

General Terms and Conditions of Sale, Delivery and Payment of Carborundum Schleifmittelfabrik GmbH, Kappeler Str. 105, D-40597 Duesseldorf

I. Applicable Conditions

Our business relations, even in the future, with the purchaser and all rights arising therefrom are governed exclusively by the following terms and conditions of sale and delivery. We are not bound by conditions set by the purchaser which are not expressly recognized by us, even if we do not object to them in individual cases.

II. Completion of and Amendments to the Contract

1. Our offers are subject to change without notice.
2. All contracts are required to be completed in text form in order for them to be effective. The same applies to additional agreements and amendments to the contract.
3. The illustrations, drawings, descriptions and technical specifications in our brochures and other printed matter are valid as approximations only.
4. We reserve property and intellectual property rights in cost estimates, technical descriptions, drawings and other documents.

III. Delivery

1. Delivery periods and dates are valid as approximations only. They refer to the point in time of dispatch of the merchandise or, if applicable, to the time of notification of readiness for shipment.
2. Without affecting our rights arising from any default by the purchaser, delivery periods and dates are extended by the period during which the purchaser fails to fulfill his obligations to us.
3. Cases of force majeure and other events upon which we have no influence and which render delivery considerably more difficult or impossible for us, for example, works stoppages, transportation delays, strikes, lawful lockouts, official measures and the non-delivery, incorrect or delayed delivery on the part of our supplier irrespective of the cause, relieve us of the obligation to deliver. However, hindrances of a temporary nature do so only for the duration of the hindrance plus an appropriate lead time. As far as the delay is not reasonable to the purchaser, he may withdraw from the contract by way of an immediate declaration in writing.
4. If delivery by call-off has been agreed, the merchandise shall be purchased at the latest six months after conclusion of the contract even if it has not been called off.
5. Partial deliveries are allowed.
6. Excess and short delivery of up to 10 % are allowed subject to a corresponding adjustment to the charge.
7. Even if delivery is agreed with freight prepaid, the risk passes to the purchaser upon transfer of the merchandise to the forwarding agent or haulage contractor or other transportation person (at the commencement of loading procedures), at the latest, though, upon leaving our work warehouse. If dispatch is delayed for reasons that lie with the purchaser, the risk passes on upon notification of readiness for shipment. The purchaser shall bear any storage costs arising after the transfer of risk.
8. The method of dispatch and type of packing are at our discretion.
9. Insurance of the consignment against transportation damage and other risks shall be effected only at the express wish and at the cost of the purchaser.

IV. Prices, Payment

1. Our prices are valid for the items of contractual consideration listed in our order confirmations. The respective statutory value added tax is added to this except where export consignments are concerned. Should we increase our prices generally between the conclusion of contract and delivery, the price valid on the day of delivery shall apply, unless expressly agreed otherwise.
2. Packing costs will be provided separately, if nothing else has been expressly agreed. Crates will be provided on loan and are to be sent back to us freight prepaid within four weeks after delivery, and if by rail to the station Duesseldorf-Reisholz. If not returned, the cost price of the crates will be invoiced. We shall not take back any other packing materials.
3. Regardless of the order value, our prices generally apply ex works or ex warehouse. Deviating delivery conditions are shown on the front of the form. The purchaser shall bear any additional costs for fast and express freight consignments, too.
4. Unless otherwise shown on the front of the invoice form, all payments shall be remitted without any deductions within 30 days after the invoice date. An agreed discount shall only be granted, if all payment obligations that are due to us arising from earlier deliveries have been fulfilled and if the amount of the invoice is paid punctually.
5. We shall accept bills of exchange only on the basis of express agreement and only without responsibility taken for protest. Discount charges, bank charges and stamp duty shall be at the cost of the purchaser. The acceptance of bills of exchange or cheques is effected only pending discharge of the debt, debts not being considered settled until they have been honoured.
6. If the purchaser delays payment, we are entitled to charge default interest at a rate of 5% above the respective Base rate per Discount Rate Transition Act of the ECB, at least a minimum of 5%, unless the purchaser can prove that damages have not been suffered by us to this amount. The right to asset further default damages is reserved. In case of delay, all other payment obligations fall immediately due regardless of the agreed due date.
7. Retention of goods due to or set-off against counter-claims by the purchaser is only allowed if the counter-claims are recognized by us or are established with the force of law.
8. If circumstances become known to us subsequent to conclusion of the contract which justify doubt as to the solvency or credit worthiness of the purchaser, even if these circumstances already existed upon conclusion of the contract but were not known to us or did not have to be known to us, we are entitled,
 - a) to make outstanding deliveries only against prepayment or the provision of security, and to withdraw from the contract without fixing a new time limit if the prepayment or security is not remitted within two weeks and
 - b) to call due immediately all accounts receivable from the purchaser regardless of the agreed due date.

We are also entitled to call due immediately all accounts receivable if the purchaser is in default in respect of his obligations to us. Any further rights remain unaffected.

V. Warranty

1. The merchandise supplied by us is to be carefully examined immediately after arrival at the purchaser's premises. It shall be considered approved if no notification of defects is received in writing at our premises within 10 working days after arrival of the merchandise at the destination or, where the defect could not be detected upon careful examination, within 10 working days after discovery thereof.
2. In the case of defects or the absence of a property the presence of which was assured, the purchaser may to demand at our option the remedying of the defect, replacement of the merchandise or cancellation of the contract. Instead of this we may also offer the purchaser a reduction of the purchase price, unless the items delivered are unusable for the purchaser. In the case of impossibility, failure, refusal or negligent delay in making a replacement delivery or remedying the defect the purchaser may at his option demand a reduction in the purchase price or cancellation of the contract.
3. In the case of any damages suffered by the purchaser due to or in conjunction with defects or the absence of an assured property in the delivered merchandise or in services executed by us, we are only obliged to replace merchandise subject to the ruling in section VI of these conditions, unless these relate to claims for compensation of damages arising from the assurance of a property or properties which should have safeguarded the purchaser against the risk of any consequential harm caused by a defect. In this case too, however, we are liable only for typical and foreseeable damages.

VI. Claims for Compensation for Damages

In so far as negligence should come into question, we are liable only to the following extent for all claims against us for compensation for damages, irrespective of the cause in law, in particular arising from impossibility, default, deficient delivery, positive infringement of the contract, the infringement of obligations during contractual negotiations, and inadmissible actions:

- a) We are not liable in cases of slight negligence by our non-managerial employees and other personnel assisting in the performance of duties.
- b) We are only liable in the case of gross negligence by our non-managerial employees and other personnel assisting in the performance of duties, if there is an infringement of obligations which are fundamental to the contract.
- c) Apart from cases of gross negligence by our organizational bodies, legal agents and managerial employees we are not liable for damages which are contractually untypical and thus hardly foreseeable.

VII. Extended Reservation of Proprietary Rights

1. We reserve proprietary rights to all merchandise delivered by us (merchandise subject to reserved proprietary rights) until the purchaser has settled all of the obligations arising from the business relationship, including those that have yet to arise.
2. The purchaser may only resell the merchandise subject to reserved proprietary rights within the scope of an orderly business operation; use of any other kind, in particular pledging as security or transfer of ownership by way of security, is not allowed.
3. If the purchaser defers receipt of the sales price from his customers, he shall in relation to these reserve proprietary rights in the sold merchandise under the same conditions under which we reserved our proprietary rights when the merchandise subject to reserved proprietary rights was delivered. Without this reservation the purchaser has no authorization to resell merchandise subject to reserved proprietary rights.
4. The purchaser subrogates to us forthwith the outstanding accounts receivable relating to the purchase price or other remuneration claims to which he is entitled from his customers arising from resale or other sales transactions. They serve as security for us to the same extent as the merchandise subject to reserved proprietary rights. The purchaser is only entitled and authorized to resell or otherwise use the merchandise subject to reserved proprietary rights, if it has been ascertained that the accounts receivable arising therefrom will pass to us.
5. If the merchandise subject to reserved proprietary rights is sold by the purchaser together with other merchandise which is not supplied by us, the subrogation of the accounts receivable arising from the sale shall then only apply to the amount of the invoiced value of the merchandise sold which is subject to reserved proprietary rights.
6. If the subrogated account receivable is recorded in a current account, the purchaser subrogates to us forthwith that portion of the outstanding current account balance corresponding to the account receivable in question.
7. The purchaser is authorized until revoked by us to recover the accounts receivable that have been subrogated to us. We may make no use of this right of revocation as long as the purchaser duly fulfills his payment obligations arising from the business relationship with us.
8. At our request the purchaser shall provide us at any time with information about the whereabouts of merchandise subject to reserved proprietary rights and about the accounts receivable arising from their resale and to hand over to us the documents necessary for the assertion of our rights.
9. The purchaser shall advise us without delay if our rights in merchandise subject to reserved proprietary rights are affected or endangered by the mortgaging of the merchandise or by other measures taken by third parties.
10. If the value of the securities in existence for us exceeds the secured accounts receivable by a total of more than 20 %, we are obligated at the request of the purchaser to release securities of our choice to this extent.
11. The purchaser shall insure merchandise against fire subject to reserved proprietary rights at its own cost and to their full value. The purchaser herewith subrogates to us any claims against the insurance company.

VIII. Concluding Provision

1. Place of performance is Duesseldorf-Reisholz.
2. The place of jurisdiction for all disputes between us and the purchaser, as far as he is a qualified merchant according to the Handelsgesetzbuch (HGB), arising from any transaction to which these terms and conditions of sale and delivery apply is at our option Duesseldorf or the place of the registered office of the purchaser. Duesseldorf is the exclusive place of jurisdiction for legal actions brought against us.
3. Relations between the purchaser and us are subject exclusively to the internal law of the Federal Republic of Germany. The "United Nations Convention on Contracts for the International Sale of Goods" dated 11.4.1980 does not apply.
4. It should be noted that we also store personal data within the scope of the application of the contract with the purchaser.
5. In the event of individual provisions of the General Terms and Conditions being or becoming invalid in total or partially, the validity of the remaining provisions shall not be affected thereby.