

Terms and Conditions of Purchase of CeramTec AG

Issue: November 2009

1. General

The following Terms and Conditions of Purchase shall exclusively apply for all and any legal relationships with companies and legal persons/entities under public law. We do not recognise the General Business Conditions of the contractor/supplier (hereinafter called „Supplier“) which are contradictory to or deviate from our Terms and Conditions of Purchase, even in an individual case where we have not explicitly raised an objection. The latest edition of our Terms and Conditions of Purchase shall always apply, also for all future supplies and performances of the Supplier (hereinafter called “Supply”).

2. Conclusion of contract and alterations thereto

- 2.1 Orders, conclusions of contract as well as alterations/amendments thereto shall be in written form only, where notification per telefax or data telecommunication shall be covered by this requirement. Oral agreements before, during or after conclusion of contract shall only then be effective when these have been confirmed by us in writing. This shall apply in particular for alterations and/or amendments to our Terms and Conditions of Purchase. The Supplier shall confirm in writing all orders with details of binding prices and dates of delivery within five working days.
- 2.2 References to existing business relations with us for advertising or other purposes whatever shall require our prior approval in writing.

3. Dates of delivery

- 3.1 Agreed delivery dates and times are binding. The decisive factor for the adherence to the delivery date or delivery time is the receiving of the goods or the fulfillment of a service performance at that location specified in the order. If a delivery “free works” has not been agreed (DDU or DDP according to Incoterms 2000), then the Supplier shall have the goods ready in good time, with due consideration of the time required for loading and shipment to be coordinated with the shipping agent.
- 3.2 If it is evident that an agreed delivery date cannot be upheld in all probability, the Supplier shall inform us immediately and in writing of such an event, stating the reasons and the expected duration for the delay.
- 3.3 In the event of default on the part of the Supplier we are entitled to demand, notwithstanding any other rights whatsoever, a contractual penalty to the amount of 0.5% of the overall order value for each commenced calendar week, as a maximum however 5%, from the date of default. The unconditional/unreserved acceptance of the delayed delivery is not a waiver of claims for damages or contractual penalty to which we are entitled as a result of delayed delivery.

4. Deliveries

- 4.1 Delivery shall be made to that location as specified in the order. The goods shall be packed professionally and as required in order to effectively avoid quality negative influences such as damage, fouling or any changes during transport. When selecting packing, supporting/loading and piling capacities must be taken into due consideration. The applicable EC-Directives must be given due observance.

- 4.2 Independent of an incoming goods inspection, we are entitled to reject extra deliveries as non-agreed and short deliveries as partial performances, in each case at the expense of the Supplier. The same shall apply if and when the Supplier delivers at a date earlier than that as agreed.
- 4.3 Supply/Delivery and manufacture of Supplies by third parties shall require our prior approval in writing.

5. Pricing and invoicing

- 5.1 Agreed prices are understood as free works to that location specified in the order, including safe, secure, reliable packing as required and as according to standard commercial practice.
- 5.2 Invoices shall be submitted immediately following delivery, clearly stating reference to order number and order data, to the invoicing address as stated in the order. Incorrectly issued invoices shall not substantiate obligation to payment and will be returned to the Supplier unpaid. Deliveries on a cash-on-delivery basis shall be unacceptable.

6. Terms of payment

- 6.1 Unless otherwise and specifically agreed, our payments will be effected as per the 10th day of that month following the date of receipt of invoice. Payments of invoices do not mean that the delivery is recognised according to contractual conditions.
- 6.2 Independent of an incoming goods inspection, only the equivalent of the actually received delivery is regarded as being due.

7. Warranty

- 7.1 The acceptance of the delivery shall be subject to inspection for conformity, particularly also for functional capability, correctness and completeness. We are entitled to examine the contractual subject-matter, insofar and as soon as this is possible and expedient according to the orderly course of business. Any detected deficiencies will be reported by us immediately following detection. Insofar, the objection to a belated complaint is not applicable for the Supplier who has no right to such.
- 7.2 With reference to existing material deficiencies and deficiencies in title, the following regulations apply unless otherwise regulated.
- 7.3 The supplier warrants that his Supply complies with the agreed specifications and quality criteria, that it is suitable for our purposes and that it has no deficiencies which would cancel or reduce its value or its qualification for normal usage or for usage presupposed according to the contract. The Supplier furthermore warrants that his Supply is also in compliance with the state of the art and the applicable DIN-Standards, the decisive regulations for environmental protection, accident prevention and other industrial protection regulations as well as the generally recognised safety-technical and industrial-medical regulations as applicable in the Federal Republic of Germany or which have been passed with a transition period.
- 7.4 The Supplier shall comply, and shall ensure that the Products comply, with all applicable laws and regulations of the country of manufacture and sales. These laws may include medical device laws, environmental laws, nuclear regulatory laws, and product safety laws.
- 7.5 The right to select the mode of subsequent fulfillment is in principle our right. The Supplier has the right to reject the mode of subsequent fulfillment as selected by us under the prerequisites of § 439 para. 3 BGB (Civil Code).
- 7.6 If the Supplier fails to eliminate deficiencies despite being called on by us to do so, we have the right, in urgent cases and especially to ward off acute hazards or to avoid major damage, to perform this ourselves or have it performed by third parties at the expense of the Supplier.

- 7.7 The warranty period for material damage is two years. The limitation period begins with the delivery of the contractual subject-matter (passing of risk) and/or for a works contract with the acceptance of the works and/or with completion of the subsequent fulfillment. The warranty period for deficiencies in title is ten years. In the event of such deficiencies in title, the Supplier shall indemnify us from all and any possible claims of third parties.
- 7.8 If material deficiency is detected within six months after passing of risk, it is assumed that the deficiency had already existed at the time of passing of risk.
- 7.9 In the event of any costs incurred by us as a result of a deficient delivery, especially transport/work/material costs or costs for incoming inspection beyond the normal scope, then the Supplier shall be obliged to take over these costs.
- 7.10 In such a case where we withdraw manufactured products as a result of deficiency of the subject-matter as delivered by the Supplier, or where we have to accept a price reduction for the same reason, or where other claims have been made on us, we reserve the right to make recourse to the Supplier. In addition, we are entitled to demand compensation of expenditures which we had to bear in relationship with our customer because he has a claim opposite us to compensation for expenditures, particularly transport/work/material costs, as required for the purpose of subsequent fulfillment.

8. Product liability

- 8.1 In the event of any claims made on us for reasons of product liability, the Supplier shall be obliged to indemnify us from any such claims, provided and insofar as the damage has been caused by a fault of the contractual subject-matter delivered by the Supplier. In such cases, the Supplier shall bear all costs past and present, including the costs for any possible recall actions. Moreover, the legal regulations shall apply in such cases.
- 8.2 The Supplier is obliged, for such case, to conclude a third party liability insurance with a minimum coverage sum of 2.5 million Euro. Upon demand by us, he shall provide us with verification of insurance coverage as required.

9. Protective rights violations

The Supplier is liable and shall ensure that his supply as well as its usage does not violate any industrial protective rights of Third Parties. Should any Third Parties assert claims, the Supplier shall support us at his expense and with his best possible efforts and, if claims are substantiated, he shall ensure that we are exempted from these and all costs incurred herewith.

10. Execution of work

Persons who have to perform work on the works premises for the purpose of fulfillment of contract shall observe the relevant rules and regulations concerned. Liability for accidents to these persons on the works premises is ruled out, unless the accident was caused by intentional or gross negligence on the part of our legal representatives or agents of contractual fulfillment.

11. Utilities and hazardous materials

- 11.1 The use of fixtures/devices, plants, tools, forms, matrixes measurement and testing instruments etc., required for delivery purposes, shall require our prior approval. The costs shall be borne by the Supplier unless otherwise agreed. To that extent where we take over the costs for the items listed above, either partially or in whole, we acquire ownership and/or co-ownership of the objects concerned.
- 11.2 The supplies of hazardous materials and other goods which must comply with legal requirements or with the requirements of trade associations, only have to be accepted by us when the required and

correctly issued safety data sheets and/or other correspondingly adequate documents accompany the delivery.

12. Confidentiality and documents/documentation

- 12.1 Within the framework of the order, the Supplier shall treat with strict confidence all information of a technical or business nature made known to him, irrespective of whether a contract has been established or not, for the period following conclusion or termination of a contractual relationship. This does not apply in such cases where the information is verifiably known to the general public.
- 12.2 Upon our demand, all information which has come from us (also copies, recordings etc.) including items lent out by us shall be returned to us immediately and completely or destroyed as required.
- 12.3 All specifications, drawings, specimens, models/patterns and other documentation submitted by us shall remain our property and – insofar as not required for fulfillment of contract – shall not be given or shown to others, neither partially nor entirely, nor duplicated, their content – not even partially – shall be utilised, electronically processed or made accessible to third parties or the general public, nor shall these be used economically in any other way without our prior approval in writing. All and any processing and administrative work on the items listed above shall be for us.

13. Place of performance

The place of performance is that location to which the goods have to be delivered in accordance with the order.

14. Social Responsibility

- 14.1 The supplier is obliged to abide by to the provisions of the applicable legal system(s). In particular, the supplier will not participate, neither actively nor inactively, in any form of corruption, violation of basic rights of his members of staff or of children. He will resume responsibility for health and safety of his members of staff at their workplace, abide by the laws for environmental protection and call for and support this code of conduct at his sub-suppliers.
- 14.2 Any case of culpable infringement of these obligations shall entitle CeramTec to withdraw from, or to quit the agreement without prejudice to further titles. If the elimination of the violation of obligations is feasible, this right can only be exerted, if an appropriate period for elimination of the violation has passed effectless.
- 14.3 We require conformity to legal standards by our suppliers. Suppliers, who participate in any form of corruption, violation of basic rights of their members of staff or of children, who neglect their responsibilities for health and safety of their members of staff at their workplaces, and who neglect their responsibilities in accordance to the laws for environmental protection, will be – if these violations are discernible for CeramTec – prompted to attend to their duties within reasonable time. If this is ignored, sufficient procedures to disassociate from such a supplier have to be initiated.
- 14.4 CeramTec cannot afford to actively check all her suppliers in view of conformity of the above mentioned standards. By means of these requirements in the general terms, we appeal on our supplies to oblige to these social responsibilities. The staff of our purchasing departments is sensibilized to, wherever possible (e.g. at the occasion of visits, audits, meetings, press releases or other observance), draw conclusions to the social behaviour of suppliers and to actively pursue negative impressions or information as outlined above.

15. General terms and conditions

- 15.1 Should any term or condition of these purchasing conditions be or become ineffective, the validity of the remaining terms and conditions shall not be affected by such. The contractual partners shall be obliged to replace the ineffective term or condition by an equivalent regulation which serves the economic success of this contract to the nearest possible degree.
- 15.2 Where the contractual relationships are concerned, German law shall exclusively apply, under exclusion of the conflict of laws provisions and the treaty of the United Nations on contracts for international purchase of goods (CISG).
- 15.3 Place of jurisdiction for all legal disputes arising from the contractual relationship upon which these terms and conditions of purchase are based, is Stuttgart, according to our choice also the competent court for the head offices or subsidiary of the Supplier, and the court for the place of performance.