

## **I. Preamble**

**I.1** Basis of permanent and persistent business relations are rather not established from Terms and Conditions than cooperation and mutual trust. However, we cannot forbear to agree assorted conditions differing and/or completing legal regulations for all businesses with our customers.

## **I.2 Definitions**

Applied Terms in use as set out below:

"Applier":	Within contracting parties, the party who drafts/governs this General Terms & Conditions (GTC).
"Supplier" or "Applier":	Flie-San GmbH, Rosenbroecksweg 21, 47623 Kevelaer
"Customer":	Orderer, Purchaser or Buyer who starts business relations with the Applier.
"Entrepreneur":	A registered trader, a legal entity under public law, or a special fund under public law. In terms of § 14 BGB. In contrast to consumers (end user).
"Goods":	Subject matter of the contract or service our Customers obtain from us as Applier.
"Online-Shop":	Agreements concerning distance selling and electronic commerce.
"BGB":	German Civil Code.

## **II. Area of application and conclusion of an agreement**

### **II.1 Area of application**

This Terms and Conditions of Sale, Delivery and Payment are legally binding for all business relations, sales and other transactions between the Customer and us as Applier. The contract is valid exclusively in agreement with our GTC as Applier; other conditions will not be acknowledged not even through the Applier does not object them explicitly.

### **II.2 Written Form and Additional Agreements**

All contractual agreements, predefinitions of any subject matter of services and modalities of quantity, as well as any further main- and side-agreements, require a written confirmation by the Applier for validation. The actual authority is restricted for the general personnel active in any business operation of the Applier in this respect. This does not apply to validations of primary agents or other entities authorised to represent (e.g. authorized signatories).

### **II.3 Offer (including Quotation, Dimension and Weight Specification)**

Our offers and quotations according to the following propositions are without engagement. All specifications like dimension, weight, illustrations, descriptions, installation instructions and drawings, in catalogues, price lists and other publications, are estimated approximately, but best possible.

Variations – in particular natural products – are production-related and/or characteristics of any Good. Customers shall not exercise any rights from it, if deviations or alterations, in consideration of the Applier's interests, are reasonable for the Customer. Any models (mock-ups) and designs in any form shall remain the Applier's property.

Any published images of products (e.g. Online-Shop) represent no legally binding offer, but an invitation to order. Errors and omissions excepted (E. & O.E).

### **II.4 Order Confirmation**

Any order acceptance, agreements, confirmations and quality structure specifications communicated by Applier's representatives, who are not primary agents or other entities authorised to represent, have to be confirmed by us as Applier in writing. Any complaint of written confirmations, also when a verbal agreement is concluded with primary agents or other entities authorised to represent, shall be asserted in writing without delay, at the latest within one (1) week.

Confirmed prices are valid for purchase confirmed order quantities only.

Offered sales prices confirmed in writing by us shall be firm prices if our offer will be accepted in an unmodified written order without delay, at the latest within 10 (ten) days. Sentences in the premises will not come into effect as far as expressly stated otherwise within individual contracts.

Using the Online-Shop a binding purchase order of all listed items within the order process will be generated and confirmed by clicking on the assigned Order-Button. The contract of purchase shall be achieved when we, the Applier, accept your purchase order in direct relationship to a confirmation of order via E-Mail.

## **III. Delivery Conditions**

### **III.1**

a) Unless expressly stated otherwise within individual contracts place of performance and success shall be the principal office of the Applier.

b) Deliveries of Goods effected by the Applier on customer request shall be performed on account of and at Customers risk. Risk of unforeseen loss and damage of Goods shall pass to the haulage personnel in compliance with § 447 BGB as soon as the Goods are proper livered. In case of shipments carried out by the Applier's personnel, any liability shall be excluded.

This is not applicable for damages based on wilful intent or gross negligence on the part of the Applier, the Applier's legal representatives or vicarious agents. This shall be without prejudice to our liability based on culpable injury to life, limb or health.

c) Transport

Choice of route and means of transportation shall be reserved to the Applier – to a reasonable extent for the Customer.

Delivery “free building site” is defined as supply on the condition heavy machinery can operate on all passages. The Applier is entitled to, unless expressly agreed individually, to separately invoice costs for unloading the Goods. Should local conditions, at the persons effecting transport dutiful discretion, prohibit save delivery and unloading, the persons effecting transport are entitled to return the Goods to the Applier immediately. Thereupon the Applier will provide pick-up. Repeating deliveries free of charge shall not sequence. Exits the delivery vehicle presented passages on instruction of the Customer, their representatives or vicarious agents, the Customer shall be liable for resulting damages. The Applier will assume no liability for the Applier’s representatives or vicarious agents unless based on wilful intent or gross negligence on the part of the Applier’s representatives or vicarious agents. This shall be without prejudice to our liability based on culpable injury to life, limb or health.

d) Using the Online-Shop for purchase orders, all deliveries of Goods shall be effected within Germany only.

### **III.2 Delivery Date and Delivery Periods**

a) A contract concluded proceeds with the provision of correct and punctual self-deliveries. The Applier shall be entitled to withdraw from a contract in case of an absent self-delivery. For Customers being no merchants, this is valid only in case the Applier effected a congruent concrete cover transaction and resulting self-supply miscarried.

b) The Applier shall be released from all duties to perform, in consideration of mutual interests and within reasonable limits, for the duration of the existence of unforeseen events, including strikes, lock-outs or other concerted acts of workmen, acts on the part of government authorities, delays or similar causes of force majeure. After setting a reasonable grace period, the Customer shall be entitled to demand the Applier’s freedom to choose from § 275 par. 2 BGB. In case conditions of § 275 par. 2 BGB are not suitable, and rendering an Applier’s service is not reasonable in spite of abilities, the Applier shall be entitled to withdraw from the contract. The Customer may request to exercise the Applier’s right to withdraw within a reasonable period of time; any demanding rights of the Customer shall not persist, if waiting is reasonable for the Customer.

c) The Applier is obligated to inform the Customer about unavailability of Goods without delay, to instantly reimburse already received considerations by the Customer in cases of withdraw from the contract or refer to § 275 par. 2 BGB.

d) Agreed-upon delivery periods shall be binding with the provision of correct and punctual self-deliveries. In case of not timely self-deliveries the provisions of the foregoing letters a) to c) shall apply accordingly. Section II.2 shall be applicable. Within the Online-Shop details concerning delivery periods are listed in the respective product page.

e) Where the Customer delays acceptance of Goods any risk of contingent loss or damage or impairment of Goods shall pass to the Customer in compliance with §§ 446 clause 3, 326 par. 2, 2. Alternative BGB. The Customer risks default of acceptance as soon as the Applier indicates readiness for processing of Goods and the Customer fails to perform obligations to cooperate. This shall not apply when readiness for dispatch is indicated before an agreed-upon delivery date. In this case default of acceptance shall eventuate with the agreed-upon delivery date. Where the Customer delays acceptance the Applier may claim reimbursement for additional expenses incurred (e.g. stand & warehouse charges), unless the Customer substantiates that no correlated expenses or losses originated for the Applier.

f) As to contracts regarding distance selling in terms of § 312 b BGB, the Applier reserves his right to postpone deliveries not before expiry date of withdrawal periods in compliance with §§ 312 d par. 1, 355 BGB.

### **III.3 Indemnity for Delays and Impossibilities**

In case of delays, partial or total impossibilities of the Applier’s performance, any demands for compensation are excluded, unless the Applier, the Applier’s legal representatives, authorized representatives and executive staff, and vicarious agents are guilty of wilful intent or gross negligence. This shall be without prejudice to our liability based on culpable injury to life, limb or health.

### **III.4 Packing**

The Goods are packaged usual in a line of business. Packing at cost. The Applier is obligated to take back packing material according to §§ 4, 6 VerpackV. Commissions for taken back packing material shall be granted due to individual agreements only. Section II.2 shall be applicable.

### **III.5 Cargo and Damage Insurance**

Insurance of damages or loss in transit or breakage related shall be contracted at Customer’s explicit request only, at Customer’s expense and own account. Notifications of claim shall be reported upon receipt of Goods supplied without undue delay and confirmed in writing immediately providing cogent details about manner and extent. Damages or loss in transit and shortage shall be inspected upon receipt of Goods supplied instantly, testifying the state of affairs by railway authorities or adequate evidence within the accompanying documents (consignment note, etc.).

As far as the Applier incurs any damage or loss, the Customer shall be obligated to assign insurance policy demands to the Applier.

## **IV. Warranty and Liability for Defects**

### **IV.1 Customers, who are Entrepreneurs in terms of § 14 BGB**

Regulations of this section IV.1 below shall be valid for Customers, who are Entrepreneurs in terms of § 14 BGB only.

a) The Customer notifies the Applier in writing about all identifiable defects inclusive of shortages, excessive quantity and incorrect delivery within five (5) workdays upon receipt, at all events before manipulation, processing or installation.

In case of unobvious defects, the time limit prescribed within the foregoing sentence 1 is valid, as soon as these defects are identified; otherwise defect liability claims are depending on a notification within two (2) weeks upon receipt. Arrival at the

Applier is decisive. Overstays the Customer these obligations for notification upon defects, the Customer shall not be entitled to defect liability claims.

b) Claims in terms of §§ 438 par. 1 no. 2, 634 a par. 1 no. 2 BGB are in lapse after a time period of two (2) years and six (6) months upon delivery date; § 438 par. 2 BGB and all other claims are in lapse after a time period of six (6) month upon delivery date in regard to § 438 par. 2 BGB.

c) Selling Goods labelled low-grade, the matter at this is a quality structure agreement in terms of § 434 par. 1 clause 1 BGB. Low-grade quality does not constitute as material defect.

d) The Customer shall have the right to file for § 437 no. 1 and no. 2 BGB in case of defective, in terms of § 434 BGB, Goods delivered, and notified in time regarding this defects. Any rights for compensation are excluded, unless the Applier, the Applier's legal representatives, authorized representatives and executive staff, and vicarious agents are guilty of wilful intent or gross negligence; this shall be without prejudice to our liability based on culpable injury to life, limb or health. The Applier reserves all rights to opt the form of subsequent remedial action in terms of § 439 par. 1 BGB. The Applier may refuse any subsequent remedial action in total, on conditions referring to § 439 par. 3 clause 1 BGB. In this case the Customer shall have the right to file for §§ 437 no. 2, 440 BGB.

e) Product descriptions and specifications constituted within limits of section II.3 are quality structure agreements in terms of § 434 par. 1 clause 1 BGB. This is equivalently valid for consistency in coloration concerning matching furnishing. Guarantees in terms of §§ 276, 442, 443 BGB are such only qualified explicitly as guarantee. Section II.2 shall be applicable. References to DIN standards, wear resistance guidelines or similar collections of generally binding character are quality structure agreements in terms of § 434 par. 1 BGB as well – and not guarantees in terms of §§ 276, 442, 443 BGB, unless agreed otherwise. Section II.2 shall be applicable. This applies equivalently for purchase by sample or specimen, or for monitoring and consulting processing of materials within the scope of our customer service.

f) Ceramic materials may show cracking and colour variances due to their particular nature; herewith no quality loss consequences. Such properties and deviations of Goods are a part of the quality structure agreements in terms of § 434 par. 1 clause 1, but in any case concerning Goods of the same kind commonly in terms of § 434 par. 1 clause 2 BGB. In this respect any defect liability claims of the Customer shall be excluded.

g) After any processing of the Goods any defect liability claims shall be excluded, except where a defect was not detectable with due diligence before processing.

#### **IV.2 Customer, who are consumers in terms of § 13 BGB**

Regulations of this section IV.2 below shall be valid for Customers, who are consumers in terms of § 13 BGB only.

a) The Customer notifies the Applier in writing about all identifiable defects inclusive of shortages, excessive quantity and incorrect delivery within five (5) workdays upon receipt, at all events before manipulation, processing or installation. Dispatch of notification is decisive. Risk of loss shall pass to the Customer. Overstays the Customer these obligations for notification upon defects, the Customer shall not be entitled to defect liability claims.

b) In cases of §§ 438 par. 1 no. 2, 634 a par. 1 no. 2 BGB the statutory period of limitation shall apply. In all other cases lapse takes one (1) year upon delivery date of the Goods (§ 438 par. 2 BGB).

c) Selling Goods labelled low-grade, the matter at this is a quality structure agreement in terms of § 434 par. 1 clause 1 BGB. Low-grade quality does not constitute as material defect.

d) The Customer shall have the right to file for § 437 no. 1 and no. 2 BGB in case of defective, in terms of § 434 BGB, Goods delivered, and notified in time regarding this defects. Any rights for compensation are excluded, unless the Applier, the Applier's legal representatives, authorized representatives and executive staff, and vicarious agents are guilty of wilful intent or gross negligence; this shall be without prejudice to our liability based on culpable injury to life, limb or health. Apart from that, legal regulations shall be applicable.

e) Section IV.1 letters e) to f) shall apply accordingly.

#### **V. Withdrawal of Goods**

Goods supplied by the Applier may be taken back in mint condition, with the Applier's approval and carriage paid purchase return only. Taken back Goods shall be credited deducting an administration cost allowance of minimum 10 % of the purchase price, unless the Customer is able to prove that minor or no administration effort resulted. Taking back is excluded in cases of one-off-productions or Goods with special quality structure at Customer's request.

Foregoing sentences 1 to 3 shall not apply to take backs where the Customer's withdrawal is justified. In this case legal regulations in terms of §§ 346 ff. BGB shall be applicable.

Using the Online-Shop for purchase orders of Customers, who are consumers in terms of § 13 BGB, our Customer's right to withdraw provided within [www.flie-san-webshop.de/Widerrufsrecht](http://www.flie-san-webshop.de/Widerrufsrecht) shall be applicable.

#### **VI. Maturity of Remuneration and Payment Agreement**

##### **VI.1 Price**

The Applier's prices are effective ex warehouse, plus in a line of business usual packing at cost, plus statutory rate value-added tax (VAT).

##### **VI.2 Maturity**

a) Invoices shall be payable on receipt unless payment terms are expressly agreed upon.

Section II.2 shall be applicable.

b) Maturity shall be effective immediately despite opposing payment terms agreed where terms of payment are neglected, or the Applier, at a prudent businessman's appropriate discretion, shall doubt the Customer's creditworthiness.

### **VI.3 Cash Discounts**

As far as cash discounts are granted, presupposition shall be that all previous invoices are settled by now, except those invoices reasonable doubts of our Customers oppose to. Decisive for calculating a cash discount is the total billing amount net after deducting of any other discounts, freight charges, etc.

### **VI.4 Checks and Bills of Exchange**

The Applier accepts Checks and Bills of Exchange due to agreements for the purpose of payment only. Checks will be accepted in principle unless the Applier raises reasonable doubt about a Check not redeemable. Checks and Bills of Exchange are credited after encashment, assignments of claim not until after payment. The debt and corresponding maturity of payment remain unaffected until then. The Applier shall assume no liability for encashment and rising protest in due time. Any charges for discounting, protest and debiting shall be at the expense of the Customer. The Applier's representatives shall be entitled to acceptance of payments where collecting power is granted explicitly in writing only, and shall be verified in any case. Equivalently to grant collecting power shall apply where an Applier's representative presents an invoice properly received by the Applier's representative for the individual case.

### **VI.5 Sequence of Accounting**

Where multiple outstanding debits of the Applier towards the Customer are present, payments received shall be deducted from the respective oldest receivable.

### **VI.6 Lien**

a) The Applier shall be entitled to request advance payments as long as reasonable doubts in the Customer's performance persist. This shall not apply when stated otherwise within individual contracts.

Section II.2 shall be applicable. A Customer's advance payment obligation shall be deemed agreed upon in any case, when the Customer delays in payments or neglects formerly applied payment agreements.

b) Customers may exercise their rights to withhold payments within the same contractual relationship only. The Customer shall not be entitled to withhold payments concerning other existing contractual relationships with the Applier.

### **VI.7 Compensation**

Compensation of counterclaims is admissible only when respective counterclaims remain undisputed or legally binding.

### **VI.8 Interests**

a) The Applier shall be entitled to charge interest of 4 % above the statutory basic rate of interest applicable to payment arrears in terms of § 247 BGB commencing maturity date and from Customers who are Entrepreneurs.

Commencing arrears, the Applier shall be entitled to charge default interest of 8 % above the statutory basic rate of interest in terms of § 247 BGB from Customers who are Entrepreneurs.

b) From Customers, who are consumers, the Applier shall be entitled to charge interest of 5 % above the statutory basic rate of interest in terms of § 247 BGB commencing arrears.

c) The exercise of additional losses from arrears shall remain reserved.

### **VI.9 Compensation**

Where the Customer, after setting a reasonable grace period in terms of §§ 281 par. 2, 323 par. 2 BGB, fails to perform contractual commitments and/or defaults in payments in full or inadequate, the Applier may claim compensation, instead of achievement, of 15 % of the agreed total billing amount gross, without prejudice to account for greater damage or loss. In case Customer's breach of duty relates to a subservice only, § 281 par. 1 clause 2 BGB shall apply.

The Customer shall be entitled to provide objective evidence that minor or no damage or loss resulted.

### **VI.10 Payment using the Online-Shop**

Type of payment and payment proceed as described in [www.flie-san-webshop.de/Zahlungsbedingungen](http://www.flie-san-webshop.de/Zahlungsbedingungen).

## **VII. Reservation of Proprietary Rights**

All Goods (purchased items) shall remain the Applier's property until all claims are settled and payments balanced in full. In addition the following terms shall apply:

### **VII.1 Advanced Reservation of Proprietary Rights (Account Current Proviso)**

Where the Customer is an Entrepreneur, all Goods shall remain the Applier's property until amortization of all arrears resulting from the common business relation, and accruing demands in connection with the Goods.

The reservation of proprietary rights finalises as soon as the account current is balanced. Succeeding acquisition in addition of new obligations shall not regain the Applier's right to property.

In case the seller's liability based on Bills of Exchange establishes in connection with the buyer's payment of the purchase price, the reservation of proprietary rights finalises not until encashment of relevant Bills of Exchange by the buyer as drawee.

### **VII.2 Withdrawal and Collateral**

Defaults the Customer, or the Applier is entitled to withdraw otherwise, and the Applier withdraws, the Applier may take back Goods for reclaiming purposes (collateral). The Customer is committed to a restitution at Customer's expense and own account.

### **VII.3 Processing Clause**

- a) In case the Customer or a third party on behalf processes Goods delivered to new movables, the Applier shall be deemed processor. Resulting obligations for the Applier are excluded.
- b) In the event Goods delivered are processed or commingled with other Goods not the Applier's property, the Applier acquires joint ownership of the resulting new items in proportion to the value of the Goods delivered compared to the other Goods not the Applier's property at the time of the processing. The Applier obtains joint ownership as per legal provisions concerning possible splicing, mingling or mixing in terms of §§ 947, 948 BGB of Goods delivered with other Goods not the Applier's property. In case the Customer acquires absolute ownership by splicing, mingling or mixing, by now the Customer conveys joint ownership to the Applier in proportion to the value of the Goods delivered compared to the other Goods not the Applier's property at the time of the splicing, mingling or mixing. In all this cases the Customer is obliged to gratuitously coffer all Goods the Applier claims ownership or joint ownership for collaterals in terms of regulations stated in this section VII.

### **VII.4 Extended Reservation of Proprietary Rights**

- a) In case the Customer sells the Goods delivered alone or together with other Customer owned or not owned Goods, by now the Customer assigns all subsequent accounts receivable in the amount of the Goods' value plus incidental claims to the Applier; the Applier agrees to this assignment of claim. With this in mind, the Goods' value will be charged at the Applier's accounts receivable purchase price plus collateral of 10 %.
- Collateral surpluses shall not be charged, if rights of third parties oppose to.
- b) In case resold collaterals are in the Applier's joint ownership, the value of the assignment of accounts receivable limits to the Applier's shares in joint ownership.
- c) The assignment of accounts receivable shall be liquidated, for Customers being merchants (Entrepreneurs) when acquitting Account Current Proviso in terms of regulations stated in the foregoing section VII.1; and for Customers, who are consumers when paying the purchase price.
- d) The Customer shall be obligated to notify us providing all required documents for objections without undue delay in case of compulsory execution measures of a third party concerning collaterals or assignments of accounts receivable.
- e) In case the Customer, in the exercise of the Customer's business enterprise, installs collateral as integrant within premises of a third party, provisions of the foregoing letters a) to c) shall apply accordingly for subsequent work labour wage claims including granting of dept-security mortgage. In case the Customer, who purchased the Goods not in exercise of a respective trade, installs collateral as integrant within Customer owned premises, by now the Customer assigns all subsequent accounts receivable through sale of property or property rights in the amount of the collateral's value, determined in terms of section VII.4 letter a), to the Applier.

### **VII.5 Power of Disposition**

The Customer shall be entitled and authorized to resell or further process or install the collateral in the course of the Customer's duly ordinary conduct of business only and providing that accounts receivable, in terms of section VII, are actually assigned to the Applier only. The Customer shall not be entitled and authorized to pursue other disposals of collateral, in particular pledging or transferring collateral.

### **VII.6 Collection Authority**

The Applier authorizes the Customer, on reservation of withdraw, to levy all assignments of accounts receivable in terms of this section VII. The Applier remains entitled to levy all accounts receivable. The Applier will not make use of the Applier's collection authority, as long as the Customer complies with their payment obligations – to the Applier and to possible third parties. Upon the Applier's request, the Customer shall be obligated to name third-party debtors and to notify those third-party debtors of assignments; the Applier shall be authorized to notify named third-party debtors as well.

### **VII.7 Expiration of Collection Authority and Power of Disposition**

With suspension of payment, declaration or opening of insolvency or bankruptcy, of judicial or extrajudicial settlement proceedings, all rights of resale, processing or installation of collaterals and any direct debit mandates on assignments of accounts receivable shall expire; this applies equivalently for Checks and Bills of Exchange protests.

### **VII.8 Consent/Overcollateralization**

- a) Where the value of the collateral granted exceeds accounts receivable plus a collateral surplus in terms of section VII.4 a) by more than 10 %, the Applier shall be obligated to back transfer or release collateral at the Applier's discretion.
- b) The assignment of accounts receivable shall be liquidated conditional on providing objective evidence of antecedent actually enduring rights of third parties.

### **VIII. Court of Jurisdiction, Venue**

Place of jurisdiction as to all disputes and legal relations shall be Geldern, Germany.

### **IX. Severability Clause**

Should individual clauses of foregoing Terms and Conditions be rendered invalid in total or partially, this shall not affect the overall effectiveness of remaining conditions and/or residual portions of such conditions. An ineffective provision shall be substituted with such a provision closest to the economic intent of the ineffective provision and considered operative. **Where contracts are drafted in multiple languages, the German version shall constitute the binding, authoritative version only.**