

# General Business Terms and Conditions, Franken-Schotter GmbH & Co. KG, as of 27.02.2014

## 1. Terms of Contract

- 1.1 Our offers shall be conditional, subject to any technical changes as well as any reasonable changes in form, colour and/or weight. The contract shall not be legally valid until receipt of our order confirmation.
- 1.2 These General Business Terms and Conditions shall apply to any current and future business relationship.
- 1.3 Any terms and conditions deviating from, conflicting with or amending these general business terms and conditions shall constitute no part of any contract, even if we have knowledge thereof, unless their validity is expressly agreed in writing.
- 1.4 The party placing an order shall neither assign nor pledge any contractual rights.
- 1.5 The attached shifting and integration guidelines, which are on the last side of the price list, shall be a component of the contractual agreements.

## 2. Delivery

- 2.1 By placing an order, a customer shall place a binding order for the purchase of goods. We shall be entitled to accept the contractual offer contained in the order within two weeks from the date of receipt of the order by us. Acceptance shall be expressed either in writing (order confirmation) or by delivery of the goods to the customer.
- 2.2 In the event of an electronic order placement by the consumer, we shall immediately acknowledge receipt of such an order. Our acknowledgement of receipt shall represent no binding acceptance of the order. The acknowledgement of receipt may be combined with the acceptance of the order.
- 2.3 The contract shall be concluded subject to our correct and timely receipt of goods from our supplier. This proviso shall only apply in the event that we have to justify non-delivery by ourselves, in particular if we have concluded a matching hedge transaction with our suppliers. The customer shall be informed immediately of any non-availability of goods and services. Any consideration received shall be refunded without delay. The same applies to any events of force majeure, e.g. any strikes, company closures, operational problems, lack of vehicles or containers, rail blockades, problems in the quarry or any problems with sourcing necessary raw materials and any other unforeseen events.
- 2.4 Our deliveries shall be made ex works carriage forward on account of and at the risk of the party placing the order without acceptance of any liability for any breakages, theft, etc. The same terms shall also apply to deliveries made carriage paid. In particular, the risk of breakages shall not be included. The statement "inadequately packed", which is contained in waybills, is made upon the insistence of the rail authorities and shall not make us liable for any breakages.
- 2.5 Any packaging costs and transport insurance, which the party placing the order may demand, shall be borne by the latter.
- 2.6 In case of default of acceptance by the consumer we are entitled to demand refund for extraordinary expenses, particularly for the storage and conservation of the owed goods. During the default of acceptance we are only liable for intent.

## 3. Price, Payment and Security: Commercial Credit Insurance

- 3.1 Our prices shall be based on costs prevailing at the time of order placement. Shall these conditions considerably change, the party placing the order has a legal claim on the adjustment of prices under fair consideration of its authorised interests.
- 3.2 All prices are ex works.
- 3.3 Cash discounts are only issued for material costs. We do not grant discounts on net free delivery, packaging or additional labor work items.
- 3.4 Bills of exchange and cheques shall only be accepted in fulfilment. Bills of exchange shall only be acceptable after prior agreement. Any costs shall be borne by the party placing the order.
- 3.5 If following conclusion of contract, circumstances become known justifying our doubts as to the creditworthiness of the party placing the order, we shall be entitled to rescind the contract, demand an advance payment or make a delivery dependent on the provision of security. This proviso shall also apply in the event of any failure to settle claims due despite reminders to make such payments.
- 3.6 The party placing the order may only offset claims against any recognised, undisputed and legally approved counterclaims. Payment may only be withheld for reasons connected with the same contractual relationship.
- 3.7 Small dummies shall be provided free of charge. Any original sample tiles shall be charged for, however, any such amounts shall be refunded in the event of an order being placed.
- 3.8 If the customer's payments shall not suffice to redeem all our accounts receivable, even if they are part of current accounts, we will determine on which liability the payment has to be made. In case of a different purpose of redemption payment of the purchaser we are entitled to credit these outstanding payments against former liabilities. If the purchaser has to discharge any costs and interest apart from the main payment, we are entitled to credit these payments against the costs and then against the interest and finally against the main payment.
- 3.9 We guarantee our accounts receivable via a commercial credit insurance, the rules and provisions of which significantly form all payment transactions. In order to get insurance protection we contact the commercial credit insurance and ask for underwriting of coverage. If the insurance company denies coverage, 100 % of the value of goods will mature when placing the order. For the purchaser it is optional whether to use the commercial credit insurance or to offer another insurance or to offer any other valuable securities.

## 4. Warranty

- 4.1 If the purchaser is a contractor, we shall initially and at our discretion offer a warranty by way of refinishing or a replacement delivery for any defective goods. In the event of a failure of the subsequent performance, the customer may, as a matter of principle and at his/her discretion, demand a price reduction (abatement) or contract cancellation (rescission). However, in connection with a minor breach of contract, in particular for minor defects, the customer shall not be entitled to withdraw from the contract.
- 4.2 The following applies to natural stone: It only shows the general appearance of stone. Dummies can never incorporate all characteristics and variations in colour, marking, structure and grain of natural stone. Any variations occurring in colour, which are due to the nature of the stone, any opaqueness, veining, etc. as well as any naturally occurring faults such as pores, gaps, intrusions, cracks, quartz veins, etc. shall not reduce the natural value of the stone. Complete frost resistance cannot be guaranteed. In connection with variegated stone, competent cementing, separating parts in loose veins and stitches, and their reassembly as well as strengthening by placing solid tiles underneath (double layers), and attaching brackets, pins and intersections subject to quality and characteristics of the types of stone concerned is not only unavoidable, but also absolutely necessary when processing stone.
- 4.3 Contractors shall be obliged to advise us in writing of any obvious defect within a period of two weeks from receipt of warranty claim. The fact that a claim was posted in good time shall suffice. The contractor shall have the full burden of proof in respect of all preconditions concerning any claim, in particular, in respect of the actual defect, the time of determination of any defect and the timely notice of such defect. If the party placing the order lays any goods delivered by us despite obvious defects, no warranty shall apply.
- 4.4 In case of any warranties for defects the party placing the order shall impose us an obligation of subsequent delivery within 14 days.

- 4.5 If due to a defect in title or material following failed subsequent performance the customer elects to withdraw from the contract, he/she shall have no additional claim for compensatory damages in respect of such defect.
- 4.6 If the customer elects compensatory damages following failed subsequent performance, the goods shall remain with the customer, if this can be expected of the customer. Compensatory damages shall amount to the difference between the purchase price and the value of the defective goods. This proviso shall not apply, if the breach of contract was fraudulently caused by us.
- 4.7 The warranty period for contractors shall be one year from the date of dispatch of the goods. The warranty period for consumers shall be two years from the date of dispatch of the goods. The period of limitation for used goods shall be one year from the date of dispatch of the goods. This proviso shall not apply if the customer has failed to notify us of a defect in good time.
- 4.8 If the customer is a contractor, as a matter of principle, the agreed material description shall only be the manufacturer's product description. Any public statement or recommendation made or advertising engaged in by the manufacturer shall constitute no contractual material description.
- 4.9 The liability for any minor loss shall be expressly excluded by the party placing the order/purchaser as well as by us.
- 4.10 If any damage is noted upon arrival of the goods the customer shall have to have such damage immediately noted by rail office on the waybill. If the goods are dispatched by HGV, a report shall have to be produced stating precisely the full extent of any damage. Such report shall require the driver's signature.
- 4.11 In the event of a payment default or loss of credit, we may refuse to honour our warranty until such time when the party placing the order have met their payment obligations to an extent which is equivalent to the value of our delivery less any price reduction due to defects which may be present.

## 5. Retention of Title

- 5.1 In connection with contracts with consumers, we shall retain the title to the goods, until the purchase price of the goods has been paid in full. In connection with contracts with contractors, we shall retain the title to the goods, until all claims arising from current business relations have been settled in full. The customer shall be obliged to store the goods separately.
- 5.2 The customer shall be obliged to treat the goods with care. If any maintenance and support work is requested, the customer shall be obliged to have such work carried out at his/her own expense.
- 5.3 The customer shall be obliged to notify us immediately of any seizure of the goods by a third party, e.g. in connection with a distraint of property as well as of any damage to or destruction of the goods. The customer shall immediately advise us of any change of ownership of the goods as well as any change of his/her own place of abode.
- 5.4 In the event of any breach of contract by the customer, in particular, in the event of any payment default or breach of any condition of these terms and conditions, we shall be entitled to withdraw from the contract and to demand the return of the goods.
- 5.5 The contractor shall be entitled to sell the goods within the ordinary course of business. He/she shall now assign to us any claims up to the invoice amount, which he/she may acquire on any third party through an onward sale. We shall accept the assignment. Following the assignment, the contractor shall be entitled to collect such claim. We shall retain the right to collect a claim ourselves as soon as the contractor has failed to meet his/her payment obligations correctly and is in payment default.
- 5.6 Any treatment or processing of such goods by the contractor (party placing the order) shall always be carried out in our name and on our behalf. If goods are processed together with items not belonging to us, we shall acquire a joint title in the new property as a proportion of the value of the goods supplied by us in relation to such other processed items. The same proviso shall apply, if the goods are combined with other items not belonging to us.
- 5.7 The customer also assigns to us the claim for securing our claims against him, arising from the mixing or processing of the delivered goods as well as the claims against him accrued from the combination of the delivery item with a plot, against a third party, each in the amount of the claims we are entitled to according to the subject contract. We already now shall accept the according assignment.
- 5.8 If we enable the customer to pay the purchase price by endorsing for discounting purposes a bill of exchange drawn by us and accepted by customer (bill-cheque exchange procedure), the title to the goods shall only pass to the party placing the order once the bill has been honoured and the liability on the bill has been discharged.
- 5.9 If the value of securities for our claims exceed 25 % we shall, on demand of the party placing the order, authorise securities elected by us.

## 6. Works and Works Supply Contracts

In addition to these terms and conditions, works and works supply contracts with companies for work to be performed on buildings are subject to the latest version of the VOB/B-regulations as long as they are not contradictory to our General Business Terms and Conditions.

## 7. Limitation of Liability

- 7.1 In case of lightly negligent breach of duty we shall only be liable for an average damage being predictable according to the nature of the goods and being direct and typical to contract. The same proviso shall apply to lightly negligent breach of duty by our legal agents, factors, servants or assignees. We shall not be liable for lightly negligent breach of insignificant contractual duties towards contractors.
- 7.2 The limitations of liability, as aforesaid, shall not apply to claims concerning product liability. Furthermore the limitations of liability shall not apply to damages due to us caused to the customer's body or health or the customer's loss of life
- 7.3 Compensation for damages claims by the customer due to any defects shall prescribe one year from the date of dispatch of the goods. This shall not apply if we may be accused for fraudulent intent or in case of damages caused to the customer's body or health or the customer's loss of life.

## 8. Place of Performance, Jurisdiction and Final Provisions

- 8.1 Any contract shall be subject to the laws of the Federal Republic of Germany. The terms and conditions of UN-law relating to purchase contracts shall be excluded.
- 8.2 If the customer is a trader, a public law-entity or public-law special fund, the competent court for our registered office shall have exclusive jurisdiction for any disputes arising under this contract. The same proviso shall apply, if the customer has no general jurisdiction in Germany or if his/her place of abode or normal residence is unknown at the time legal proceedings are instituted.
- 8.3 Place of performance for all payments is our registered place of business.
- 8.4 Should individual terms of the contract with the customer including these General Business Terms and Conditions be or become partly or wholly ineffective, the validity of the remaining terms shall not be affected. The partly or wholly ineffective terms shall be replaced by such term whose commercial success shall be as close as possible to the ineffective term.