

General Terms and Conditions (GT&Cs)

Date: 10.06.2020

Article 1 Validity

(1) Our supplies, services, and quotations shall be based solely on these general terms and conditions if the customer is an entrepreneur as defined by § 14 of the German Civil Code. These general terms and conditions are an integral part of all agreements executed by us, including agreements for future supplies and services and quotations.

(2) Terms and conditions of the customer or of third parties shall not apply, even if we do not expressly object to the validity of those terms and conditions in individual cases.

Article 2 Quotations and conclusion of the contract

(1) Our quotations are subject to change without notice and are non-binding unless they have been expressly designated as binding or if they contain a specific term of acceptance.

(2) The contract concluded with the Ordering Party, including these terms and conditions, contains all agreements made between the Contracting Parties; any assurances are legally non-binding; oral agreements are replaced by agreements in written form. Deviations from the quantities ordered of up to +/- 10% are permitted and in the case of special orders made to specifications, up to +/- 20%.

(3) Amendments and/or additions to the agreement concluded must be made in written form in order to be valid. Transmission by fax and/or by e-mail is sufficient to satisfy the written form requirement.

(4) We retain ownership of and copyright to all quotations and estimates provided by us, including any drawings, illustrations, calculations, brochures, catalogues, models, tools and other documentation and associated resources provided. The Ordering Party may not provide access to these items to third parties and may not use or duplicate them.

Article 3 Prices and payments

(1) Unless otherwise agreed, prices are in EUROS ex works, plus other packaging, statutory VAT and customs duty, as well as fees and other public dues.

(2) Insofar as our list prices form the basis for the agreed prices and delivery is to be made more than four months after concluding the agreement, our list prices valid at the time of delivery (in each case less any percentage discount or fixed discount agreed) shall apply.

(3) Unless otherwise agreed, amounts invoiced are to be paid within 10 days of the invoice date less 2% discount or within 30 days without any deductions. The date on which the payment is received by us shall be deemed the payment date.

(4) Should the customer fail to pay by the due date, the outstanding amounts shall bear interest as from the due date at the rate of 5% p.a.; the right to claim higher interest and additional damages in the event of default shall remain unaffected.

(5) Offsetting against disputed counterclaims or counterclaims not yet enforced by law and the assertion of rights of retention which are not based on the same contractual relationship are excluded.

Article 4 Delivery and delivery time

(1) Unless otherwise agreed, deliveries shall be made ex works.

(2) Deadlines for deliveries and services are only binding if they are expressly designated or agreed as such. Delivery deadlines and delivery dates refer to the point in time when the delivery item is transferred to the shipping company, carrier or any other third party commissioned to transport the goods.

(3) We are not liable if delivery is or becomes impossible or for delivery delays which are caused by force majeure or other events that were unforeseeable at the time the agreement was concluded (e.g. work stoppages of any kind, difficulties obtaining materials or energy, transport delays, strikes or legal lockouts) and for which we are not responsible. Should such events significantly impede deliveries or services or render them impossible, we will be entitled to withdraw from the agreement. In the event of impediments of a temporary nature, deadlines for deliveries and services shall be extended or postponed by the duration of the impediment plus a reasonable start-up period. If this is unreasonable for the Ordering Party, the party can withdraw from the agreement by sending immediate notification of this.

(4) Should we default on a delivery or service or should it become impossible for us to effect a delivery or service, for whatever reason, our liability shall be limited to damages in accordance with Art. 8 of these General Terms and Conditions.

Article 5 Place of performance, dispatch, storage, transfer of risks and inspection/acceptance

(1) The place of performance for all obligations arising from the contractual relationship is our warehouse in Falderbaumstraße in Kassel.

(2) We shall select the shipping method and packaging according to our best judgment.

(3) Transfer of risks to the Ordering Party shall occur no later than when the delivery item is transferred to the shipping company, carrier or a third party selected to carry out the shipping.

(4) After the transfer of risks, any storage costs shall be borne by the Ordering Party. They will amount to 0.25% of the invoice amount for the delivery items to be stored per full week. We reserve the right to assert additional lower storage costs upon provision of evidence.

(5) We shall insure the shipment only upon the express request of the Ordering Party.

Article 6 Warranty and defects

(1) The warranty period is one year from the date of delivery. For damages arising from injury to life, body or health and in the case of grossly negligent breaches of duty, the statutory warranty period shall apply.

(2) The delivered items must be stored in a dry location and must not under any circumstances come into contact with moisture. We also refer to our processing guidelines which can be found on our website at www.technoform.com/de/agb-technoform-glass-insulation-gmbh. The delivered items must be carefully examined immediately after delivery. They shall be deemed to be approved unless we receive a written notice of defects relating to obvious defects or other apparent defects within seven working days of delivery. Upon request, the rejected delivery item shall be returned to us free of freight charges. If the notice of defects is warranted, we shall reimburse the costs of the least expensive shipping method.

(3) As a first step, we shall remedy said defect or make a replacement delivery. If this is not successful, the Ordering Party can withdraw from the agreement or reasonably reduce the price or, in the event that we are at fault, demand compensation for damages in accordance with the stipulations specified in Article 8.

(4) We are not liable if the Ordering Party modifies the delivery item or has it modified without our consent and as a result makes it impossible or unreasonably difficult to rectify the defect.

Article 7 Property rights

(1) We vouch for the fact that the delivery item is free of any property rights or copyrights held by third parties. Should this not be the case, we shall modify or replace the delivery item at our expense and in such a way that no third-party rights are being violated or we shall procure the right of use by concluding a license agreement. If this is not successful, the Ordering Party shall have the right to withdraw from the agreement or to reasonably reduce the purchase price.

(2) If delivery is carried out in accordance with documentation (e.g. a drawing or sample) provided by the Ordering Party, the Ordering Party guarantees that property rights held by third parties are not violated thereby. In the event of such a violation, we are entitled to discontinue the manufacturing process and delivery and to require reimbursement of any costs hitherto incurred by us without being obligated to verify the legal situation.

Article 8 Liability for damages due to negligence

(1) Insofar as our liability for damages, regardless of the legal basis thereof, is due to negligence, it is limited as follows:

(2) We are not liable in the event of ordinary negligence by our company officers, legal representatives, employees or other vicarious agents provided that no breach of material obligations under the agreement is involved. Material obligations under the agreement shall include the obligations to deliver the items ordered in good time and ensure that they are free of any defects which impair their functionality or serviceability more than only insignificantly, as well as the consulting, protection and due care obligations, in such a way as to enable the Ordering Party to use the items ordered as contractually intended, physically protect staff of the Ordering Party from bodily harm and protect the Ordering Party's property from significant damage.

(3) Our liability is limited to damages that we foresaw as a possible result of a breach of the agreement or should have foreseen at the time the agreement was concluded. Indirect damages and consequential damages, the consequence of defects in the delivery item, can only be considered as eligible for compensation insofar as such damages can be reasonably expected when the delivery item is used as intended.

(4) In the case of liability for ordinary negligence, our liability to pay compensation for property damages and resulting additional pecuniary damages is limited to the amount covered by our business liability insurance in the amount of EUR 15,000,000 all-inclusive cover for personal and property damages and EUR 500,000 for solely pecuniary damages, even if a breach of material obligations under the agreement is involved.

(5) The afore-mentioned liability exclusions and limitations also apply in favour of our company officers, legal representatives, employees and other vicarious agents. Insofar as we provide technical information or consulting services and this information or advice is not part of the contractually agreed scope of performance owed by us, this shall be carried out free of charge and under exclusion of any liability.

(6) The afore-mentioned limitations do not apply to our liability for intentional acts, guaranteed characteristics and/or properties, injury to life, limb, or health or in accordance with the Product Liability Act.

Article 9 Reservation of title

(1) The following reservation of title serves to safeguard all of our existing and future receivables vis-à-vis the Ordering Party under the existing supply relationship.

(2) The merchandise delivered by us remains our property until all secured receivables have been paid in full. The Ordering Party shall hold the reserved goods in custody for us at no charge.

(3) The Ordering Party has the right to process and/or sell the merchandise that is subject to reservation of title during normal business operations until an enforcement event occurs.

(4) Processing shall take place in our name and for our account as manufacturer; we shall directly acquire ownership and/or co-ownership of the new item corresponding to the ratio of the value of our reserved goods to the value of the new item. The Ordering Party transfers its future ownership and/or co-ownership of the new item to us as of today's date.

(5) As of today's date, the Ordering Party assigns to us by way of security all receivables that accrue from any re-sale. This also applies to receivables that replace the reserved goods or that accrue with respect to the reserved goods such as, for example, insurance claims or claims resulting from unlawful acts in the case of loss or destruction.

(6) We shall release this collateral upon request insofar as its value exceeds the amount of the secured receivables by more than 50%.

Article 10 Final provisions

(1) The place of jurisdiction for all disputes shall be Kassel or the domicile of the Ordering Party at our discretion. Kassel shall be the sole place of jurisdiction for legal action against us.

(2) The business relationship between us and the Ordering Party is governed solely by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 does not apply.

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