

I. Scope

The following terms and conditions apply to all contracts for the supply of goods concluded between elling refractory solutions GmbH, hereinafter referred to as the Ordering Party - and the client, hereinafter referred to as the Supplier. They also apply to all future business relationships with commercial Suppliers, even if they have not been expressly agreed upon again. Different terms and conditions of the Supplier, which have not been explicitly accepted by the Ordering Party, are not binding for the Ordering Party, even if the Ordering Party does not explicitly oppose to them. The following terms and conditions shall also apply if the Ordering Party carries out the order without reservations, knowing of contradictory or deviating terms and conditions of the Supplier.

All agreements concluded between the Supplier and the Ordering Party for the execution of orders are made in writing under contracts concluded for this purpose.

II. Order/ Offer and conclusion of contract

1.

Contracts regarding supplies (order and receipt) and request for a delivery, as well as changes and supplements to them, require a written form. Request for a delivery may also be realised via remote data transmission.

2.

If the Supplier does not accept the order within three weeks from receiving them, then the Ordering Party has the right to cancel it. Requests for deliveries are binding when the Supplier does not object within two weeks from their receipt.

3.

To the extent feasible to be executed by the Supplier, the Ordering Party may request changes in the construction and design of the delivery item. Consequences of such changes shall be agreed upon by mutual agreement, especially with regard to additional or reduced costs of implementation and delivery dates.

III. Payment

1.

The condition for payment is to receive a correctly issued and verifiable invoice. Payments are made within 30 days from the date of delivery or service provision or, if the Ordering Party receives an invoice from the Supplier only after receiving the delivery/ service, within 30 days from the date of receipt of the invoice, by transferring the relevant amount to the account created by the Ordering Party for the Supplier. In the case of accepting early deliveries, the payment term is counted from the date of the agreed delivery date.

2.

The payment is made by a bank transfer. Any discrepancies shall be immediately reported to the Ordering Party.

3.

In the event of a defective delivery, the Ordering Party shall be entitled to withhold a payment proportional to the value, until the delivery has been properly realised.

4.

Without the prior consent of the Ordering Party, which it may not unreasonably refuse, the Supplier is not entitled to assign its claims against the Ordering Party or to have them collected by third parties. In the case of an extended retention of title, the consent shall be deemed granted. If, contrary to sentence 1, the Supplier assigns its claims against the purchaser to a third party without the purchaser's consent, this assignment shall nevertheless remain effective. The Ordering Party may, however, at its own discretion with the effect of releasing the claims, make payments to both the Supplier and the third party.

IV. Reporting defects

The Ordering Party is obliged to inspect the incoming goods only for externally visible damage and externally recognisable deviations from type and quantity. The Ordering Party is obliged to immediately notify of any defects found.

The Ordering Party is obliged to notify the Supplier of other delivery defects as soon as they are detected in the course of usual business. In this respect, the Supplier waives the right to object to late notification of defects.

V. Confidentiality

1.

The Parties to the Agreement undertake to treat as a trade secret all commercial and technical details which are not known to the public and which will be disclosed in the course of the business relationship.

2.

Drawings, models, templates, specimens and other objects are not permitted to be transferred or otherwise made available to unauthorised third parties. Reproduction of such objects is only permitted within the framework of operational requirements and copyright regulations.

3.

Subcontractors should also be obliged accordingly.

4.

The Parties may only advertise their business relations with prior written consent.

VI. Delivery dates and times/Delivery clause

The dates and times agreed are binding. The date on which the goods are received by the Ordering Party shall determine whether the delivery date or time limit is met. The Supplier shall make the goods available on time, taking into account the typical time for loading and dispatch. Deliveries are to be made in accordance with the Ordering Party's instructions.

VII. Delay in delivery

1.

The Supplier is obliged to compensate the Ordering Party for damage caused by the delay in accordance with statutory regulations.

VIII. Force majeure

Force majeure, group disputes, riots, official measures and other unforeseeable, unavoidable and serious events relieve the contracting parties of their service obligations for the duration of the disruption and its consequences. The same applies if these events occur at a time when the affected parties to the contract are delayed in implementing its provisions. The contractual parties undertake, to the best of their ability, to provide the necessary information without delay and to adapt their obligations in good faith to the changed circumstances.

IX. Quality and documentation

1.

The Supplier is obliged to observe the recognised technical rules, safety regulations and agreed technical data with regard to its deliveries. Changes to the subject of delivery require the prior written consent of the Ordering Party. With regard to serial deliveries, the Supplier may only start a serial delivery after the Ordering Party has accepted the delivered samples. Irrespective of this, the Supplier shall continuously check the quality of the delivery items. The Parties shall inform each other about the possibilities of improving quality.

2.

If the type and scope of tests and testing equipment and methods have not been explicitly agreed between the Supplier and the Ordering Party, the Ordering Party will be prepared to discuss the tests at the Supplier's request, within the frames of its knowledge, experience and capabilities, in order to determine the appropriate required state of testing technology. Furthermore, the Ordering Party shall, upon request, inform the Supplier of the applicable safety regulations.

3.

If the authorities, in order to check the specific requirements, request inspection of the Ordering Party's production process and inspection documentation, at the Ordering Party's request the Supplier shall be prepared to grant the same rights at its plant and provide the Ordering Party with all possible support.

X. Liability for defects

1.

Unless otherwise agreed, if the relevant legal requirements and the following requirements are met, the Ordering Party may demand the following in the event of delivery of defective goods

a)

Before starting production (processing or assembly), the Ordering Party shall first give the Supplier the opportunity to rectify the defect or make another delivery (replacement), unless this is unacceptable to the Ordering Party. If the Supplier cannot or does not comply with this provision immediately, the Ordering Party shall have the right to withdraw from the contract without setting an additional deadline and return the goods at the Supplier's risk. In urgent cases, the Ordering Party may, in consultation with the Supplier, rectify the defect on its own or have it rectified by a third party. Any costs incurred in relation to this, shall be borne by the Supplier. If the same goods are repeatedly delivered with defects, the Ordering Party, after having warned the Supplier in writing for a repeated defective delivery, may withdraw from the contract also with regard to the unfulfilled part of the delivery.

b)

If, despite compliance with the obligation under Section IV (Reporting defects), a defect is detected after production has started, the Ordering Party may

- pursuant to § 439 section 1, 3 and 4 of the BGB [German Civil Code], demand subsequent performance and reimbursement of transport costs for subsequent performance of the contract, as well as expansion and assembly costs or
- reduce the purchase price.

c)

In the event of a culpable breach of obligations beyond the delivery of the defective goods (e.g. in the case of an obligation to provide information, advice or conduct an inspection), the Ordering Party may demand compensation for the consequential damages and consequential damages compensated by the Ordering Party to its client.

Further claims for reimbursement and compensation for the delivery of defective goods in accordance with § 437 BGB or the regulations directly mentioned therein shall only apply if this is contractually agreed upon. In the case of newly concluded contracts, section XV point 1 shall apply.

2.

The parts to be replaced by the Supplier shall be made available by the Ordering Party immediately at the Supplier's request and expense.

3.

For deliveries of goods not intended for production, the Ordering Party is entitled to a statutory warranty pursuant to §§ 434 et seq. BGB.

4.

Claims for liability for defects shall become time-barred 24 months after delivery to the Ordering Party.

5.

No claims for defects shall arise if the defect results from a breach of the provisions of the operating, maintenance and assembly instructions, misuse or improper use, defective or negligent treatment and natural wear and tear, as well as interference in the delivery item by the Ordering Party or third parties.

6.

In the event of defective deliveries, the Ordering Party's claims under the Product Liability Act, unlawful action and the conduct of other people's matters without order remain unaffected by Section X. Warranties of quality and durability must be expressly stated as such in detail in writing.

XI. Responsibility

Unless the other provisions of these terms and conditions provide for any other liability, the Supplier is obliged to compensate for damages suffered by the Ordering Party directly or indirectly as a result of a defective delivery, violation of official safety regulations or other legal reasons attributable to the Supplier, exclusively as follows:

1.

The obligation to pay compensation shall in principle only apply if the Supplier is at fault for the damage it caused.

2.

In the event of pursuing claims against the Ordering Party for liability to third parties that is independent of the fault in accordance with non-negotiable regulations of law, the Supplier shall be liable to the Ordering Party to the extent to which it is directly responsible. The provisions of § 254 BGB shall apply accordingly to compensation for damages between the Ordering Party and the Supplier. They shall also apply in the event of a direct claim against the Supplier.

3.

The obligation to pay compensation is excluded if the Ordering Party, on its side actually holds a limited liability towards its recipient. Moreover, the Ordering Party shall endeavour to agree on limitations of liability to the extent legally permissible also for the benefit of the Supplier.

4.

The Ordering Party's claims are excluded to the extent to which the damage results from the Ordering Party's breach of operating, maintenance and assembly regulations, misuse or improper use, faulty or negligent treatment, natural wear and tear or a faulty repair.

5.

The Supplier shall be liable for actions taken by the Ordering Party to prevent damage, to the extent that it is legally obliged to do so.

6.

The Ordering Party shall immediately and fully inform and consult the Supplier if it intends to make a claim against the Supplier under the above provisions. The Ordering Party is obliged to provide the Supplier with an opportunity to investigate the case of damage. The Parties to the Agreement will make arrangements concerning the measures to be taken, in particular settlement negotiations.

XII. Protection laws

1.

In case of use of the delivery items in accordance with the Agreement, the Supplier shall be liable for claims resulting from the infringement of protection rights and applications for protection laws (protection rights), at least one of which has been published either in the Supplier's country of origin, by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria, the Netherlands or the USA.

2.

It releases the Ordering Party and its recipients from all claims arising from the use of these protection rights.

3.

The above shall not apply if the Supplier manufactures the delivery items on the basis of drawings, models or equivalent descriptions or data provided by the Ordering Party and does not know or could not have known, or in the context of the products it develops did not have to or could not know, that a breach of protection rights is taking place.

4.

If the Supplier is not responsible according to point 3, the Ordering Party shall indemnify it against all claims by third parties.

5.

The Parties undertake to notify each other immediately of any risks of infringement and potential cases of infringement of protection rights, and to enable each other to counteract such claims in a mutually agreed manner.

6.

At the Ordering Party's request, the Supplier shall notify the Ordering Party about published and unpublished own and licensed protection rights and applications for protection rights against the delivery item.

XIII. Use of the Ordering Party's means of production and confidential information

Models, dies, templates, specimens, tools and other means of production, as well as confidential information provided to the Supplier by the Ordering Party or fully paid for by the Ordering Party, may be used for deliveries to third parties only upon the prior written consent of the Ordering Party.

XIV. Reservation of ownership

The Supplier reserves ownership of all goods it supplied until receiving a full payment; in this context, all deliveries are considered as related delivery transactions. In the case of a current account, the reserved ownership shall serve as security for the outstanding balance.

For justified reasons, the Ordering Party is obliged, at the Supplier's request, to inform the Supplier of the assignment to third parties and to provide the Supplier with the information and documents necessary to assert its rights.

The Supplier shall release the securities held by it in the scope in which their value exceeds the secured receivables by more than 20% in total.

XV. General provisions

1.

If one of the Parties suspends payments or applies for bankruptcy proceedings against its assets or for out-of-court settlement proceedings, the other Party has the right to withdraw from the Agreement to the extent in which it has not been performed yet.

2.

If any provision of these terms and conditions and other arrangements made, should be or become invalid, the validity of the other provisions remains unaffected. The Parties undertake to replace the invalid provision with a provision that is as close as possible to the economic purpose of the invalid provision.

3.

Legal relations between the Parties with regard to all agreements based on these Terms and Conditions of Purchase are governed by the German law.

4.

For all disputes arising from agreements between the Parties, also with regard to the effectiveness of these agreements or these General Terms and Conditions of Purchase, the court of jurisdiction shall be the court appropriate for the city of Klötze.

