

General Terms and Conditions of Sale and Delivery

1. General

Our Terms and Conditions of Sale and Delivery form a constituent part of every contract concluded between us and our customers.

Terms and conditions or counter-confirmations by the customer require our express confirmation in order to take effect.

2. Offers and orders

(1) The prices, quantities, delivery times and delivery options stated in our offers are subject to change and subject to prior sale. Orders and verbal ancillary agreements shall only be deemed to have been accepted if we have confirmed them in writing.

(2) Export to the USA or Canada is not permitted without prior consultation and written confirmation of insurance by us.

3. Prices / calculations

(1) All deliveries are subject to our prices valid on the day the contract is concluded, unless otherwise expressly agreed upon. All prices are ex works. Repeat orders count as new orders, for which prices and conditions must be newly agreed. Similarly, prices and terms shall be renegotiated in the event of increases in costs between the conclusion of the contract and delivery, in particular for raw materials, energy and personnel, the extent of which could not be foreseen and which make it unreasonable to abide by the agreed upon price.

(2) The dimensions and weights determined by us shall be the standards used for our calculations. In the case of loose material, excess or short deliveries of up to 10% shall be deemed acceptable.

(3) Pallet exchange/calculation

If the goods are shipped on Euro pallets, these will be charged. Euro pallets will be credited at the issue price when returned in perfect condition. In the case of dealers/warehouse deliveries, a credit note shall be issued by the contractual partner in the form of a pallet note on which the pallet exchange is acknowledged. The return of the pallets to one of our storage locations is basically a debt to be discharged by our contractual partner. Upon request, the pallets can also be transported back by us against a freight charge. The return period for pallets that were not exchanged upon delivery is 8 weeks.

In the case of deliveries to a building site, pallet exchange is excluded and the Euro pallets are always charged at the issue price. A complaint about the loading equipment must be acknowledged immediately and upon delivery. Later complaints cannot be accepted.

4. Delivery and shipping

(1) The delivery and shipment of the products, is not part of the product price lists. The organization and handling of freight services is an additional service offer. Price adjustments can be made at short notice, according to the market situation and are not subject to a fixed period of validity.

(2) Delivery takes place ex warehouse, which is also the fulfilment location for delivery and any subsequent fulfilment. The goods will be sent to a different destination at the customer's request (sale by mail order).

(3) The transport risk for all deliveries shall be transferred to the buyer as soon as the goods have left our factory or distribution warehouse or have been handed over to a means of carriage, including our own means of transport, a forwarding agent or carrier, irrespective of who bears the freight costs.

(4) The buyer shall be responsible for taking out any transport and other insurance, unless expressly agreed otherwise.

(5) We are permitted to make partial deliveries. Unless otherwise agreed, delivery is generally made with a 40t truck. The construction site or any other delivery location must have a suitable approach and departure route as well as an unloading location appropriate to the type and the quantity of material.

The unloading point must be sufficiently illuminated for ma-

noeuving. If these delivery requirements are not met, the buyer shall be solely liable in full for all resulting delays, costs and damages. In case of doubt, the delivery truck driver on site is responsible for the professional assessment of compliance with the delivery requirements.

(6) If freight incl. unloading with a lifting platform, forklift or crane is agreed upon, delivery is always free to the kerbside, i.e. delivery obligation is fulfilled when the goods are unloaded from the truck at its stopping place. Movement of the goods to other locations at the unloading site is at the discretion of the unloader and is not part of the transport service. The customer shall bear any costs that may arise from subsequent movement of the goods. Unloading for total tonnage of up to and including 5t is usually carried out using a lifting platform and pallet truck. Higher total tonnage is carried out using a transportable forklift. Unloading by crane requires prior agreement.

(7) Waiting times: free of charge for max. 0.5 hours for every 8t load or part thereof after the truck arrives at the delivery location. In the event of increased time requirements, the customer will be charged the freight forwarder's costs with a minimum charge of €30.00 per commenced 0.5 hour.

5. Delivery times, delivery obstacles and force majeure

(1) Specified delivery times are subject to change and apply specifically to the respective delivery option. The scheduling of freight deliveries and notifications (letters of notice) are services that are exempt from complaint claims. These do not constitute delivery time agreements, but guidelines for scheduling. Notice of delivery by telephone will only be made once.

In order to avoid confusion, customer voicemail boxes and contact names should be discussed.

(2) If an order confirmed by us is changed, all confirmations regarding freight costs and delivery dates for the order shall also be considered void.

(3) Admission of a default in delivery shall be determined in accordance with the statutory provisions. The buyer is required to issue a reminder in all cases of delay.

(4) War, riots, operational disruptions of any kind, traffic disruptions or impositions from higher authorities as well as all events of force majeure, strikes, walk-outs and lockouts, shortages of raw materials, semi-finished materials and labour that affect production or dispatch and for which we are not at fault entitle us, at our option, to postpone the delivery for the duration of the hindrance and to the extent of its effects or to withdraw from the contract – in whole or in part – at any time.

(5) The rights of the buyer pursuant to clause 8 of these General Terms and Conditions and our statutory rights, in particular in the case of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the service and / or subsequent performance), shall remain unaffected.

6. Payment

(1) Settlement of invoices shall follow our payment terms as applicable at the time or agreed upon on a case-by-case basis. Payments by bill of exchange require prior agreement. Cheques and bills of exchange shall only be accepted subject to respective cover and on account of payment. Discount and bill charges shall be borne by the buyer. Retention of payments or offsetting with counterclaims other than undisputed or legally established counterclaims are excluded.

(2) If circumstances arise after confirmation of the order for the buyer that impair its solvency or creditworthiness, or if we only become aware of such circumstances after the order has been placed, we are entitled to refuse performance in accordance with the statutory provisions and to withdraw from the contract – if necessary after setting a deadline – (section 321 German Civil Code, BGB) or may demand immediate cash payment of our invoices even where different terms of payment have been agreed. Information from a bank or a reputable credit agency shall also serve as evidence of such circumstances without our being obliged to provide evidence to the buyer.

(3) In the event of late payment, default interest in the amount of the applicable statutory default interest rate will be due.

7. Suspension of delivery

Failure to comply with payment obligations or unauthorised disposal of delivered goods by the buyer shall, subject to further claims, entitle us to suspend any further delivery to the buyer. Without prejudice to further claims, we may cancel the quantities of goods not called up or not accepted by the end of an agreed purchase period without notice of default or the granting of a grace period.

8. Warranty

(1) All materials offered correspond exclusively to our previous experience in building with earthen clay. No general liability may be derived from technical information provided, as the respective conditions on construction sites vary greatly. The properties of the materials may fluctuate depending on the raw materials used. The buyer accepts that clays and the clay earth building materials made from them may not be accredited under specific standards or similar. The same applies to supplementary products for half-timbered renovation and reed panels. These are not tested insulation materials. Please also refer to our supplementary delivery conditions.

(2) All quality agreements and technical information assume that only suitable materials specified by us are used for preliminary work and further processing. The buyer is aware that no liability is assumed for the processing of other materials. We do not guarantee that the material offered is suitable for purposes that are conceived of but not expressly agreed upon.

(3) The buyer is obliged to check the goods immediately upon arrival. We can only consider complaints regarding the quantity of the delivered goods and visible defects or damage if they are communicated to us within five days of receipt at the destination, and / or before combining, blending and processing. In the event of damage or loss in transit, the buyer must arrange for appropriate damage or loss notices to be entered on the freight documents and freight invoices and ensure that the situation is properly reported.

(4) No objections to industry-standard breakage of clay blocks may be raised.

(5) Insofar as we are obliged to provide supplementary product fulfilment, we are entitled, at our discretion, to either rectify the defect (repair) or deliver a new item (supplementary delivery).

(6) If supplementary product fulfilment has failed, a reasonable deadline set by the buyer for supplementary fulfilment has expired or has been waived, in accordance with statutory provisions, the buyer may withdraw from the contract of sale or reduce the purchase price. However, no right of withdrawal shall apply to minor defects.

(7) Reimbursement or damage claims by the buyer in the case of defects shall only apply pursuant to clause 9 and are otherwise excluded.

9. Other liability

(1) We are fully liable in accordance with the statutory provisions for damage resulting from culpable injury to life, limb or health and in accordance with the provisions of the German Product Liability Act.

(2) In all other respects, we shall only be liable for damage caused by intent or gross negligence, including intent or gross negligence on the part of our representatives or agents. Subject to paragraph 1, we are only liable for damage caused by minor negligence in the event of a breach of essential contractual obligations, compliance with which is of particular importance for achieving the purpose of the contract (cardinal obligations). In this case, however, our liability is limited to compensation for typical foreseeable damage specific to the type of contract in question.

(3) Typical foreseeable damage is limited in total to the value of the goods as well as the cost of exchange and return.

10. Limitation

Our warranty is valid for two years from the date of delivery

11. Retention of Ownership

(1) For all deliveries, we reserve ownership of the purchased item until all payments from the buyer's business account have been settled.

(2) The buyer is obliged to treat the reserved goods with due care and to insure them properly against fire and theft at their own expense; proof of the insurance policy must be provided upon request.

(3) The buyer is entitled to resell the purchased item in the ordinary course of business; however, they hereby assign to us all claims in the amount of the final invoice (including VAT) that accrue from the resale to customers or third parties, regardless of whether the purchased item has been resold without or after processing. The buyer remains authorised to collect this claim even after the assignment. Our authority to collect this claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the buyer meets their payment obligations from the proceeds received, is not in default of payment and no application has been made to initiate insolvency proceedings.

If this is the case, however, we can demand that the buyer informs us of the assigned claims and the associated debtors, provides all information required for collection, hands over the relevant documents and notifies the debtor (third party) of the assignment.

(4) The processing or transformation of the purchased item by the buyer is always performed on our behalf. If the purchased item is processed with other items that do not belong to us, we acquire co-ownership of the new product according to the ratio of value of the purchased item to the other items used at the time of processing. The same applies to the product resulting from processing as to the purchased item delivered under the reservation of ownership.

(5) If the purchased item is inseparably blended with other items that do not belong to us, we shall acquire co-ownership of the new product in the ratio of the value of the purchased item to the other items used at the time of blending. If the blending takes place in such a way that the buyer's item is to be regarded as the main item, it is agreed that the buyer transfers proportional co-ownership to us. The buyer shall retain the resulting sole or joint ownership on our behalf free of charge and with due commercial care.

(6) The buyer also assigns the claims to us as security for our claims that arise against a third party through the combination of the purchased item with the land.

(7) If the value of all security interests to which we are entitled exceeds the amount of all secured claims by more than 10%, we will release a corresponding part of the security interests, at our discretion at the request of the buyer.

12. Returns and cancellation costs

(1) The acceptance of returns must generally be approved by our sales management.

(2) If the buyer withdraws from a placed order, they are obliged to pay the costs incurred in processing the order plus compensation for the lost profit, totalling 5% of the value of the goods. The buyer retains the right to prove lower damages.

(3) 15% of the value of the goods, but at least €30 plus any transport costs incurred, will be charged for re-stocking of building materials. The buyer retains the right to prove lower damages.

(4) In principle, all blended products of the YOSIMA and CLAYFIX lines, all coarse clay-colour plaster products, light clay woodchip 03.011 and expanded clay 03.040 as well as all special mixtures custom mixed at the customer's request are excluded from the possibility of re-stocking.

13. Fulfilment and jurisdiction

Jurisdiction for all disputes arising from the contractual relationship and any future legal disputes including check and bill claims and liabilities is exclusively located in Viersen, Germany. German law applies to the relationship between the customer and us, with the exclusion of UN sales law.

Supplementary terms of delivery and information

Clay building materials

The product sheets of the clay building materials regulated in the new DIN 18945-18947 standards contain the required information, and the layouts of the product packaging will be successively adjusted to match. Clay earth building materials that comply with the clay earth building rules of the Dachverband Lehm e.V. (DVL) are marked with a note on the corresponding product sheets.

Other building materials not accredited with specific standards only correspond to the level of our experience.

The specified material values are approximate values and may vary depending on the natural raw materials used.

Technical information and manufacturer's processing instructions

The information in the ClayTec product and worksheets corresponds to many years of experience in the execution of earthen clay building work and the application of our products. No binding legal agreement may be derived from them. Regardless of information provided by us, an assessment of the individual case on site is always required to test substrates, especially plaster and painted substrates. This assessment is the responsibility of the person carrying out the work. Sufficiently large work samples should always be created for the purpose of this assessment.

General requirements for the processor

In order for the products to be processed correctly and without damage, the processor must have sufficient general technical and structural knowledge. This also applies where processing will be performed by end users on their own. The "Lehmbau Regeln" (German regulations for building with clay earth) as well as the information in our product and worksheets, as amended from time to time, apply. These can be accessed online at www.ClayTec.de.

Special requirements when working with plastering machines

Plastering machines and mortar pumps are complex technical devices that are designed for handling by experienced and qualified plasterers or stuccoers (requires apprenticeship!). No complaints shall be acknowledged based on poor economic efficiency of use due to a lack of knowledge and experience.

Scope of liability

Our general terms of sale and delivery apply. If product defects are discovered, the supplying dealer or the head office in Viersen must be notified without undue delay. Processing of any products found to be defective must be interrupted immediately if there is a risk of consequential damage (e.g. to plastering machines or subsequent coatings).

Frost in winter time

Naturally-moist ready-to-use products can become frozen in the winter months.

It cannot be ruled out that the material may be exposed to freezing temperatures after production, during transport or during intermediate storage. In order to guarantee timely and scheduled implementation on winter construction sites, dried goods may have to be used. No liability will be accepted for compensation claims due to additional work caused by frost delay, idling or necessary additional work (transport to heated rooms, thawing of the material etc.).

We are also not liable for damage to plastering machines or other devices arising when naturally-moist ready-to-use goods are processed despite their frozen condition.

Drying of goods installed in a wet state

The fast and flawless drying of clay earth building materials installed in a wet, malleable or naturally-moist state must be guaranteed.

A worksheet on the correct methods for the drying of clay plasters is available, we are happy to deliver this upon request or it can be accessed online at www.claytec.de.

Drying measures include uninterrupted draughts or, if necessary, professionally carried out mechanical building drying. Goods that are delivered in a naturally-moist state are subject to ongoing microbiological controls, but compliance with certain values cannot be guaranteed for this form of delivery.

If there is visible mould formation, this is always a sign of insufficient drying. In this case, the drying process must be optimised immediately. Upon request, we are happy to provide separate information on excluding health risks during drying and how to deal with the affected surfaces. Liability claims are excluded.

Terms of delivery and prices

Our general terms of sale and delivery apply.

Viersen, 06 June 2023