STANDARD TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT

§ 1 Scope

1. These general terms and conditions of sale, delivery and payment (hereinafter referred to as the Terms and Conditions) shall apply to all offers, sales and deliveries by V&B Fliesen GmbH. These Terms and Conditions shall apply only in relation to merchants, legal persons of public law or special public assets.
2. Unless otherwise expressly agreed these Terms and Conditions shall apply for the entire period of the business relationship without us having to expressly refer to such. Other terms and conditions of a similar nature, in particular the customer's terms and conditions of purchase, shall not apply, irrespective of whether they are expressly rejected. These Terms and Conditions shall also apply if we deliver without reservation notwithstanding knowledge of conditions of the customer at variance to our Terms and Conditions.
3. Any Variation (amendment/ Supplement) to these conditions shall be in writing.

§ 2 Prices, discounts, terms of payment

1. Unless otherwise agreed, all sales and deliveries by V&B shall be subject to the prices quoted by V&B at the time of the conclusion of the contract plus VAT at the statutory rate. Discounts shall be granted on the invoiced gross prices. Bonuses shall be granted on the net value of the goods. If the net value of the goods is not calculated on the basis of the prevailing gross price list, no bonus shall be payable on the transaction.
2. Unless otherwise agreed, all prices for goods are ex warehouse and exclusive of packaging, shipping, transport and insurance costs, customs duties, taxes, fees and other charges that may arise in connection with sales and deliveries of goods to the customer (hereinafter: delivery costs).
3. All delivery costs are borne by the customer up to a freight weight of 3 tons. V&B will specify the delivery costs separately. The customer shall bear the delivery costs ex warehouse and the costs of any transport insurance ordered separately by the customer. If V&B fulfills the order by partial deliveries, the customer shall bear the delivery costs for all partial deliveries. Deliveries are free of charge from a freight weight of 3 tons. Individual agreements remain unaffected by this regulation.
4. The m^2 tile prices shall be calculated on the basis of the information on the nominal dimensions.
5. The parties may perform price adjustments (price increases and price reductions) by notifying the other party in writing up to 7 days prior to delivery in the event and to the extent that unforeseeable changes in costs occur for the respective party after the conclusion of the contract, e.g. caused by
   - changes initiated by the customer with regard to the scope, manner of delivery, delivery date and/or other cost-relevant factors;
   - delays caused by instructions or other behavior of the customer;
   - information, instructions and/or other acts of cooperation of the customer that are not provided, not provided in a timely manner, not provided accurately, not provided in full and/or otherwise not provided sufficiently;
   - significant economic circumstances beyond the control and/or influence of both parties, e.g. exchange rate fluctuations, changes in taxes or duties, changes in external labor-, material-, energy-, product procurement or manufacturing costs, if these costs directly or indirectly affect the costs of manufacturing goods, procurement or the costs of the contractually agreed performance and the delivery is to take place more than two months after the conclusion of the contract. The price adjusting party will explain the circumstances for changes of costs to the other party upon request. In the event of a price adjustment of more than 20% during this period, either party is entitled to withdraw from the contact.

   A price adjustment is excluded in each case if and to the extent that a cost increase is offset by a reduction in other costs.
6. In case of framework supply agreements obligating V&B to continuously deliver products on the basis of separate orders placed by the customer, deliveries shall be made at the prices stated in the price list valid at the time of the respective order (conclusion of the purchase agreement). The price list is available by V&B in its current version at any time. Price adjustments therefore do not require prior notice by V&B.
7. Unless payment in advance or another mode of payment is agreed, payment shall be due immediately without deduction. The deduction of a discount requires a separate written agreement. The date on which payment is credited to our account shall be decisive for determining whether payment has been made on time.
8. Upon expiration of each of the above payment periods, the customer shall be in default. The amount due in each case shall bear interest during the period of default at the applicable statutory default interest rate. V&B reserves the right to assert further damage caused by delay. A claim to the commercial due date interest (§ 288 sect. 2 German Civil Code, § 353 German Commercial Code) remains unaffected.
9. The repayment of several claims and of principal claims, interest and costs shall be made at all times in accordance with § 366 sect. 2 and § 367 German Civil Code.
10. In the event that we have manufactured the goods as custom-made items at the request of the customer, we are entitled to supply as much as 10% more than the agreed volume without this being deemed a breach of obligations. Should this occur, the purchase price is changed accordingly.
11. The customer shall only be entitled to rights of set-off or retention insofar as it's claim has been legally determined or is undisputed. Customer's statutory warranty rights remain unaffected.
12. If, after conclusion of the contract, it becomes apparent (e.g. by filing for insolvency proceedings) that V&B's claim to the payment claim (purchase price, delivery and other costs) is at risk because of the customer's inability to pay, V&B shall in each case be entitled to refuse performance and to withdraw from the contract in accordance with the statutory provisions (§ 321 German Civil Code). V&B shall be entitled to perform outstanding deliveries and services only against advance payment or provision of security.
13. In the event that the payment claim is at risk because of the customer's inability to pay, V&B shall also be entitled to perform outstanding deliveries and services only against advance payment or provision of security. This shall also apply if V&B has deferred payment to the customer or granted the customer any other deferral of payment.

§ 3 Offers

1. Our offers are, unless such are described to be binding, non-binding. Orders placed by the customer shall not become binding until we have expressly accepted these in writing (order confirmation). Within the framework of an ongoing business relationship, this can be replaced by the Provision of goods in accordance with the order.
2. Upon confirmation of the order or Provision of goods in accordance with the order, a contract shall come into being in accordance with the Terms and Conditions and/or any individual agreements.
3. If after the formation of a contract our customer requires amendments or cancel the contract in whole or in part all costs and expenses incurred until such time as well as any other damage resulting (e.g. loss of profit) shall be borne by the customer. Cancellation is possible only with our approval.
4. Should the purchaser be in default of acceptance or fail to perform an Obligation of Cooperation, or should our delivery be delayed by any other reason for which the purchaser is responsible, we shall be entitled to demand compensation for the resulting damages, including any additional expenses incurred (e.g. storage costs). If the delay should exceed eight weeks as calculated from the time at which delivery was due or - should there be no delivery deadline - from the time at which the customer was informed that the goods were ready for shipment, we shall be authorised to Charge the customer for storage costs at a flat rate of EUR 0.10 per square metre for each month or part thereof.
5. The right to assert a Claim for greater damages and our statutory Claims (in particular to compensation for Otter additional expenses incurred, commensurate damages, termination) shall remain unaffected; the flat rate shall however be offset against any further financial Claims. The customer has the right to demonstrate that we did not suffer any damages whatsoever or that the damages we suffered were substantially less that the amount of the aforementioned flat rate.

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§ 4 Delivery period

1. We shall be bound by delivery dates and periods quoted only if we have expressly confirmed them as being binding.
2. A delivery date or period shall be deemed to have been complied with if the goods upon such date or upon the expiry of such period the delivery has left our factory or, if it has been agreed that the goods are to be collected by the customer, the customer has been informed that the goods are ready for collection. Such deadline or period shall be reasonably extended in the event of any delay occurring for reasons for which we are not responsible, including but not limited to force majeure, labour disputes, delays on the part of our suppliers, delays for which the customer is responsible (e.g. requests on the part of the customer for changes to the scope of delivery) as well as any other circumstances beyond our control.
3. We shall be authorised to supply the goods in instal- ments.

§ 5 Transfer of risk

The goods shall be dispatched in accordance with the pro- visions of Section 447 of the German Civil Code. The risk shall pass to the customer even in the event of instalment deliveries on handing over of the goods to the carrier. If collection of the goods by the customer is agreed, the risk shall pass to the customer when the goods are ready for dispatch. Transport damage shall be reported to the Service provider for verification without delay. The purchaser shall have the complaint certified and shall notify us of it without delay.

§ 6 Packaging

The goods shall be packaged at our discretion.

§ 7 Dispatch, loading and shipment

1. The goods shall always be dispatched in accordance with the regulations in the price group list for the country of delivery.
2. The cost of loading of the goods onto trucks or other means of transport are included in our price. All other costs shall be borne by the customer.
3. Freight and packaging costs shall not be subject to discounts or bonuses.

§ 8 Product quality

1. Products designated as “Grade 1” comply with the quality requirements of European quality Standard DIN EN 14411. Those designated as “Grade 2” comply with the requirements for the CE-symbol but not with the aforementioned Standard and exhibit technical and/ or visual defects excluding them from Classification as “Grade 1” products.
2. In view of the special conditions relating to the production of ceramic products, no liability can be assumed if the colour of the goods delivered is not even or if the goods do not exactly match the samples. In mosaics in particular, some colour Variation is to be expected. Similarly, normal tolerances with respect to size and thickness do not constitute flaws. This shall also apply to any subsequent deliveries.
3. All floor coverings are subject to wear and tear depending on where they are used, the frequency of contact, the type and degree of soiling as well as the hardness and wear resistance of the material in question. The Classification in stress groups refers to the resistance to wear of the glazed surface but not to the resistance to strain caused by pressure or heavy objects.
4. In the case of some artistic and decorative glazes, cracks in the glazing are a deliberate effect and do not impair the ability to use the tiles for their intended purpose or constitute a flaw.

§ 9 Complaints, contributory duties

1. The delivered goods shall be inspected immediately upon receipt pursuant to Section 377 of the German Commercial Code to ensure that they are correct, complete and free of any faults. If as a result of damage to pallets there is reason to believe that the goods may be flawed, the pallets in question shall be opened. Any complaints shall be referred to us in writing without delay and at the latest within 14 days. Any flaws that do not become evident until after the boxes have been opened shall also be reported in writing within the aforementioned period and, in any case, prior to being used. In this case, they may not be used. In the absence of any complaint or if the goods are used, they shall be deemed to have been accepted and free of any flaws.
2. Goods exhibiting flaws shall be made available to us for examination in the condition which they had upon the flaws being discovered. All further use of such goods must be stopped. The customer shall duly störe the goods exhibiting flaws until the complaint has been settled. In the event of a violation of the above Obligation, we shall be under no Obligation whatsoever to provide any replacements.
3. If the complaint concerns tiles that have already been laid, we shall not entertain any Claims for damages notwithstanding the fact that the alleged flaws did not become evident until the files had been used, if and to the extent that the tiles are removed without our prior consent.
4. Any laying plans, extracts from quantity lists or draft specifications provided by us shall be examined by the construction manager or the tiling Company to ensure that they are correct. No liability shall be accepted for their correctness. They are provided solely as a convenience.

§ 10 Liability for product characteristics, guarantee periods, Statute of limitations

1. Information contained in brochures, offers, product descriptions, drawings, illustrations or other declarations, e.g. with respect to dimensions, weights or other performance criteria, may not be construed as consti- tuting a binding guarantee but shall merely be deemed to be general product descriptions, liability for which is governed by Section 8 nos. 2 - 4 of these Terms and Conditions.
2. If the products supplied by us do not comply with the quality referred to in Section 8 herein and if the conditions specified in Article 9 are satisfied, we shall take back the flawed products and replace them with flaw- less products. In lieu of this, we may also reimburse the customer for the reduced value of the products caused by the flaws in question, it being understood that no further remedies shall be available to the customer in this case. If the replacement delivery twice fails to produce the desired results and after a reasonable period of grace designated in writing by the customer has expired, the customer may at its own discretion either demand a reduction in the price or rescind the contract. Any pure optical defects shall result in a right to reduction of value only.
3. Any Claim for damages regardless of the legal reason shall exist only in the event of wilful acts or gross neg- ligence on our part. Claims for damages in accordance with the law as to liability for defective products (Product Liability Act), as well as the liability for injury to life, body and health and the liability for breach of substantial contractual duties shall not be affected hereby. The legal representatives and their agents shall be liable in relation to the Purchaser insofar as legal Claims can be made against such, but also only in the event of wilful acts or gross negligence. Unaffected hereby shall be the liability for injury to life, body and health as well as the liability for the breach of substantial contractual duties.
4. The above limitation of liability shall also not apply if we have accepted a guarantee for the quality of the goods.
5. The precondition for substitute performance shall be proof of correct handling in accordance with our Installation, Operation and care instructions as well as proper Processing.
6. We shall reimburse direct consequential damage up to a maximum limit of EUR 150,000 per case of damage. Any further Claims for damages (e.g. for loss of profit, loss of use etc.) are excluded.
7. The customer shall be obliged to check the goods for any Variation in colour pursuant to Section 9 herein. Once the goods have been used, we shall not be liable in any way for variations in colour.
8. Similarly, we shall not be liable for any of the conse- quences of improper planning or tiling work or for damage caused by inappropriate cleaning particularly involving detergents containing hydrofluoric acid.
9. We shall not accept any guarantee for products other than those classified as Grade I products, in other words for inferior qualities. This shall especially apply to reduced resistance to frost and acid as well as wear and tear and cracks in the glazing, etc.

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10. Any subsequent changes to the surface as a result of our products being refired, particularly the addition of decorations, shall be subject to our prior written approval.

    Our contractual Partners similarly undertake to impose this Obligation on customers when reselling our products. We shall assume no guarantee for any products modified in the manner anticipated by this Provision.
11. Our liability for any flaws in our products shall expire after a period of two years commencing with delivery to the customer. If the customer is subject to any justified Claims within the period agreed upon between him and his own customers following the Utilisation of the tiles in a building, we shall waive the Statute of limitations for a period of five years commencing with delivery to our customer. If the customer informs us that his customer has asserted Claims against him within the aforementioned five-year period, we shall additionally waive the Statute of limitations for a period ending 14 days after the Claims against our customer have become legally binding. All liability for consequential loss or damage shall expire after five years exclusively pursuant to Section 634a of the German Civil Code.

§ 11 Copyrights

The illustrations, reports and data published by us are in most cases protected by Copyright. Any use of such materials which is not approved under the Copyright Act shall require our prior consent. This shall apply in particular in relation to copying, Processing, translation, storage of data, Processing or the reproduction of pictures, product forms or other documents.

§ 12 Retention of title

1. All goods shall remain our property (current account reservation) pending full discharge of all receivables, including the outstanding balance in connection with our business relations. This shall also apply to all current, future or contingent receivables. If we accept bills or cheques, our Claims shall not be deemed to have been discharged until the irrevocable payment of such bills or cheques.
2. As long as it is not in arrears of payment, the customer may resell the goods subject to our retention of title as part of its normal business operations only and with the care of a prudent businessman provided that it retains title with respect to the customer. The use of the goods subject to retention of title for the purpose of performing construction or delivery obligations shall also be deemed to constitute resale. Prior to effective payment, the customer may not dispose of the goods supplied by us in any other way; in particular, it shall not assign the goods supplied by us to third parties or pledge them as collateral.
3. If the customer resells, uses or processes the goods subject to retention of title or consolidates them with other goods, it shall assign to us the Claim arising from such resale, use, Processing or consolidation upon placing his Order for the goods with us. If the goods are resold together with other goods, the Claim arising from such resale shall be assigned to us in the ratio of the invoice value of the goods subject to retention of title relative to the invoice value of the other goods. The customer shall be entitled and obliged to collect Claims assigned to us. Apart from collection, it may not dispose of the Claims assigned to us in any other way without our prior written authorisation.

   If the customer is in arrears of payment, the right of disposal and collection granted pursuant to Section 12 (2) and (3) above with respect to the goods supplied by us may be revoked at any time. Moreover, in this event we shall be entitled to withdraw from the agreement and to call upon the customer to surrender the goods supplied subject to the current account reservation clause as long as all Claims receivables have not been paid in full.
4. In this case, the customer shall at our request immedi- ately refrain from any further transactions with respect to the goods supplied by us, safeguard them at its expense and inform the third-party debtors in question of the assignment of the receivable pursuant to Section 12, assist in recovering all receivables from such third-party debtors and furnish us with any information and documents required for that purpose. As soon as the customer is in arrears of payment, we may disclose the existence of such assignment to its customers. The customer shall immediately inform us of any seizures or other Intervention on the part of third parties affecting the goods subject to retention of title.
5. If the value of the collateral provided exceeds the value of the receivables by more than 10%, we shall release the collateral at the customer's request.
6. The customer shall insure the goods delivered by us and subject to retention of title against fire and theft and on request to furnish us with evidence of the existence of such insurance.

§ 13 Offsetting, assignment

1. Counterclaims may be offset against our Claims receivables only provided that such counterclaims have been acknowledged by us or are legally binding.
2. Claims against us may not be assigned.

§ 14 Closing provisions (applicable law, disputes, severability)

1. The conclusion, content and interpretation of the con- tract as well as any additions to it shall be subject to the law of the Federal Republic of Germany, it being understood that the United Nations Convention on the International Sale of Goods (CISG) shall be excluded.
2. The place of fulfilment for both parties shall be our headquarters. Exclusive place of jurisdiction for all disputes in connection with our deliveries and Services as well as those arising out of the contract shall be Saarbrücken.
3. If any of the provisions contained in these Standard terms and conditions of business are or become void, the validity of the remaining provisions shall not be affected. In this case, the invalid provisions shall be replaced by provisions that approximate as closely as possible the commercial purpose of the invalid provisions in so far cases as there are no applicable statutory provisions.