

**GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT OF  
SEVEN REFRACTORIES GMBH**

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**§ 1 Scope**

(1) The following General Terms and Conditions of Sale, Delivery and Payment (GTC) are basis for all business relations between the Seven Refractories Deutschland GmbH (hereinafter: "**Seller**") and their customers, insofar they are business customers according to Sec. 14 of the German Civil Code, legal entities governed by public law or separate funds under public law (hereinafter: "**Buyer**"). They apply insofar as no individual agreement has been settled with the Buyer in a particular case.

(2) The GTC of the Seller apply exclusively. GTC of the Buyer do not apply, unless the Seller has assented to them explicitly and in written form in advance. This approval requirement applies in each case, especially even if the Seller is aware of GTC of the Buyer and delivers without any reservations.

(3) If not agreed upon otherwise, these GTC are applicable for future business relations between the Seller and the Buyer in the version valid at the time the order is placed. A reference to the GTC shall not be necessary.

**§ 2 Conclusion of the Contract, Ordering**

(1) The Seller informs the Buyer about disposability, prices and delivery period of her products at the Buyer's request. These offers are non-binding. This also applies if the Seller hands out catalogues, technical documents, other product specifications or other documents to the Buyer.

(2) By placing the order the Buyer makes a binding offer to purchase the relevant product. The Seller is not bound to her explanations prior this order.

(3) The Seller shall be entitled to accept the offer within a two weeks period after the receipt of the order.

(4) The acceptance may be declared either in written form or by delivering the goods to the Buyer. The order confirmation, containing details about quality, amount and date of delivery, shall not be an acceptance, unless it contains an explicit declaration.

**§ 3 Delivery**

(1) The parties individually agree upon a period of delivery, respectively the Seller announces a period of delivery along with the order confirmation which receipt will be the starting date for its calculation. The compliance with the delivery period shall not be substantial for the fulfilment of the contract.

(2) If the product chosen by the Buyer is not or just partly available at the time of the order, the Seller shall inform the Buyer thereof in the order confirmation, immediately. In case the product is not in stock permanently, the Seller will not accept the offer. The contract will not be concluded.

(3) If the ordered product is only temporarily not available, the Seller shall inform the Buyer thereof in the order confirmation, immediately, too. In case of a delay of delivery of more than four (4) weeks – regardless of the reason – the Buyer shall be entitled to withdraw from the contract. Incidentally, the Seller shall be entitled to withdraw from the contract in that case, too. Events of major force, strikes, lockouts, shortage of materials, disruption to transport and business, states of war or emergency or other circumstances for which the Seller is not responsible, the Seller shall be entitled with the exclusion of any claims to compensation by the Buyer to delay the execution of the order or to withdraw from the contract, entirely or partly. In case of a withdrawal the Seller is obligated to reimburse all payments by the Buyer without undue delay.

(4) Delivery delay by the Seller begins according to the law. In any case a warning notice by the Buyer is necessary. In the event that the Seller is in default, the Buyer shall be entitled to claim lump sum compensation of his default damage. The lump sum compensation is 0.5 % (delivery value) of the net price per complete calendar week's default, subject to a maximum of 5 % of the delivery value of the goods delivered late. The Seller retains the right to prove that the Buyer did not suffer any or only significantly less damage whatsoever than the lump sum compensation. The rights of the Buyer according to § 9 (Liability) remain unaffected.

(5) The Seller delivers the ordered products free German border, duty unpaid and including packaging, unless the packaging is explicitly lent, ex-factory – INCOTERM ® (ICC, 2010) DIVACA Massen/ Duisburg Handelswaren – the place of performance and possible supplementary performance. On demand, the goods will be sent to a destination (Sale to Destination). Unless otherwise agreed, the Seller shall be entitled to determine the type of shipment (in particular transport company, shipment route and packaging).

(6) The risk of accidental destruction, damage or loss of the delivered product shall pass to the Buyer at the latest with the handover of the goods. In case of a Sale to Destination, such risk shall pass to the Buyer upon delivery of the product to the carrier.

#### **§ 4 Packaging**

(1) Deliveries also include packaging unless the packaging is explicitly lent. Packaging which is left by way of lending should be sent back by the Buyer within a ten (10) working-days period, freight prepaid. Apart from that, the Seller does not take back packaging.

(2) For small packages surcharges may be raised. As far as the packaging is marked with the RE-SY-/ REPASACK-label, this shall not entitle to discount a waste disposal fee.

(3) Packaging marked with the trademark of the Seller may only be used in connection with goods of the Seller.

## **§ 5 Prices**

- (1) The Seller informs the Buyer about prices in the communication prior the ordering at the Seller's request.
- (2) The prices named by the Seller are understood exclusive of taxes, charges, transportation, insurance and packaging, unless otherwise is agreed upon.

## **§ 6 Conditions of Payment**

- (1) If nothing else is agreed upon in the order confirmation, the net sales price is payable within thirty (30) days from the date of the invoice to the account indicated in the invoice.
- (2) On expiry of the aforementioned period the Buyer will be in default without the need for further warning notice. From that point in time the Buyer will be charged interests at the legal rate (Sec. 288 Par. 2 German Civil Code) as well as the legal default lump sum (Sec. 288 Par. 5 German Civil Code). The Seller reserves the right to claim further damages due to default.
- (3) Furthermore, in the event of a payment default, the Seller shall be entitled (a) to perform future and already ordered deliveries with advance payment and/or (b) to declare all receivables from the business relationship due at once.
- (4) The Buyer shall have no right of set-off or retention, except to the extent that the counterclaim has not been disputed by the Seller or been determined by a final and binding decision. The Buyer shall only have the right to retention with counterclaims arising out of the same contractual relationship.

## **§ 7 Disclosures / application-technical consultation**

Product specifications, any information the Seller may give about the ways in which her products can be processed or used, her technical consultancy service and any other statements the Seller may make are provided according to the best of the Seller's knowledge, non-binding basis and to the exclusion of any liability. Advice on technical applications by the Seller verbally or in writing do not release the Buyer from carrying out his own examination of the products for their suitability for the intended processes and purposes.

## **§ 8 Warranty**

- (1) The statutory regulations shall apply to the rights of the Buyer in case of defects of quality and title, insofar as not otherwise determined below. The primary basis of the Seller's liability for defects shall be the agreement made concerning the quality of the goods. In the absence of any agreed specification of the goods, the existence of defects therein shall be determined in accordance with statutory provisions (Sec. 434 Par. 1 S. 2 and 3 German Civil Code).
- (2) The Buyer's claims arising from a defect require in the wholesale business that the buyer has fulfilled his legal duty to examine the goods and to give notice of defects (Sec. 377, 381 German Commercial Code). In the event that a defect is revealed during the inspection or at a later date,

the Seller must be notified without delay in written form. A report after a ten (10) working days period will not be regarded as immediate whereby compliance with this deadline is met if notification is sent in good time. If the Buyer fails to carry out the proper inspection and/or report of defects the liability of the Seller for the defect which was not reported is excluded.

(3) In the event that any products prove to be defective, the Seller may choose whether the subsequent performance is to be effected by remedying the defect or delivering an item which is free of defects. The right of the Seller to refuse supplementary performance according to the legal provisions remains unaffected. The Seller shall be entitled to make the owed subsequent performance dependent on the fact that the Buyer pays the due purchase price. The Buyer is however entitled to retain a part of the purchase price which is reasonable in the ratio to the defect.

(4) The Buyer shall give the Seller the time and the opportunity which may be needed to for the supplementary performance. In case of replacement, the Buyer has to return the defective goods in accordance with statutory provisions. The expenses necessary in connection with examination and subsequent performance, in particular as regards transport, travel, labour and materials, shall be to the Seller's account if a defect does indeed exist. Otherwise, however, the Seller may claim reimbursement of arising costs (especially examination and transport), if the request for supplementary performance is unjustified, unless the missing deficiency is not instantly identifiable.

(5) If the subsequent performance has failed or a reasonable deadline which is to be set by the Buyer for the subsequent performance has expired unsuccessfully or it is dispensable according to the statutory regulations the Buyer can withdraw the contract or reduce the purchase price. This right of withdrawal does not exist with an insignificant defect.

(6) Claims of the Buyer for damages or reimbursement of fruitless expenses shall only exist according to § 9 (Liability) and are incidentally excluded.

## § 9 Liability

(1) Unless otherwise has not been agreed upon in these GTC including the following provisions, the Seller is liable according to the relevant statutory regulations in case of a breach of contractual and non-contractual duties.

(2) In connection with fault-based liability the Seller is liable – regardless of the reason – in the event of intent or gross negligence. In case of slightly negligence the Seller is only liable subject to a milder scope of liability according to the statutory regulations (e.g. the same care as in own affairs)

(a) for damages arising from injury to life, body and health,

(b) for damages arising from a significant infringement of an essential contractual duty (duties whose fulfilment generally only allows the proper realization of the contract and on whose observance the user regularly trusts – so called “**cardinal obligation** “); in this case, the Seller's liability shall be limited in its amount to the foreseeable, typically occurring damage.

(3) The limitations of liability stated in No. (2) do also apply in case of breaches of duty by persons whose culpability the Seller is responsible for according to statutory provisions. They shall not apply, insofar as the Seller has fraudulently concealed a defect or has given a quality guarantee for the products and for claims of the Buyer according to the German Product Liability Act.

(4) A Buyer can only withdraw from the contract when a breach of duty, which does not constitute a defect, is the Seller's responsibility. A free right of cancellation for the Buyer is excluded. Otherwise the statutory requirements and legal consequences shall apply.

## **§ 10 Statute-of-limitations**

(1) Notwithstanding Sec. 438 Par. 1 No. 3 German Civil Code, the general statute-of-limitations for claims from defects of quality and title is one year from delivery, unless the shelf life of the product limits the warranty to a shorter period of time. This arises from the Storage Conditions that are provided for each product under [\[Link auf Homepage\]](#). The aforementioned statute-of-limitations also applies in the event of contractual and non-contractual claims for compensation of the Buyer, as they are based upon a defect, unless the application of the ordinary statutory limitation (Sec. 195, 199 German Civil Code) results in a shorter period of limitation in the individual case. Otherwise claims for damages of the Buyer according to § 9 (Liability) lapse exclusively according to the statutory limitation period.

(2) In case the delivered good is a building or a good typically used in the construction of a building (building material), which defectiveness subsequently caused the defect of a building itself, the limitation period comes to five (5) years after delivery according to the statutory provisions (Sec. 438 Par. 1 No. 2 German Civil Code). Other special statutory provisions concerning statute-of-limitation (especially Sec. 438 Par. 1 No. 1, Par. 3, Sec. 444, 479 German Civil Code) remain unaffected.

## **§ 11 Retention of Title**

(1) The Seller reserves the right to the property of the sold goods until the full payment of all of the Seller's current and future claims from the purchase contract and a current business relationship (secured claims).

(2) Prior to complete payment of the secured claims, the goods for which ownership is reserved can neither be pledged nor assigned by way of security to third parties. The Buyer shall inform the Seller without undue delay and in written form if an application is made for opening insolvency proceedings or if any third party claims rights (e.g. attachment) in goods which the Seller has delivered subject to retention of title.

(3) If the Buyer acts in a way contrary to the contractual obligations, in particular in the event of a default in payment, the Seller shall be entitled after granting an appropriate grace period - to withdraw from the contract and/or to demand the return of the goods on the basis of the reservation of title and the rescission. Any demand for the return of goods shall not be deemed to include a simultaneous declaration of withdrawal; on the contrary, the Seller shall be entitled to demand solely the

return of the goods and reserve the right to withdraw from the contract. In the event that the Buyer does not pay the due purchase price, the Seller may only assert such rights if the Seller has previously set the Buyer a reasonable period for payment without result or if the setting of such a period is superfluous according to the statutory regulations.

(4) Until revoked according to below (c), the Buyer may sell and/or process the goods under retention of title within the scope of a proper business. In this case the following provisions shall apply in addition:

(a) The reservation of title covers the products which are produced by processing, mixing or combination of the Seller's goods at their full value, whereby the Seller is deemed the manufacturer. If the ownership rights of third parties remain in existence during the processing, mixing or combination with their goods, the Seller shall acquire co-ownership in relation to the objective value of these goods; it shall be agreed now already, that the Buyer will carefully safeguard the goods for the Seller in this case. Incidentally, the same shall apply to the produced product as to the goods delivered under reservation of title.

(b) The Buyer hereby now already assigns the claims against third parties, which are established from the resale of the goods or product in total or in the amount of our possible co-ownership share, to the Seller as collateral according to the aforementioned paragraph. The Seller accepts the cession. The obligations of the Buyer stated in Par. 2 shall also apply in view of the assigned claims.

(c) The Buyer shall retain the right to collect the receivables in addition to the Seller. The Seller undertakes to refrain from collecting the receivables provided that the Buyer complies with its payment obligations towards the Seller, no lack of the Buyer's financial capacity occurs and if the Seller does not invoke her retention of title according to Par. 3. However, if this is the case the Seller may demand to be notified by the Buyer of the assigned receivables and their debtors, to be provided by the Buyer with all data required to collect the receivables and with the relevant documents and that the Buyer notifies the debtors (third parties) of the assignments. Furthermore, the Seller shall be entitled to revoke the authority of the Buyer to resell and process the goods under retention of title.

(d) Should the realizable value of the securities exceed the aggregate of the Seller's claims which are to be secured by more than 10 %, the Buyer shall be entitled to demand a release to such extent.

## **§ 12 Concluding Provisions**

(1) These GTC and all legal relationships between the Seller and the Buyer shall be governed by the law of the Federal Republic of Germany; the UN Convention on the International Sale of Goods (CISG) shall not apply.

(2) The place of jurisdiction – including international jurisdiction – for all disputes arising directly or indirectly from the contractual relationship is exclusively the Seller's registered office in Duesseldorf, Germany. The Seller shall also be entitled to bring actions in the place of fulfilment for the delivery commitment according to these GTC, a subsequent individual agreement or the general

jurisdiction. Statutory regulations of prime importance, in particular exclusive jurisdiction, remain unaffected.

(3) If one of the provisions of these GTC is or becomes invalid or impracticable, the contract in its entirety and the remaining stipulations remain unaffected with the exception of the cases, when due to the separate provisions cancellations one of the Parties is so inadmissibly infringed, that one cannot demand the agreement keeping from her.