

Terms of Delivery and Payment KYOCERA Fineceramics Europe GmbH High-Performance Ceramics

1. Scope

Our terms of delivery and payment apply exclusively; we do not accept deviating or contradictory terms by the customer, even where we have not expressly rejected these.

2. Terms of Contract – Confidentiality Issue

- 2.1 Our quotations are not binding. A contract exists only if we confirm the order in writing. Our written order confirmation determines content and size of a contract.
- 2.2 Any illustrations, drawings, calculations, files, documents and other information provided by us must be treated confidentially. We reserve right of ownership and copyright for these. Written authorisation must be obtained from us prior to distribution to third parties.
- 2.3 Changes in the technical design of the ordered goods are permitted as long as these do not cause essential functional changes or where the customer can prove that the changes are not acceptable.
- 2.4 We will accept liability for the composition of an item only if this has been stated expressly in our order confirmation or in one of our advertisements.

3. Delivery Times – Delivery Quantities

- 3.1 The delivery period begins once all technical queries have been resolved.
- 3.2 All delivery times and periods are subject to ourselves being supplied properly and in good time.
- 3.3 Delivery times will be longer where the customer has asked for changes or delivery has been hampered by events for which we are not responsible, also with ceramic baking waste.
- 3.4 Due to the production of ceramic components involving many different stages, we cannot always guarantee adhering exactly to the amount ordered.

4. Prices and Terms of Payment

- 4.1 Our prices are ex works, loaded, plus VAT. Insurance, packaging, dispatch and custom clearance prices will be invoiced separately. We reserve the right to adjust our prices if after completion of the contract cost increases or reductions occur especially due to changes in the technical design as per Fig 2.2, following wage settlements or changes in material cost. We will document these if requested by the customer.
- 4.2 Invoices are payable net within 30 days from invoice date.
- 4.3 We reserve the right in individual cases to accept bills of exchange and cheques. Payment using bills of exchange does not qualify for any discount. Bills of exchange and cheques are accepted only on account of performance. The claim is fulfilled only once payment has been made or credited. All costs incurred are the responsibility of the customer.
- 4.4 Where payment conditions are not honoured or in circumstances bringing into question the credit worthiness of the customer, we are authorised to demand immediate cash payment for all deliveries. We are furthermore authorised to prohibit the reselling of the goods delivered with reservation of ownership as well as demand the immediate return of the goods at the customer's expense once we have rescinded the contract.

5. Passage of Risk – Insurance

- 5.1 The risk passes to the customer once the delivery has been released and a release note has been issued to the customer. This applies even if delivery is delayed due to circumstances not in our control. If a release note is not issued, the risk is passed to the carrier with the goods, but is then passed to the customer latest at the point where the delivery leaves the works compound. This applies also when our own carriers are used or delivery is carriage paid.
- 5.2 The customer is obliged to insure the goods sufficiently for as long as reservation of ownership applies. Independently from this stipulation we are authorised - but not obliged - to insure the goods for the duration of the transport to the customer in Germany and to invoice the customer for the costs incurred.

6. Complaints, Claims for Defects, Period of Limitation

- 6.1 The customer is requested to check the goods immediately on delivery for any faults. Complaints must be raised immediately on receipt of the goods, and no later than within 14 days of receipt, in writing. The same period applies for hidden faults from the moment of discovery. Claims do not apply where faults have not been notified in time.
- 6.2 Where complaints are justified, we choose to implement corrective measures or to make a replacement delivery. If we have not rectified the fault within a reasonable period or after no more than two attempts and have not provided a replacement, the customer has the right to rescind the contract or to demand a reduction in the purchase price. Rescission is not possible if we have violated our duties only to an immaterial extent.
- 6.3 Claims for defects will lapse after one year.
Warranty period starts once the item is delivered.

7. Reservation of Ownership

- 7.1 Our deliveries are always made subject to reservation of ownership. The goods remain in our possession until the customer has settled all outstanding claims. The reserved ownership serves as security for our claims where accounts remain unsettled.
- 7.2 The customer may resell delivered goods within the framework of his or her proper business procedures. In this event he or she will transfer his purchase price claim amounting to the value of the conditional commodity to us. On request by us the customer must tell us who the debtors of the transferred claim are and notify them of this transfer. The customer is obliged to notify us immediately if an order of attachment or any other event affecting our security rights by third parties occurs.
- 7.3 We commit ourselves to release securities apportioned to us on request of the customer up to the point where the realisable value of our securities exceeds the claim to be secured by more than 10%; the choice of securities to be released remains with us.

8. Acts of God – Right to Rescind

If we are prevented from fulfilling our delivery duties by acts of God or other events which we are unable to influence, or if fulfilment of our duties becomes an undue burden for any such reasons, we have the right to rescind the contract. The customer will not be able to claim for damages in such an event. The right to rescind exists even if the customer was initially notified of an extension to the delivery period.

9. Liability Restrictions - Exemption for Infringements of an Industrial Property Right, Limitations of Liability

- 9.1 We are liable for any violations of life, body or health for which we are accountable in accordance with legal requirements.
- 9.2 For other damages the following applies:
 - a) We are liable for damages based on gross negligence by us or deliberate or gross negligence by our legal representatives or assistants in accordance with legal requirements.
 - b) For damages based on the violation of essential contractual obligations based on negligence by us, our legal representatives or assistants, our liability is limited to the predictable contractual damage up to a maximum of the value of the delivered item.
 - c) Claims for other damage on violating subsidiary obligations or inessential obligations based on negligence are excluded.
 - d) Claims for damages for delay caused by negligence are excluded. The customer's legal rights on completion of an appropriate period of time remain unaffected.
- 9.3 Liability exclusions or limitations do not apply if a defect has been deliberately concealed by us or if we have offered warranty on the quality of the item.
- 9.4 A customer's claim for compensation of time or costs invested in vain instead of compensation in place of time or costs, and the liability according to the product liability law remain unaffected.
- 9.5 The customer is obliged to ensure that the goods ordered and any drawings, plans and technical information made available to us do not violate any commercial property rights or any other rights by third parties. This means that the customer will accept liability for any demands made by third parties

10. Non-assignment clause

Unless something different has been expressly agreed with the customer, the customer is not authorised to transfer rights from the contract to third parties without our agreement.

11. Applicable rights, Place of Jurisdiction

- 11.1 Only German law applies under the exclusion of UN purchasing rights.
- 11.2 Exclusive place of jurisdiction for disagreements between contract parties is Mannheim, if the customer is a merchant, a legal person of public law or a special asset, or if the customer does not have a place of jurisdiction in Germany. We do however reserve the right to proceed against a customer who does not have a general place of jurisdiction in Germany within other courts of our choice.

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- 3.4 Due to ceramic production specifics, especially the occurrence of baking waste, the customer is obliged to accept partial delivery. We will always attempt to deliver outstanding goods due to the occurrence of baking waste as soon as possible.

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- 6.2 Where complaints are justified, we choose to implement corrective measures or to make a replacement delivery. If we have not rectified the fault within a reasonable period or after no more than two attempts and have not provided a replacement, the customer has the right to rescind the contract or to demand a reduction in the purchase price. Rescission is not possible if we have violated our duties only to an immaterial extent.
- 6.3 Claims for defects will lapse after
 - a) Five years for delivery of building materials which consequently caused faults in a building.
 - b) One year for the delivery of new goods to a contractor
 - c) Two years for all othersThe period starts once the item is delivered.

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- 7.2 The customer may resell delivered goods within the framework of his or her proper business procedures. In this event he or she will transfer his purchase price claim amounting to the value of the conditional commodity to us. On request by us the customer must tell us who the debtors of the transferred claim are and notify them of this transfer. The customer is obliged to notify us immediately if an order of attachment or any other event affecting our security rights by third parties occurs.
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 - b) For damages based on the violation of essential contractual obligations based on negligence by us, our legal representatives or assistants, our liability is limited to the predictable contractual damage up to a maximum of the value of the delivered item.
 - c) Claims for other damage on violating subsidiary obligations or inessential obligations based on negligence are excluded.
 - d) Claims for damages for delay caused by negligence are excluded. The customer's legal rights on completion of an appropriate period of time remain unaffected.
- 9.3 Liability exclusions or limitations do not apply if a defect has been deliberately concealed by us or if we have offered warranty on the quality of the item.
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