared (not only temporarily) to be legally valid and enforceable.
- 8) The credits granted by the seller may only be applied to material invoices. There are no cash pay-outs from the credit amounts.

## **VIII. Reservation of Title**

- 1) All products delivered remain our property (reserved goods) until all receivables have been fulfilled, independent of their legal grounds, also including the resulting future or conditional receivables from current and

future contracts.

2) As manufacturers with respect to § 950 BGB [German Civil Code], we develop and process reserved goods without legally binding ourselves. The processed goods are considered to be reserved goods for the purpose of these terms and conditions. If the reserved goods are processed or inextricably mixed with other products that are not ours, we acquire joint-ownership of the new product which is equal to the relationship between the invoice value of the reserved good and the invoice value of the other products used (at the time of development and processing). The resulting joint-ownership rights are considered to be reserved goods for the purpose of these terms and conditions. If our products are combined or mixed with other moving products and the result is a product that is inextricably mixed in such a way that the other product is considered to be the main product, then it is agreed that the purchaser grants us joint-ownership, so long as the product belongs to him. He preserves this joint-ownership for us free of charge. The products resulting from the development, combination and processing are also treated as reserved goods.

3) The purchaser may only sell the reserved goods in the ordinary course of business under his normal business conditions, provided that he has declared a reservation of title to his customers and that the receivables from the resale are passed on to us. Installation in properties or in facilities attached to buildings or utilization to fulfill other work and work performance contracts by the buyer is considered to be resale.

4) The purchaser's receivables that are the result of the resale of the reserved goods are already assigned to us. If the purchaser sells the reserved goods together with other products that have not been produced by us, then the receivables from the resale are assigned only according to the value stated in our invoices regarding the respectively sold reserved goods.

5) The purchaser shall have the right to collect receivables from the resale. However, if he fails to fulfill his contractual obligations to us, then we reserve the right to revoke this right. The purchaser shall not have the right to assign this claim. At our request, he is obligated to inform his customers of the assignment and to provide us with the information and documents required to assert the claim.

6) The purchaser's right to possess the reserved goods expires when he fails to fulfill his obligations with respect to this contract or to another contract. At which point in time, we reserve the right to enter the purchaser's premises and confiscate the reserved goods without specifying a grace period or declaring the contract cancelled. We shall then have the right to use the goods in the best way possible by freely selling them on the open market or by auction, irrespective of outstanding payments or other liabilities of the purchaser toward us.

7) If the value of the securities that we are entitled to exceeds our total claim against the purchaser by more 20% then upon demand of the purchaser, we are insofar obligated to release securities of our choice.

8) We shall have the right to withdraw from the contract and demand the goods if the purchaser acts in such a way that is contrary to the terms of the contract, in particular with respect to default of payment.

### **IX. Notification of Defects, Warranty**

1) It is the purchaser's responsibility to immediately examine the goods upon receipt and to give us specific notification via fax of any defects within two weeks of receipt of the goods at the latest.

2) Warranty claims against us are restricted to rectification of defects or substitute deliveries at our discretion. The buyer reserves the right to reduce payment or withdraw from the contract if we fail to rectify defects or to deliver a substitute. Further warranty claims are excluded.

3) So long as our products comply with the requirements set forth in the valid and respective provisions of DIN 18158 and DIN EN 14411 Appendix G, then objections are excluded insofar as this is permissible by law.

4) We shall have the fundamental right to inspect the rejected goods, have them inspected by a representative, or request samples.

5) An intended notification of defect does not authorize the purchaser to refuse a transport delivery or to return the shipment, if we have not given our prior explicit consent.

6) We are not liable for the costs or more extensive damages, which result from subsequent processing of inappropriate materials. The purchaser must bear the cost of any damages resulting from transportation and may pay for the shipment to be insured against such damages.

7) For superior grade tiling, we are liable according to the provisions set forth in DIN 18158 (for clinker tiles), and DIN EN 14411 Appendix G (for stoneware) for two years after the delivery date. For special choice goods, we are liable for one year. Tiles of Second Choice grade do not need to fulfill the quality requirements. This could include such things as damaged edges, hairline cracks, burned-in brush hairs, etc. Furthermore, the dimensional tolerances may also deviate from the standard; they may be slightly above or below.

Generally speaking, warranty claims for lower sorting grades are excluded insofar as is legally possible. The same is also true for processed material. The warranty is conditional upon the article being properly processed during the appropriate construction of a building in accordance with the seller's standard procedures. The

purchaser must request the processing procedures when he places his first order or if they are unknown to the installer. If these conditions are not fulfilled and if an existing corresponding processing procedure of the seller is not followed, then the seller is absolved from his warranty obligations. The warranty only applies to the damaged ceramic tiles delivered by us. It does not apply to the costs associated with the labor, removal, installation, or other construction site costs that might result. We reserve the right to deliver replacement material. The purchaser does not receive any guarantees from us in a legal sense.

#### **X. General Limitation of Liability**

Claims not explicitly permitted in these terms and conditions, in particular claims for damage compensation due to impossible delivery, delay, violation of secondary contractual obligations, or acting illicitly when the contract was signed, even if such claims exist in relationship to the purchaser's warranty rights, are excluded insofar as is legally permissible. However, this does not apply when the claims are due to intentional or gross negligence on our part or on the part of other vicarious agents. A claim may be asserted if the cardinal obligations have been violated (even in cases of simple or slight negligence).

#### **XI. Place of Fulfillment and Jurisdiction, Applicable Law**

Wehrendorf shall be considered the place of fulfillment with respect to our deliveries.

Osnabrück shall be considered the place of jurisdiction (also for claims regarding checks and bills of exchange). The law of the Federal Republic of Germany apply should there be a dispute between the parties. The terms and conditions of both the Hague and UN Conventions on Contracts for the International Sale of Goods do not apply.

#### **XII. Binding Nature of the Contract**

Should individual terms and provisions of this contract become null and void, this shall not affect the remaining parts. Should a provision become ineffective, either in whole or in part, the contractual partners shall promptly strive to replace the ineffective provision in a legally acceptable way that has the desired economic effect.