

# General Terms and Conditions of Sale of Morgan Advanced Materials Haldenwanger GmbH

## I Conclusion of the contract

The following terms and conditions of sale apply to all of our quotes, deliveries and services, including information and consulting services to contractors. They also apply to future business relations with business customers, even if we do not expressly refer to this when concluding the contract.

Other terms and conditions, specifically the general terms and conditions of purchase of our customers, do not apply even if we do not expressly contradict them. Individual contractual agreements, regardless of their form, have priority over these general terms and conditions of sale. Our quotes are non-binding unless a deadline has been expressly agreed.

The purchase contract shall not come into effect until we send the customer an order confirmation that corresponds to the essential parts of the order.

If we deliver within the term stated in Section 147 II of the German Civil Code (BGB) without us sending a confirmation in advance, the contract shall come into effect upon provision of the service. With regard to the contractual terms, our invoice shall also be considered an order confirmation in this case.

An electronic signature according to the respective state of the art and according to legal provisions is permitted for the effective conclusion of the contract. It meets a contractually agreed written form requirement and shall also be valid if changes are made to the contract.

## II Pricing

Unless otherwise agreed, the prices shall be "EXW" (INCOTERMS 2010) from the supply plants Waldkraiburg or Ampfing, excluding the packaging and transport insurance.

We reserve the right to calculate minimum order values for small quantities. In this case, a small quantity is a net goods value of under EUR 500.00.

Within the scope of our general sales policy, we are entitled to change our price list at any time. The customer shall be informed of such changes in writing at least two months in advance. Any orders already placed by the customer shall not be affected by the changes.

## III Property rights, models and moulds

Drawings, models and samples enclosed with the quotes are our property and may only be made available to third parties with our consent. They are to be returned immediately if the quote does not result in an order.

With the exception of orders of our catalogue goods, the buyer is obligated to check the extent to which the workpieces ordered are free of third-party property rights. If third-party rights are affected when executing the buyer's order, the buyer shall indemnify us for all claims made by third parties.

Unless otherwise agreed, we shall remain the owner of all usage rights associated with our delivery items. Furthermore, we reserve the unlimited right to use all models and tools that we manufacture or that are manufactured on our behalf in connection with each customer order and that remain our property.

## IV Shipping and transfer of risk

The place of fulfilment is the place of delivery according to the agreed INCOTERM. The risk of accidental loss or deterioration is transferred to the buyer upon delivery from the place of fulfilment, regardless of the assumption of any costs for transport and packaging.

The packaging is decided by us at our professional discretion.

The buyer shall be invoiced for the packaging costs. The transport risk is only insured upon request by the buyer. The buyer shall also be invoiced for the transport insurance costs.

## V Dates and deadlines

Serious events, such as in particular force majeure, industrial action, unrest, military or terrorist attacks that have unforeseeable consequences for the provision of the service shall release the contractual parties from their duties for the duration of the disturbance and to the extent of their effect, even if they are in default. This is not associated with automatic termination of the contract. The contractual parties undertake to inform each another of such hindrances and to adjust their obligations in good faith to take into account the changed conditions.

If the deadline is not met for other reasons, the customer may demand compensation for every complete week of delay from 0.3 % up to a total of 5 % of the value of the part of the delivery that is delayed, provided there is proof that the customer has suffered damages due to the delay. Further claims of the customer are excluded in all cases of delayed delivery, including after the lapse of an extension period set by us. This shall not apply if liability is mandatory, e.g. in the case of intent, gross negligence or damage to life, limb and health. The customer's right to withdraw from the contract after the fruitless lapse of an extension period set by us shall not be affected. This also applies to our right to withdraw from the contract.

## **VI Warranty**

Within the scope of the following provisions, we warrant that the products delivered and the services provided are free of defects that would completely or considerably reduce the value or suitability for the ordinary or contractually stipulated use at the time the risk of the delivery or service is transferred.

1. If products or services show a material defect within of the limitation period, regardless of the operating time, the supplier may decide whether to rectify the defect free of charge, deliver a new product or provide the service again, provided the cause of the fault existed when the risk was transferred. We are not responsible for wear and tear due to normal use or defects that were caused by improper use, handling or storage as well as non-compliance with the manufacturer, installation or operating instructions. The warranty shall lapse due to improper handling either by the customer or third parties appointed by the customer.
2. Unless otherwise expressly agreed in writing, all information about our products, in particular any illustrations, drawings, technical information and references to standards and specifications contained in our quotes and brochures are not quality or service life guarantees within the meaning of sections 443 I 276 of the German Civil Code, they are simply descriptions or labels. This also applies to the delivery of prototypes or samples.
3. Even if prototypes or samples were delivered beforehand, the customer shall inspect the goods immediately after delivery and promptly inform us in writing of any defects found or quantity deviations. Otherwise, the goods shall be considered approved unless deviations that could not be detected during the inspection are identified.

4. The warranty period is 12 months and starts with the time of delivery of the goods to the customer at the place of delivery, latest with the delivery to the customer. The time of warranty starts with the take over as per Section 640 of the German Civil Code, as far as contractual components are deliverables including deliveries that are non-fungible items.
5. We shall bear the costs incurred for the purpose of rectifying any defects (in particular transport, travel, working and material costs). If the costs increase because the items were taken to a place other than the delivery place of the customer after delivery, the customer shall bear the extra costs unless this complies with normal use. If defects are to be rectified, the customer shall immediately allow us to do so and make the faulty goods available to us for inspection and processing.
6. The customer shall bear the costs incurred for any unjustified claims of defects unless the customer was unable to identify that these were not defects. Lump-sum compensation for claims of defects from customers is not accepted.
7. If the improvement or replacement delivery fails, the customer is permitted to demand a reduction of the price or to withdraw from the contract, notwithstanding any other claims for compensation.
8. Further claims are excluded unless otherwise agreed in these sale and delivery terms and conditions.

## **VII Quantity discrepancies**

During the manufacturing of ceramic materials the quantity produced can vary for production technology reasons. Therefore, we are entitled to carry out over/ underdeliveries customary in the trade. This arrangement comes into effect provided we do not receive any objection from the customer in writing within one week after receipt of our order acknowledgement. Please note that disapproving overdeliveries can result in longer lead times. The quantity charged will be the quantity effectively delivered.

## **VIII Payments**

Unless otherwise expressly agreed in writing, all payments are due 30 days after the delivery and invoice have been sent to the customer and are to be made without any deductions to the designated account. The invoice is settled upon receipt of the payment. Bills and checks are only accepted by

virtue of a corresponding agreement and on account of performance. In these cases, the invoice shall only be deemed to have been settled when we are able to access the respective amount irrevocably. All bill, check and discount charges as well as all other costs shall be borne exclusively by the customer.

Default of payment arises 30 days after the invoice was due and received. The invoice amount is due immediately upon receipt of the invoice unless another payment condition has been expressly agreed. If it is unclear when the invoice was received, the debtor shall be in default at the latest 30 days after the due date and receipt of the goods.

If the customer is in default of payment, we are entitled, at our discretion, to charge interest in the amount of 9 percentage points above the basic interest rate or the replacement of exactly the calculated damages we incur due to the delay. Section 353 of the German Commercial Code (HGB) shall remain unaffected. The customer only has a right to set-off or retention if its counterclaims have been legally established, are indisputable or have been recognised by us. The assignment of all claims of the customer against us to third parties requires our express written consent in order to be valid. Section 354a of the German Commercial Code (HGB) shall remain unaffected.

If, after the conclusion of the contract, a significant deterioration of the customer's financial circumstances becomes known to us (e.g. application to open insolvency proceedings, poor credit ratings or interim default of payment), we are entitled to carry out any outstanding deliveries or services only against receipt of advanced payment or an appropriate security, with any delivery or service dates being extended accordingly and/or deadlines being postponed. If we have already delivered, we may demand immediate payment of our invoice, in deviation of point VIII, section 1. The customer is entitled to prove that the significant deterioration already existed at the time the contract was concluded and should have been known to us had we exercised due diligence. If the customer is unable to provide the required security within a reasonable period of time, we are entitled to withdraw from the contract. Claims for damages are reserved.

## **IX Retention of title**

We retain title to the delivered goods as well as the items resulting from their adaptation or processing (reserved goods) until the complete payment of all claims against the customer now and in the future, including those that arise after the conclusion of the contract. In the case of current account claims, the retention of ownership shall secure our balance

claims. Adaptation or processing is only permitted within proper business operations and shall be carried out for us by the customer without other obligations arising for us. If the product is processed by connecting it with other items delivered either under basic or extended retention or ownership, we shall acquire joint ownership of the new items in the ratio of the gross sale price agreed between us and the customer to the corresponding value of the other items.

The customer shall hereby transfer to us its joint ownership shares resulting from any connection, mixture or blending of the reserved goods with other items.

As the custodian, the customer shall handle the items in our sole or joint ownership with the due care of a prudent businessman. If the customer takes out insurance policies for the reserved goods, it hereby assigns its claims from the respective insurance contract to us, or in the case of joint ownership, in the ratio of our share of joint ownership to all joint ownership shares.

The customer is only permitted to dispose of the reserved goods if they are sold in proper business transactions and if it is ensured that the claims resulting therefrom are transferred to us. It is not authorised to dispose of the goods in any other way (in particular pledging or assigning).

As a security, the customer shall hereby transfer to us the claims to which it is entitled as a result of the sale or another legal reason concerning the reserved goods. If the transferred claim is included in a current invoice, the customer hereby transfers a part of its balance claim including the closing balance in the amount of its resale claim.

If it sells the reserved goods after adapting or processing or after connecting, mixing or blending them with other products or together with other products, the claim assignment shall be considered agreed in the amount of the share that corresponds to the gross price agreed between the customer and us plus a security margin of 10% of the realisable value. The customer is authorised to collect the claims assigned to us.

We may withdraw the right to dispose of the reserved goods and the right to collect the claims assigned to us at any time if the customer does not properly meet its obligations to us.

The customer is obligated to issue all requested information about the reserved goods and the assigned claims to us at any time and to hand over the corresponding documents to us. The customer shall notify the debtors of the assignment at our request.

The customer shall immediately notify us of access or claims of third parties (including any enforcement measures) to the reserved goods or assigned claims, as well as hand over the relevant documentation. It shall inform third parties immediately of our retention of ownership and the security assignment.

If the customer is in default of payment or breaches the obligations resulting from these terms and conditions, we are entitled, without prejudice to our other rights, to take back the reserved products, to disclose the security assignment and to use the reserved goods and assigned claims against the customer for the purpose of satisfying any outstanding claims. In this case the customer shall immediately grant us or our agents access to the reserved goods and hand them over.

## **X Liability**

Unless stated otherwise in these terms and conditions of sale including the following provisions, we are liable according to legal provisions in the case of a breach of contractual and non-contractual obligations.

We shall be liable for compensation for damages – for whatever legal basis – in cases of intent and gross negligence within the scope of fault liability. In cases of simple negligence, we are only liable according to legal provisions (e.g. for diligence in own affairs), subject to a more lenient liability standard, for

- a) damages caused by injury to life, limb or health,
- b) damages caused by the significant breach of a material contractual duty (an obligation whose fulfilment is essential for the proper execution of the contract and on the observance of which the contractual partner regularly relies and may rely); in

this case, our liability is however limited to compensation of the foreseeable damage occurring in a typical manner.

The liability limitations from this section also apply in the case of breaches of obligations by or in favour of persons, for whose misconduct we are responsible according to legal provisions. They do not apply if we have maliciously concealed a defect or have given a guarantee for the quality of the goods and for the claims of the customer according to the German Product Liability Act.

In case of a breach of duty that does not comprise a defect, the buyer may only withdraw from or terminate the contract if we are responsible for the breach of duty. A free right of the buyer to terminate the contract is excluded. Otherwise, legal requirements and consequences shall apply.

The above regulations do not give rise to a change to the burden of proof to the disadvantage of the customer.

## **XI Other terms**

German law applies to our contracts and these general terms and conditions of sale, excluding the provisions of the CISG.

If any of the individual provisions of these terms and conditions of sale are ineffective, this shall not affect the validity of the remaining provisions. The contracting parties shall replace any ineffective provisions with provisions that come closest to the intent of the ineffective provisions.

The sole place of jurisdiction for any disputes arising from or in connection with this contract shall be our registered office. However, we are permitted to select another place of jurisdiction.