

GENERAL TERMS & CONDITIONS

Modified reissued in July 2020 by the Royal Dutch Association for Building Ceramics (KNB)

General

1. These general terms & conditions apply to all offers, agreements and deliveries of goods and services of the user of these general terms & conditions (hereafter called: Seller) as distinct from that person's opposing party (hereafter called: Buyer) to the extent that there has not been otherwise agreed in writing between the Seller and the Buyer.

They are in particular applicable to offers, agreements and deliveries of bricks and of rubble and of pieces.

They also apply to all subsequent offers, agreements and deliveries, however these come about.

2. The applicability of any purchasing terms & conditions that may possibly be employed by the Buyer will be excluded, if and to the extent that these conflict with the present terms & conditions, unless these are expressly accepted in writing by the Seller in relation to some form or other of specific transaction. This acceptance does not entail that the purchasing terms & conditions are (will be) applicable to other transactions of the Buyer.

Offers and order confirmations

3. All offers made by the Seller are without obligation. The agreement will first come into effect by written confirmation by the Seller or (the commencement of) actual execution by the Seller or through a possible tacit (or other) acceptance by the Seller of the order.

If the correctness of the contents of a written confirmation from the Seller is not rejected within 8 working days, parties shall be bound to this.

4. If the Buyer cancels the order in full or in part or does not comply with his obligation to take goods, the Buyer shall owe the Seller a sum of € 25.00 per 1,000 pieces of Waal format bricks or Waal format equivalents that are cancelled or not purchased by the Buyer. The Buyer owes this sum without there being any requirement to issue a notice of default or the Seller actually suffering loss as a consequence of the cancellation or failure to take bricks. The above does not apply if the cancellation or failure to take bricks concerns no more than 10% of the total number of Waal Format bricks or Waal format equivalents to which the order relates. If the cancellation or failure to take relates to more than 10% then the above-mentioned sum is owed on all cancelled or non-taken bricks. Cancellation can never take place with respect to bricks already delivered.

The Buyer is bound to compensate the Seller for the damage that results from the cancellation or from the failure to take goods in so far as this loss exceeds the amount that the Seller shall owe on the grounds of the above.

That which is defined in this article does not affect the right of the Seller to claim compliance with possibly compensatory damages instead of the above-mentioned amount.

4a. Amendments to the agreement, of whatsoever nature, shall only be effective if they have been agreed in writing between the Seller and the Buyer. If the Buyer, after the agreement comes into effect, wishes to make changes in the execution thereof, it is up to the Seller to determine whether, and if yes, under what terms & conditions these amendments can still be accepted in the context of the agreement.

Seller is entitled to charge the Buyer in the event of amendments to the agreement (of

whatever nature) for the higher costs involved in such amendments.

Deliveries

5. The place and time of the loading at the factory of the Seller is regarded, in all cases, as the place and time of the transfer of ownership of the goods by the Seller. After loading the Seller is not obliged to deal with complaints in relation to colour, quality, form, numbers etc. without prejudice to that which is defined in Articles 9 to 14. The Buyer is considered at the time of the transfer of ownership to be aware of the quality of the purchased goods and the possible uses thereof.

The Seller shall strive to deliver within the delivery time stated in the agreement. Exceeding the delivery time shall not cause the default as intended in Article 6.83 sub a Civil Code to come into effect, unless the Seller and the Buyer have expressly agreed in writing that a delivery time shall be regarded as binding. In this latter case the Seller is only liable in the case of a delay in delivery for the demonstrable damage suffered by the Buyer to a maximum of the invoice amount of the delayed part of the delivery. The Buyer is not entitled, in the case of a delivery time agreed as binding being exceeded, to suspend or not to comply with any obligation towards the Seller. In all other cases of delay in the delivery the Seller is not liable for any damage resulting from this delay for the Buyer.

6. If "Delivery carriage paid works" or "Franco delivery address" has been stipulated that stipulation is considered only to relate to the transport costs and the transport risk and thus not to the place and time of the transfer of ownership and consequently also not to the moment of the transfer of risk of the delivered goods. In that case the price includes the transportation of the goods to the unloading site, provided this lies on a surfaced road or can be normally accessed by the vehicle used carrying a full load. Unloading then takes place alongside the vehicle or vessel at the place indicated by the Buyer, taking into consideration the above.

7. Transportation is provided by the Buyer in the case of "delivery ex factory". The Buyer and the Seller can agree that the transportation is provided by the Seller at the expense of the Buyer. In that case the transport risk is also at the expense of the Buyer. The Seller can charge the Buyer for any transport insurance taken out by him.

Taking up Goods

8. The Buyer is obliged to take the purchased goods within the delivery- and/or on-demand time or times included in the agreement. If no delivery time has been defined or if it has been stipulated that the delivery shall take place on demand without a time having been set with respect to those on-demand times, then the goods must be taken up within 3 months after the date on which according to Article 3 the agreement has become effective.

If the Buyer has not taken up the purchased goods on time, then the Seller sends the Buyer a written warning and the Buyer is in default 3 working days after this written warning solely through the lapse of that period without any (further) form of default notice is required. In addition to the other rights that are then pursuant to the law and pursuant to these

general terms & conditions – in particular also pursuant to Article 4 - and that accrue to him from the default of the Buyer, the Seller has the right without any legal intervention to dissolve the agreement for the remaining unexecuted part thereof by means of simple notification.

Quality and testing

9. The consignment note, the delivery note or similar document provided on the delivery of the goods is regarded as correctly indicating the number of the goods delivered, unless Buyer has notified his objection to this to the Seller immediately after the receipt of the bricks in writing.

10. If and to the extent that it has been agreed that the quality shall be according to a sample, that sample will apply for the establishment of the average quality of the bricks. A type of brick handed over by the Seller in connection with the sale or received by the Buyer shall only be applicable as a sample unless this is expressly agreed in writing.

11. The Buyer is entitled before the delivery to have the goods tested at his own expense. If the Buyer has requested this test, the Seller is required in a timely manner before the loading to notify the Buyer of the time and place where the testing can take place. If the Seller does not comply with this obligation the Buyer is authorised to notify his objections with respect to the delivered goods as soon as possible yet at the latest within 8 days after the delivery of the goods.

12. If the Buyer has omitted to have a test carried out and/or did not make objections with respect to the quality of the goods to be delivered after a test and before the delivery, the Buyer has no longer any right to complain about the delivered goods. If after the test there still appears to be defects in the goods that could not be discovered after a normal test generally used in the branch, the Buyer can still object provided he makes his objections as soon as possible and at the latest within 8 days after the delivery.

13. All rights of the Buyer to complain in respect of the delivered goods lapse in every case where the goods have already been processed.

13a. Differences in colour and structure are natural to the material of course ceramic products and cannot therefore be regarded as defects in the product. Very minor damage that does not actually affect the use of the products can also not be regarded as a defect in the product.

Complaints and liability

14. On penalty of the loss of the right of the Buyer to complain, all complaints must be made in writing within the times defined in these general terms & conditions.

In so far as no shorter time has been set in these terms & conditions or this shorter time cannot reasonably be demanded of the Buyer, a complaint must be made at the latest within 8 days after defects in the delivery have come to the knowledge of the Buyer or the Buyer should reasonably have known about these defects, without prejudice to that which is defined in Article 13. Each complaint must be made giving an accurate description of the nature of the complaints.

15. The liability of the Seller, in whatsoever capacity, is restricted to maximally the amount

of the invoice of the delivered goods to which complaints that are justified relate or to the replacement of those goods by similar goods or to a reduction of the sale price of the goods, this and that according to the choice of the Seller.

If the Seller decides to exchange the goods the associated transport costs shall be at the Seller's expense.

If the Seller decides to reduce the sale price that reduction consists of that part of the sale price that is accounted for by the defective goods and/or the extent of the defect on the goods. If the defect is of such a nature that the Buyer can no longer use the goods and the Buyer wishes to get rid of the defective goods, these are then made available to the Seller who removes these goods at his own expense. In so far as this is reasonable, Seller then gives a reduction in such a case on the transport costs that can be calculated for these defective and no longer usable goods.

All more extensive claims of whatsoever nature and from whatever person or persons are excluded. In no event is the Seller liable for consequential loss and direct or indirect loss of business, losses arising from loss of productivity, delays in construction, loss of orders, loss of profits, manufacturing costs and such like.

16. The Buyer indemnifies the Seller for all liability in respect of third parties that goes further than the liability that the Seller has in respect of the Buyer.

Prices

17. The prices indicated by the Seller are based on the cost components that apply on the date of the tender. All increases in the cost components that occur after the tender and/or during the duration of the execution of the agreement, irrespective of their nature, will be passed on by the Seller to the Buyer in the calculation of those parts of the agreement which, at the time of the increases, have not yet been executed.

17a. The tendered and agreed prices are in euro and do not include VAT. Unless expressly otherwise agreed other taxes, duties and charges in accordance with the law. Packaging, loading, transport and insurance costs are not included in the price.

17b. The Seller is entitled to charge a credit restriction charge of 2%, which charge may be deducted from the invoice when payment is made within thirty days of the invoice date.

Payment and surety

18. Payments must be made within 30 days after the invoice date, without discount or adjustment on whatsoever basis. Claims in respect of the delivered goods do not give the Buyer the right to suspend payment or to call upon a right of retention. The time of payment shall be the moment at which the sum owed is paid into the Seller's account. Payments received shall be used first of all to pay interest and costs and thereafter the oldest unpaid principal sum(s), even if the Buyer it to be otherwise in his estimation.

19. If the invoice amount is not paid in on the due date, the Buyer is legally in default in respect of the Seller without any reminder or notice of default shall be required. The Buyer then as from the due date owes penalty interest of 15% per year as well as non-legal collection costs, which amount to at least 15% of the sums owed by the Buyer with a minimum additionally of € 125.00.

20. The Seller is entitled to demand pre-payment or surety for the payment at all times during the period of the agreement.

21. All claims of the Seller in respect of the Buyer are due immediately and all at once:

- if the Buyer does not or does not in a timely manner meet his payment obligations or other obligations in respect of the Seller;

- if the Buyer refuses to comply with the request of the Seller as intended in Article 20;

- if the bankruptcy of the Buyer has been requested or if the Buyer requests suspension of payment;

- if an attachment has been made to any part of the capital of the Buyer;

- if the Buyer sells or liquidates his company.

22. In the cases as described in Article 21 the Seller has in addition to the other rights allocated to him by the law and the agreement - including the present terms & conditions - the right to suspend his obligations or to dissolve the agreement in part or in full by means of a simple announcement without any notice of default or legal intervention being required, without prejudice to the right of the Seller instead of or in addition to the suspension or dissolution to demand compensation for losses.

Retention of ownership

23. The delivery of the goods by the Seller takes place on the basis of retention of ownership. This retention shall apply in the case of claims for payment of all goods delivered to or to be delivered by the Seller to the Buyer in accordance with any agreement or services and work activities provided or to be provided as well as in respect of claims in respect to shortcomings on the part of the Buyer in compliance with these agreement(s), including thus the present general terms & conditions.

23a. In all cases as intended in Article 21, the Seller is entitled to take back the goods with respect to which the retention of ownership applies. For as far as is considered necessary the Buyer considers the Seller irrevocably entitled to remove these or have them removed from where they are located.

24. The Buyer gives the Seller, or third parties appointed by the Seller, permission to enter its company sites, warehouses, factory buildings etc, with that purpose.

If the right of the destination land of the purchased goods has more far-reaching possibilities for the retention of the ownership than is defined here above, then these more far-reaching possibilities shall be considered to have been stipulated to apply between parties with the understanding that when it is not possible to objectively determine which more far-reaching rules this stipulation relates to, then the above-defined in relation to the retention of ownership shall remain applicable.

25. If the Seller in accordance with Article 23a has taken goods back, the Buyer will be credited for the value of the goods taken back as determined by the Seller, reduced by the costs associated with taking the goods back.

26. The Buyer can, in the context of his conduct of normal business, have available the goods delivered under retention of ownership. Conduct of normal business is in any case not understood to be the provision of surety to third parties and neither lying in grant in the context of the full or partial transfer of the company of the Buyer.

If the Buyer has the goods available, the Buyer is bound for the benefit of the Seller - to settle a tacit or public lien - to be chosen by the Seller - on the account receivables arising from this disposition.

Force Majeure

27. In the event the Seller is prevented from performing or from performing in time because of force majeure, it will have the right to extend the delivery time by the duration of the force majeure or to dissolve the agreement in so far as it was not yet performed, without being obliged to pay any compensation. The following among other things will apply as force majeure: war, insurrection, riots, terrorism, fire, power failures, natural disasters, wilful damage, strikes and lock-outs, breakdown of machines and/or tools, unavailability of transport, road blocks, stagnations in the supply of raw materials or power, import or trade restrictions, government measures, epidemics and pandemics and related government and other measures/recommendations, as well as any other circumstance, of any kind, as result of which it is reasonably impossible or onerous for the Seller to perform the agreement or to perform it in time.

Advice and Recommendations etc

28. Advice or proposals or instructions in respect of materials, constructions, executions and applications made by or on behalf of the Seller are always without obligation.

The Seller is never liable for any damages of any nature that may possibly arise from advice or proposals or instructions of the Seller.

Serverability clause

29. When one or more clauses in the agreement concluded between the Seller and the Buyer - including the present general terms & conditions - no longer is legally valid - the remaining clauses continue to be fully applicable. In place of any invalid clauses, clauses then come into effective that are legally effective in a manner as close as possible to these invalid clauses given the intentions of the parties.

Place of enforcement, choice of law, competent judge

30. The law of the Netherlands applies to tenders by the Seller and the agreement between the Seller and the Buyer. This also applies to all agreements that are entered into with Buyers resident or registered abroad.

All disputes that arise from this legal relationship and the consequent agreements shall be decided by the competent judge in the place of registration of the Seller, or according to the choice of the Seller, by the competent judge in the place of residence and/or place of registration of the Buyer.

The above-defined is irrespective of the decision of the parties in joint consultation to have disputes settled by means of mediation, binding advice or arbitration.

These General Terms & Conditions have been filed with the clerk of the District Court of Arnhem in July 2020 under number 29/2020.
