

General terms of Business: Business Conditions from 01/2009

I. GENERAL, SCOPE OF APPLICATION

1. Even without being explicitly mentioned during negotiations, these general terms and conditions of sale shall form part of the concluded agreement and shall apply exclusively to all deliveries, services, offers, order confirmations and associated declarations between us, i.e. SAINT-GOBAIN Diamantwerkzeuge GmbH & Co. KG and SAINT-GOBAIN Abrasives GmbH on the one hand and the buyer on the other hand. Our terms and conditions of sale shall only apply vis à vis merchants, governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code), and shall also govern the future business relation and shall apply in accordance with the most recent version to all subsequent transactions without any need of express reference thereto or agreement thereon. They shall be deemed to have been accepted at the latest with acceptance of the goods.
2. We hereby object to any counter confirmation, counter offer or other reference by the buyer to its general terms and conditions; differing or contrary terms of the buyer shall not apply except if expressly agreed upon in writing and on a case-by-case basis only.
3. All rights are reserved for technical and design changes on a basis of what is usual in the trade, provided that they do not comprise unreasonable worsening of the situation for the buyer, and provided that they do not impair the utilisation characteristics of the object sold.
4. The buyer may not assign any claims arising from transactions with us without our prior written approval.
5. If in individual cases there is deviation from these terms and conditions of sale, or if a provision is partly or completely invalid, this shall not affect the validity of the remaining part of the provision or the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be implement the economic purpose of the deleted provision to the greatest extent. Verbal declarations, in particular information, recommendations and advice, shall be applicable only if agreed in written form. The same shall apply for any waiver of this requirement for written form.

II. OFFERS AND PRICES

1. Our offers shall not be binding, i.e. to be understood only as an invitation to submit an offer. The buyer is bound to his order for a period of 30 days. Acceptance of the order shall be effected by written order acknowledgement or by execution of the order.
2. Our prices are to be understood ex works, with Value Added Tax to be added to them at the respective statutory rate. In the event that no prices are agreed on closing of the contract, the applicable prices shall be those set out in the price list for the date of delivery.
3. In the event of partial deliveries, each shipment may be invoiced separately.

III. DELIVERY

1. Indications of delivery data are approximate and non-binding, unless they were explicitly agreed as binding. The delivery lead time shall commence only after clarification of all details of execution, and provision of any drawings, models, samples and materials to be provided by the buyer.
2. A period for delivery is maintained if the object for delivery has left the works by the time of elapse of such period, or if readiness for shipment has been notified by such time.
3. The delivery lead time shall be extended to a reasonable extent in cases of force majeure, i.e. if circumstances and events cannot be prevented by exercising the due care and attention of proper operational management, or in the event of disruptions of operations (e.g. strike, lock-out, etc.), or in the event of any other circumstances which are outside our responsibility (such as incorrect or delayed deliveries by the buyer, non-delivery by upstream suppliers, transport disruptions, etc.), regardless of whether these occur at our plant or with our suppliers. In such cases, the contractual obligations of the parties shall be suspended for the duration of such disruption and to the extent of their effect. If cases of force majeure make it unreasonable to fulfil the contract, either partner shall be entitled to rescind the contract to the extent of the deliveries/services affected. No other claims shall be applicable.
4. In the event of delay in delivery, the buyer may rescind the contract after elapse of a reasonable subsequent deadline without effect; in the event of impossibility of performance on our part, he shall have this right without requirement to set a subsequent deadline. Delay in delivery shall be treated in the same way as impossibility of performance in the event of failure to deliver for a period of more than one month. Claims for damages are excluded, without prejudice to paras. 5 and 6; the same applies for reimbursement of expenditures.
5. The liability exclusion set out under para. 4 above shall not be applicable if an exclusion or limitation of liability is agreed for damages resulting from damage to life, from injury or damage to health due to an intentional or negligent violation of a duty on our part or on the part of a legal representative or agent appointed for fulfilment of our duties; it shall likewise not be applicable if an exclusion or limitation of liability is agreed for other damage due to an intentional or grossly negligent violation of our duty or a legal representative or agent appointed for fulfilment of our duties. In the event that we culpably infringe a substantial contractual obligation, liability shall be limited to the damage which can typically be foreseen in such contracts. The above shall also apply mutatis mutandis with respect to reimbursement of expenditures. Substantial contractual obligations are obligations that protect the essential legal position of the buyer granted by the contract. Furthermore, such contractual obligations are substantial, which at all allow performance of the contract and whose observance the buyer can rely on and actually relied on.
6. The limitations of liability set out in paras. 4 and 5 shall not be applicable to business on terms where the buyer can demonstrate that his interest in fulfilment of such contract was no longer applicable due to a delay attributable to us.

7. Partial deliveries shall be permissible provided that this may reasonably be considered acceptable for the buyer. Regarding such partial deliveries, we may invoice each delivery separately
8. Shipment and transportation of the goods shall be at cost and risk of the buyer. Freight shipments shall be effected at the cost of the recipient, and packaging costs will be charged at cost. Postal shipments shall be effected free of postage and packaging charges to the recipient. The exceptions from this are repair orders and if applicable after-sales services, for which normally postage and packaging are charged. Any objects delivered shall be accepted by the buyer, even if they have minor defects, without prejudice to buyer's rights set out in section VII.

IV. PAYMENT TERMS

1. The invoice amounts shall be payable within 10 days from the date of invoice, in cash, with 2% discount from the net value of the goods, or at the latest in full net amount 30 days after the invoice date in cash without deduction. Repairs and other services shall be payable 30 days after the invoice date in cash without deduction, full net amount in cash. In the event of late payment or the granting of a respite in payment, we are entitled to claim the usual bank interest and commission rates.
2. Discountable bills of exchange and cheques shall be accepted by us only after prior agreement and on account of performance only. Payment shall be considered to have been made only when such bill of exchange or cheque amount has definitively been credited to one of our accounts. Any discount, bank or collection charges are to be reimbursed to us by the customer. If the asset position of the buyer becomes unfavourable during the term of agreed instalment payments or in the period up to maturity of a bill of exchange, we shall be entitled to demand immediate payment of the full amount before the end of the term.
3. Payments shall in all cases be allocated to the oldest outstanding invoice. If cost and interest have already accrued, any payments shall first be attributed to the cost, then to the interest, and finally to the primary receivable.
4. The buyer shall be entitled to offset only insofar as the buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The buyer is entitled to claim retainer rights only to the extent such rights are based on the same transaction.
5. If the buyer fails to make payment in due time, we shall be entitled to charge interest for delay, amounting to 8 percentage points above the base interest rate. In the event that we have higher damage due to interest rates, we are entitled to charge such higher amount at any time upon provision of proof.
6. If subsequent to conclusion of contract we become aware of facts which, upon due commercial assessment, suggest that the claim for payment is endangered due to lack of payment capacity of the Buyer, in particular with reference to non-compliance with terms of payment, delay in payment or circumstances which are liable to reduce the creditworthiness of the buyer (e.g. information to this effect from banks or credit insurance organisations, filing of petition for opening of insolvency proceedings), we shall be entitled after setting a reasonable term to demand from the buyer at the latter's option advance payment or the provision of appropriate collateral, or to discontinue further deliveries until the fulfilment of all our claims, and in the event of refusal to rescind the contract, whereby invoices for partial deliveries already made become immediately payable.

V. RETENTION OF TITLE

1. All goods delivered shall remain our property until complete payment of our current and future claims resulting from the business relationship. In cases of account current, the retention of title shall be considered as collateral for our claim on balance.
2. The buyer shall be entitled unless given notice to the contrary to sell the goods in the course of normal business. The buyer hereby assigns to us on account of performance all claims and rights resulting from onward selling and/or processing of the goods subject to retention of title or from their loss or damage, and we hereby accept. Where the price obtained from onward selling exceeds our claim, we shall be required to return the amount equivalent to such surplus. The buyer is entitled to collect the assigned receivables unless notice to the contrary is given. We shall not avail ourselves of the right to give such notice as long as buyer properly fulfils his contractual obligations, and there is no doubt as to the payment capacity of the buyer.
3. The buyer shall not be entitled to pledge retention goods, to transfer them by way of security, or otherwise to encumber them with third-party rights. In the event of pledging, attachment by third parties, loss, damage or other circumstances that might impair the property rights or rights of retention of the seller, the buyer shall inform us thereof without delay, and provide us with all information and documents necessary for assertion of our rights. Third parties shall be informed of our property rights.
4. If goods subject to such right of retention are combined with other objects, or mixed with them or processed, this shall in all cases be deemed to be effected on our behalf, without any obligations thereby arising for us. We shall acquire title to the new objects arising by processing, combination or mixing or other modification. Buyer hereby transfers to us his rights to these new objects, and shall maintain such objects with due commercial care and attention. Such new objects shall be regarded as objects subject to the retention rights within the meaning of the present conditions.

5. In the event of delay in payment by the buyer, or doubt as to his payment capacity as set out in IV.6., we shall be entitled to take back the goods delivered, and the buyer shall be required to hand over such goods. The buyer hereby irrevocably grants us rights of access to his premises for this purpose. Recourse to the retention right and attachment of the object delivered by us shall not be considered as rescission of the contract, unless explicitly so declared by us in writing.
6. If the value of this collateral exceeds the amount of our receivables by more than 10%, we shall upon demand by the buyer release the security to the corresponding amount with respect to goods at our option.
7. In the event that in the case of shipments abroad such retention of title cannot be agreed with the same effect as under German law, but retention of other rights to the delivery object is permissible, we shall be entitled to claim such rights. The Buyer shall in all respects cooperate to achieve this.

VI. DELAY IN ACCEPTANCE, RETURN OF GOODS

1. If the Buyer fails to accept the goods or refuses their acceptance after expiry of a subsequent deadline, we have the right to rescind the contract or to claim damages in lieu of performance, pursuant to section VI. 2.
2. As damages in lieu of performance in the event of delay in acceptance, we shall charge 15% of the order price without deductions, unless the Buyer can demonstrate that no damage was incurred, or damage was not incurred to the amount of the lump-sum payment indicated above. We reserve the right to claim a higher amount of damages upon presentation of proof.
3. In the event of voluntary acceptance of return of the goods delivered by us, we shall be entitled to full compensation of the expenditure arising due to the conclusion of the contract, such as transportation and assembly cost, and a lump-sum charge for profit lost, amounting to 10% of the agreed selling price, unless the buyer can prove that no damage was incurred, or that damage was not incurred to the amount of the lump-sum charge.

VII. SPECIFICATIONS AND WARRANTY

1. Inasmuch as diamonds are products of nature and we do not have the capability of checking proper treatment of the diamonds delivered, it is not possible to give warranty of any kind for them. Testing and use of diamonds is at the risk of the buyer.
2. The nature of the goods to be delivered is defined exclusively in the corresponding agreements between ourselves and the buyer. Any samples or specimens provided by us serve only for approximate description of these goods. All agreements between us and the buyer with respect to the characteristics of the goods to be delivered by us and any other declarations by us with respect to the characteristics of these products do not constitute any warranty in the meaning of Section 443 BGB (Code of Civil Law), unless we have given the buyer a separate written declaration to this effect, explicitly taking on such warranty or unless we have given a manufacturer's guarantee according to section 443 BGB (German Civil Code). Buyer must follow the assembly instructions and goods shall be tested in a test run prior to their use in order to reduce risks resulting from damaged or defective products.
3. Subject to proper fulfilment by the Buyer of the inspection and complaint requirements set out in Section 377 HGB (Code of Commercial Law), we provide warranty for any deficiencies in deliveries, to the exclusion of further claims, subject to the ruling under Section VIII, as follows:
 - 3.1 If the goods delivered are deficient due to a circumstance occurring before transfer of risk, we shall be entitled at our option either to eliminate the deficiency or to deliver an object that is free of deficiencies (subsequent fulfilment). Where such deficiency is found, this is to be reported to us in writing without undue delay. The buyer shall after consultation with us give us the necessary time and occasion for effecting all measures which appear to us to be necessary for subsequent fulfilment, otherwise we are exempted from liability for any consequences resulting therefrom. Any parts which are replaced shall remain our property. We can refuse to remedy faults as long as the buyer does not fulfil his payment obligations towards us to an extent corresponding to that part of the deliveries which is free of deficiencies. In the event of a deficiency which is only minor, the buyer shall only have the right of reducing payment.
 - 3.2 Where the subsequent fulfilment indicated in section 3.1 above is unsuccessful, impossible, or would involve disproportionate expenditure, or where a deadline set for us for subsequent fulfilment elapses without the deficiency being remedied, the buyer shall have the option either of reducing the purchase price to a corresponding extent, or of rescinding the contract in accordance with the statutory provisions; this applies in particular in the event of culpable delay or refusal to effect subsequent fulfilment, and also if attempts at subsequent fulfilment fail for a second time.
 - 3.3 Unless otherwise regulated under the provisions of Section VIII, any further claims of the buyer are excluded, from any legal basis whatsoever (in particular claims resulting from culpa in contrahendo, violation of primary or secondary contractual obligations, reimbursement of expenditures with the exception of those set out in Section 439 para. 2 BGB, tortious act or any other liability for civil wrongs); this applies in particular for damage outside of the object of purchase, and for claims for compensation for profit lost; it also applies to claims not resulting from deficiencies in the object of sale. Claims resulting from deficiencies cannot be recognised if the goods are used, processed or sold to third parties in awareness of such deficiency.

- 3.4 No warranty is undertaken for damage resulting from the following: inappropriate or improper use, faulty assembly or setting to work by the buyer or by third parties, natural wear and tear, faulty or negligent treatment, failure to conduct proper maintenance, use of unsuitable operating materials, deficient construction work, unsuitable construction ground, chemical, electrochemical or electrical influences (unless caused by us), modifications or repair work which are inappropriate and were effected without prior consultation of us, either by the buyer or by third parties.
- 3.5 If the delivery object cannot be used by the buyer for the contractual purpose due to culpability on our part, as a result of non-compliance with or deficient compliance with proposals or advice given before or after conclusion of the contract, or due to infringement of other auxiliary contractual obligations, in particular instructions for operation and maintenance of the delivery object, Sections VII.3 and VIII shall be applicable mutatis mutandis, to the exclusion of any further claims by the buyer.

VIII. LIABILITY

We shall be liable for damage, regardless from what legal grounds (in particular for claims from culpa in contrahendo, infringement of primary and auxiliary contractual obligations, reimbursement of expenditures with the exception of those resulting from Section 439 para. 2 BGB, tortious act and other civil wrongs) pursuant to the conditions set out under VII and only

- a) in the event of intent;
- b) in the event of gross negligence on the part of the Seller or the owner, the organs of the company or senior executives;
- c) in the event of culpable fatality or physical injury or damage to health;
- d) in the event of deficiencies which we have fraudulently concealed or the absence of which we have warranted;
- e) in the event of deficiencies in the delivery object where liability is prescribed under the Product Liability Act for injuries to persons or damage to things with respect to privately used objects.

In the event of culpable infringement of essential contractual obligations, we shall be liable for gross negligence also of non-senior executives and for minor negligence, but in the latter case restricted to damage which may reasonably be foreseen with respect to damage typical of such types of contract. Substantial contractual obligations are obligations that protect the essential legal position of the buyer granted by the contract. Furthermore, such contractual obligations are substantial, which at all allow performance of the contract and whose observance the buyer can rely on and actually relied on.

Any further claims are excluded.

IX. TIME-BARRING

- 1.1 Claims of the buyer on the basis of deficiency of the delivery for subsequent fulfilment, or for damages or for replacement, shall be time-barred one year after delivery of the object sold. This shall not be applicable for an object which has been used for a building structure in accordance with its usual mode of operation, and has caused it to be defective; in such cases, time-barring shall not take effect until 5 years after delivery. In the case of replacement deliveries or corrections, the term for time barring of claims for deficiency shall start again, and shall terminate in accordance with the original term for time barring of claims for deficiency.
- 1.2 Where the subsequent fulfilment claim is time-barred, claims for reduction of price and for exercise of rescission right shall be excluded. In such case, the buyer can refuse to pay the purchase price to the extent that he would be justified in doing so on the basis of such rescission or reduction in price. In the event of exclusion of rescission and subsequent refusal of payment, we shall be entitled to rescind the contract.
2. The statutory periods shall be applicable for other claims for damages not covered by IX.1.1.

X. CATALOGUES, INDUSTRIAL PROPERTY RIGHTS

The illustrations in our catalogues and brochures are not binding for delivery. We reserve the right to make changes in execution at any time. We undertake no warranty with respect to deviations from the indicated dimensions, weights, etc. We reserve all property rights and copyright to illustrations, drawings, samples and other documents. They must not be disclosed to third parties without our approval, and shall be returned to us at once on request. The Buyer is prohibited from disclosing our technical know-how and processes to third parties or exploiting them himself, even when they are not protected by industrial property rights or copyright.

XI. PLACE OF FULFILMENT AND JURISDICTION

1. Unless otherwise defined in our order confirmation place of performance shall be our business seat stated in our order confirmation.
2. The place of jurisdiction shall be at our business seat if the buyer is a merchant. We are also entitled to initiate legal action at the place where the buyer has his registered office.
3. The laws of Germany shall apply; excluding the UN-Convention on the International Sale of Goods.