

## General Terms and Conditions of Sale and Delivery of Saint-Gobain Abrasives GmbH

As of: January 2023

### § 1 Scope of Application

(1) All sales and deliveries by saint-Gobain Abrasives GmbH ("**Seller**") to any entrepreneur as defined by section 14 German Civil Code [*BGB*], any legal entity under public law or any fund under public law ("**Buyer**") (collectively "**the Parties**") shall be governed exclusively by the Seller's General Terms and Conditions of Sale and Delivery ("**General Terms and Conditions of Sale and Delivery**").

(2) Whether or not these General Terms and Conditions of Sale and Delivery are expressly agreed upon again, they shall apply also to all future sales and deliveries by the Seller to the Buyer. The version current at the time the contract is concluded shall apply in each case. The Seller shall, without undue delay, inform the Buyer of all new versions of these General Terms and Conditions of Sale and Delivery.

(3) The Seller shall not accept any terms or conditions of the Buyer that conflict with, supplement or deviate from these General Terms and Conditions of Sale and Delivery, unless the Seller has expressly consented to their application. These General Terms and Conditions of Sale and Delivery shall apply even if the Seller unconditionally carries out an order knowing of terms and conditions of the Buyer conflicting with or deviating from these General Terms and Conditions of Sale and Delivery.

### § 2 Quotations, Conclusion of the Contract, Other Declarations

(1) The Seller's quotations shall always be subject to change without notice. A contract shall come into being, if the Seller accepts an offer from the Buyer by acknowledging the Buyer's order in writing (including email) or by carrying out the Buyer's order. The Buyer shall be bound by its purchase order for 14 days.

(2) Verbal commitments made by any representatives or other assistants of the Seller shall be binding only if and in so far as the Seller has confirmed the same in writing.

(3) All legally relevant declarations and notifications required to be made by the Buyer to the Seller or any third party must be in text form.

### § 3 Performance by Third Parties

The Seller hereby reserves the right to appoint third parties to render services owed under the contract. The Buyer's rights against the Seller shall remain unaffected hereby.

### § 4 The Seller's Right of Rescission

(1) If the Seller itself is not supplied, not supplied correctly or not supplied in due time by its suppliers, the Seller shall be entitled to rescind the contract.

(2) Furthermore, the Seller shall be entitled to rescind the contract, if the Buyer has filed a petition for the institution of insolvency proceedings concerning its assets or has executed an affirmation in lieu of an oath in accordance with section 807 Code of Civil Procedure (*ZPO*), or if insolvency proceedings concerning its assets have been instituted or the institution of such proceedings has been dismissed owing to a lack of assets.

(3) The Seller's other rights of rescission shall remain unaffected.

### § 5 Delivery

(1) Except where otherwise agreed upon, deliveries shall take place "ex works" Wesseling and Gerolzhofen (Incoterms 2020).

(2) The delivery period agreed upon in the contract shall apply. In the absence of a contractual agreement in this respect, the delivery period shall be 2 weeks from acknowledgement of the order within the meaning of § 2 (1). In so far as the Buyer is subject to a duty to co-operate, the delivery period shall not begin to run before the buyer has fulfilled such a duty.

(3) If delivery is temporarily delayed owing to force majeure or any other events unforeseeable at the time of the conclusion of the contract (operational disruptions of any kind, even if occurring at third parties appointed by the Seller or at their contractors; bottlenecks in the supply of material; etc.), the delivery period shall be extended accordingly. If such events lead to delivery being deferred by more than four months, both Parties shall be entitled to rescind the contract in respect of the scope of the

services concerned. No other claims shall exist, unless the consignee notifies the carrier of the delay in delivery within 21 days after delivery.

(4) Sub-deliveries shall be permissible in so far as reasonable for the Buyer.

(5) The Buyer may assign its claims arising from the contractual relationship only with the Seller's prior consent.

## **§ 6 Export Control Law**

(1) The Buyer hereby undertakes to refrain from carrying out under any circumstances any of the following transactions:

- transactions with persons, organisations or institutions listed on the sanctions list under EC Regulations or US export provisions;
- transactions with UN/EC-embargo states prohibited;
- transactions for which an essential permit is lacking.

The Buyer shall be liable for all expenditure and loss incurred by the Seller as a result of any violation.

(2) The Seller's contractual obligations shall cease to apply, if and in so far as applicable national or international foreign trade legislation and/or embargos and/or other sanctions conflict therewith.

## **§ 7 Prices and Payment Terms**

(1) Except where otherwise agreed upon, prices for deliveries shall apply "ex works" Wesseling and Gerolzhofen (Incoterms 2020). In particular, such prices shall not include costs for shipping, transportation and (notwithstanding Incoterms 2020) costs for packaging.

(2) All prices shall be subject to the addition of value-added tax at the rate prescribed by law at the time the invoice is issued.

(3) The Seller shall be entitled to invoice separately for any permissible sub-deliveries.

(4) The Seller hereby reserves the right to alter its prices accordingly, if costs fall or rise after the conclusion of the contract, particularly as a result of collective bargaining agreements or changes in the price of materials. The Seller shall prove such reductions or increases in costs, if the Buyer so requests.

(5) The amounts invoiced shall be paid within 30 days of the invoice date. If payment is made within 10 days of the invoice date, the Buyer shall be entitled to deduct a 2 % cash discount. Amounts invoiced for repairs and other services shall be paid, without any deduction, within 30 days of the invoice date.

(6) Discountable bills of exchange and cheques shall be accepted by the Seller only by prior agreement and only on account of performance. Payment shall be deemed to have been made only when the bill of exchange or cheque amount has been definitively credited to a bank account of the Seller. All discounting, banking and collection charges, as well as all stamp duty shall be reimbursed by the Buyer.

(7) Payments shall always be credited against the oldest invoice. If charges and interest have already been incurred, payments shall first be credited against charges, then against interest and finally against the principal claims.

(8) The Buyer shall have a right of set-off only if and in so far as its counterclaims are undisputed or have been determined by a final and non-appealable court judgement or its counterclaims are based on the same contractual relationship. The Buyer shall have a right of retention only if and in so far as its counterclaims are based on the same contractual relationship and are undisputed or have been determined by a final and non-appealable court judgement.

## **§ 8 Pallets, Packaging**

(1) In so far as the Seller delivers the goods on returnable pallets, the Buyer shall return, in exchange on a concurrent basis, the same number of returnable pallets of the same kind and in similar condition. If no proper exchange occurs, the Buyer shall pay the following additional charges: 10.00 EUR plus value-added tax for every (EUR) flat pallet and 75.00 EUR plus value-added tax for every (EUR) wire mesh crate.

(2) To keep the selling prices as stable as possible, costs in connection with the recovery and recycling of used packaging are not yet included in the delivery prices. Therefore, the Buyer shall recycle all used packaging independently and on its own account in accordance with the statutory and official requirements. The Buyer shall not be permitted, in this respect, to levy charges or reduce the amounts invoiced.

## **§ 9 Retention of Title**

- (1) The Seller shall retain title to the goods delivered until all present and future claims arising from the business relationship with the Buyer have been paid in full ("**Goods under Retention of Title**"). In the case of a running account, the property under retention of title shall serve to secure the balance claim.
- (2) The Buyer shall treat all Goods under Retention of Title with care and shall adequately insure the same against fire damage, water damage and theft on a replacement value basis at its own expense. In so far as servicing and inspection work is necessary, the Buyer shall carry out such work in due time at its own expense.
- (3) The Buyer shall be entitled to on-sell Goods under Retention of Title in the ordinary course of its business. However, the Buyer hereby assigns to the Seller all claims accruing to it from or in connection with on-selling against its customers or third parties (including all security and all ancillary rights) up to the sum of the final invoiced amount of the Seller's claims (including value-added tax), regardless of whether the item purchased is on-sold without having been processed or after having been processed. The Buyer shall, even after this assignment of claims, remain authorised to collect such claims. The Seller's right to collect such claims itself shall remain unaffected hereby. However, the Seller undertakes not to make use of this right as long as the Buyer meets its payments out of the proceeds received and has not defaulted on payment, particularly as long as no petition for the institution of insolvency proceedings has been filed and no payments have been suspended. In such cases, the Buyer shall inform the Seller of the claims assigned and the debtors concerned, provide all information necessary for collecting the claims, hand over all relevant documents and give the debtors (third parties) notification of this assignment.
- (4) The Buyer shall not be entitled to pledge Goods under Retention of Title assign the same as security or encumber the same with any other third-party rights. The Buyer shall, without undue delay, inform the Seller of all third-party compulsory execution measures concerning Goods under Retention of Title and hand over all documents necessary for any intervention. This shall apply also to impairments of any kind. Notwithstanding the foregoing, the Buyer shall point out to the third parties in advance all rights existing in respect of the Goods under Retention of Title. In so far as the third party is unable to reimburse the costs in connection with any intervention by the Seller, the Buyer shall bear such costs.
- (5) Any processing or remodelling of Goods under Retention of Title by the Buyer shall always be deemed to have been carried out on the Seller's behalf. If any Goods under Retention of Title are processed together with other items not belonging to the Seller, the Seller shall acquire joint title to the new item in the ratio of the value of the Goods under Retention of Title (final amount invoiced, including value-added tax) in relation to the other processed items at the time of processing. Moreover, the terms and conditions applicable to Goods under Retention of Title shall apply equally to the item created as a result of processing.
- (6) If any Goods under Retention of Title are inseparably mixed with other items not belonging to the Seller, the Seller shall acquire joint title to the new item in the ratio of the value of the Goods under Retention of Title (final amount invoiced, including value-added tax) in relation to the other mixed items at the time of mixing. If such mixing occurs in such a manner that the Buyer's item is to be regarded as the main item, it shall be deemed agreed that the Buyer shall transfer joint title to the Seller on a pro-rata basis. The Buyer shall hold in safekeeping for the Seller the sole or joint property thus created.
- (7) As security for the Seller's claims against the Buyer, the Buyer hereby also assigns to the Seller all claims accruing to the Buyer against a third party as a result of Goods under Retention of Title having been connected to any plot of land.
- (8) If the Seller is entitled to reclaim possession of Goods under Retention of Title, the Buyer shall bear the cost of such repossession. The Seller shall be authorised to realise such repossessed Goods under Retention of Title on the open market for the best possible price and credit the proceeds, less any appropriate costs in connection with such realisation, against the amounts owed by the Buyer.
- (9) If the realisable value of the security exceeds the Seller's claims against the Buyer by more than 10 %, the Seller shall, if the Buyer so requests, release such security to a corresponding extent. The Seller hereby reserves the right to choose the security to be released.
- (10) If, in the case of deliveries abroad, this retention of title cannot be agreed upon with the same effect as under German law, yet it is permissible to reserve other rights in the item delivered, the Seller shall be entitled to such rights. The Buyer shall co-operate therewith in every respect.

## § 10 Moulds

- (1) The moulds required for manufacturing the goods shall remain the Seller's intellectual and in-rem property. This shall apply even if the Buyer has agreed to bear the cost of manufacturing such moulds. The Seller hereby reserves all copyrights, other property rights and rights of use.
- (2) In so far as the Buyer has agreed to bear the cost of manufacturing such moulds, such moulds shall be retained for two years from the day of the last delivery. Goods ordered by the Buyer shall be manufactured by the Seller with the aid of such moulds only if this has been expressly agreed upon.

## § 11 The Seller's Documents

The Seller shall retain any and all rights of title, copyrights and industrial property rights in respect of illustrations, drawings, samples and other documents ("**Documents**"). This shall apply also to Documents not expressly designated as "confidential". The Buyer shall pass on such Documents to third parties only with the Seller's prior express written consent.

## § 12 Default in Taking Delivery

If the Buyer fails to accept the goods within a set grace period or refuses to take delivery of the goods, the Seller shall be entitled, without prejudice to any other rights, to rescind the contract and claim damages in lieu of performance. The damages in lieu of performance shall be a liquidated amount equal to 75 % of the purchase price excluding deductions, unless the Buyer proves that no loss at all was incurred or that the loss incurred was lower than such liquidated damages. The Seller hereby reserves the right to prove a higher loss.

## § 13 Warranty for Defects

(1) The qualities of the goods to be delivered, including their usability for any specific purpose, shall ensue exclusively from the corresponding agreements made between the Parties. Deviations in dimensions and/or weight within the tolerance range customary in the trade shall not constitute a defect. Samples and specimens made available to the Buyer by the Seller shall serve only to approximately describe the goods. No illustrations in catalogues or prospectuses of the Seller shall be binding for execution. The Seller hereby reserves the right to make technical and/or design changes to the goods, in so far as such changes are customary in the trade, do not unreasonably impair the Buyer and do not impair the usability of the goods for the agreed purpose.

(2) The Buyer shall give the Seller notification in text form of any and all obvious defects without undue delay, however no later than within 2 days of delivery. If the Buyer fails to give notification in due time and form, the delivery shall be deemed approved, unless the Seller has fraudulently concealed the defect. Moreover, section 377 German Commercial Code (*HGB*) shall apply. If the Buyer fails to inspect the relevant characteristics for the intended purpose of use before installing the goods, at least on a spot-check basis (e. g. by means of functional tests or trial installation), he violates the diligence normally used in commercial practice to a considerable extent (gross negligence).

(3) In case of supplementary performance, the Seller hereby reserves the right to choose between eliminating any defect and delivering an item free from defects. This shall not apply in the event of supplier recourse under sections 445a, 445b German Civil Code (*BGB*), if the last contract within the supply chain is a purchase of consumer goods. Section 439 (3) German Civil Code (*BGB*) remains unaffected. The Buyer has to state and prove the necessity of expenses to remove defective and install non-defective goods. In order to substantiate these costs actually incurred for the reasonably implemented measure he is obliged to submit a comprehensible list of costs.

(4) The Seller may refuse to provide subsequent performance if the costs of the subsequent performance are disproportionate due to the specific circumstances of the case. The costs are disproportionate, in particular, if the costs of subsequent performance are disproportionate in comparison with the value of a defect-free good or in comparison with the significance of the defect. This shall regularly be the case of the total costs of the subsequent performance required exceed 150 % of the value of the goods invoiced or 200 % of the amount representing the loss of value.

(5) The warranty period shall be one year. The statutory time-bar periods in cases of fraudulent concealment, in cases where an item used for a building commensurately with its customary use has caused such a building to become defective and in cases of supplier recourse under sections 445a, 445b German Civil Code (*BGB*) shall remain unaffected, if the last contract within the supply chain is a purchase of consumer goods.

(6) The Seller shall not assume any guarantees in the legal sense, unless expressly agreed upon.

(7) Damage claims based on any defect not already deemed approved under § 13 (2) shall be governed by § 14.

(8) Buyer's recourse claims according to sections 445a, 445b German Civil Code (*BGB*) shall only exist insofar as the Purchaser has not entered into any agreements with his customers that go beyond the statutory claims for defects. However, the Buyer's recourse claim shall only exist up to a maximum amount of 150 % of the value of goods invoiced. The latter stipulation does not apply, if the last contract within the supply chain is a purchase of consumer goods.

(9) The limitation period for Buyer's recourse claims according to sections 445a, 445b German Civil Code (*BGB*) is one year after the statutory limitation period begins, unless the last contract within the supply chain is a purchase of consumer goods. If the last contract within the supply chain is a purchase of consumer goods, the statutory limitation periods shall remain unaffected.

## § 14 Liability for Damages

(1) Unless otherwise stipulated in these General Terms and Conditions of Sale and Delivery, including the following provisions, the Seller shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) The Seller shall be liable for damages - on whatever legal grounds - within the scope of liability for culpa in cases of intent and gross negligence. In the event of simple negligence, the Seller shall only be liable subject to a milder standard of liability in accordance with statutory provisions (e.g. for diligence in his own matters) in the case of

(a) damages resulting from injury to life, body or health,

(b) damages arising from a not insignificant breach of a material contractual obligation (obligation whose fulfilment is essential for the proper performance of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case the liability of the Seller is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from paragraph 2 shall equally apply to breaches of duty on the part of or in favour of persons whose fault the Seller is responsible for in accordance with statutory provisions. They do not apply if the Seller maliciously concealed a defect or assumed a guarantee for the quality of the goods and for claims of the Buyer under the Product Liability Act.

(4) If the Seller is in default due to simple negligence, its liability for the damage caused by default shall also be limited to a maximum of 5% of the agreed price.

(5) Due to a breach of duty which does not consist in a defect, the Buyer can only withdraw or terminate if the Seller is responsible for the breach of duty. A free right of termination of the Buyer (in particular according to sections 650, 648 German Civil Code (*BGB*)) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## § 15 Applicable Law, Place of Performance, Place of Jurisdiction

(1) The laws of the Federal Republic of Germany, excluding the UN sales law (CISG), shall apply.

(2) The place where the Seller's registered office is situated shall be the place of performance.

(3) The place where the Seller's registered office is situated shall be the place of jurisdiction. However, the Seller hereby reserves the right to bring an action against the Buyer at the Buyer's place of general jurisdiction.