

**Terms and Conditions of Sale, Delivery, and Payment**  
**Argelith Bodenkeramik H. Bitter GmbH**  
**(Valid as of: 03/23)**

**I. Validity**

These terms and conditions (hereinafter referred to as: the "Terms") shall apply to all of our contracts, deliveries as well as any other services insofar as no consumers within the meaning of Section 13 BGB [German Civil Code] are involved. These Terms shall be deemed to have been accepted, at the very latest, once our material has been received. The applicability of the purchaser's general terms and conditions (especially where terms of purchase are concerned) is hereby expressly rejected, irrespective of whether these form part of any orders, order confirmations, specifications or other similar documents. We shall equally not be bound by the purchaser's terms and conditions if we do not expressly reject them separately upon their receipt or if we supply the purchaser with the goods/service unconditionally in the knowledge that the purchaser has terms and conditions that contradict, deviate from or are supplementary to our Terms.

Our most recent Terms can be found and printed by going to <https://www.argelith.de/en/gtc> Argelith GmbH will be happy to send a copy of these Terms to any customer upon corresponding request.

These Terms shall equally apply to all future business transactions, including when no further express reference to our Terms is given or made.

**II. Offers, Contracts**

1) Our offers are subject to change. All concluded contracts and other agreements, such as any verbal side agreements and assurances given or made by our sales staff, shall only be legally binding if confirmed by us whether in writing or text form. Until such confirmation, any side agreements or assurances made or given are understood to be a mere declaration of intent and shall only become definitively effective subject to their being confirmed in writing or text form. All goods shall remain subject to prior sale. The shipment and invoicing of goods shall be equivalent to our having issued a written order confirmation. All prices quoted for ex-works deliveries shall, at all times, be understood to be net prices. (As such, they shall be exclusive of the relevant rate of value-added tax (VAT).

2) The information, drawings, illustrations, technical data, descriptions of weight, and the dimensions and services shown in our brochures, catalogues, circulars, advertisements, price lists, or in the documents accompanying an offer shall be considered non-binding, except where they have been otherwise explicitly affirmed in the order confirmation as being binding or where they exceed the limits of what a customer should consider to be reasonable or tolerable. If, and to the extent that, a purchaser should refer to such a brochure, catalogue, advertisement, etc. when declaring its intention to place an order based on the terms and conditions stated therein, this shall be understood to be an offer submitted to us for which our acceptance shall be required in order for it to become valid.

**III. Promotional Literature (samples, colour charts), Advertising**

1) All our samples shall be considered to be non-binding average samples. No guarantee shall be given as to the colour of the ceramic material being exactly the same as that of any samples provided, given the inherent properties of such ceramic material. The products that we offer are primarily made of pure, natural products that are processed using intense heat. Certain colour deviations are to be expected, given the processing method and the natural raw materials used in the production of our products. For technical reasons, colour charts must also be considered as approximate renders of the various colour variations. In light of this, we recommend that the material batch be inspected at our warehouse.

2) We reserve the right to photograph the structures built using Argelith products and to use such photographs for advertising purposes. The utilisation and processing of our products is thus inextricably linked with your consent to the above-mentioned use by us. No further consent or approval shall be required.

**IV. Product Characteristics (colour, rating/grade, dimensions, weight, quality)**

To compensate for any minor colour differences occurring during installation due to the product being supplied in individual consignments, it is strongly recommended that, for ongoing construction projects, sufficient quantities of the product are ordered from the same batch in advance. Supplementary consignments delivered on the basis of follow-up orders may reveal deviations, given that the item supplied is a processed natural product.

**V. Subsequent Charges/Fees**

If, following conclusion of the order contract, freight charges, levies as well as taxes, customs duties, fees, or similar, are introduced or raised that were not discernible at the time of concluding the order contract, we shall have the right to raise the purchase price accordingly.

**VI. Delivery Periods and Delivery Dates**

1) The delivery periods and dates which we have specified as binding shall apply. Delivery periods shall begin as of the time that the order confirmation is received. Delivery periods that have been offered as binding shall be extended by the time in which the purchaser's account is in arrears, whether with respect to this or another contract, plus an appropriate grace period.

2) Should, for reasons beyond our control, the delivery of goods be delayed by more than four (4) months after conclusion of the contract, we shall be entitled to charge the prices current at the time of delivery. The same shall apply in all cases where wages, operating costs as well as other expenses have risen as well as in those cases where delivery of our works or services only occur four (4) months later due to reasons attributable to the customer. Insofar as the four-month delivery period has been exceeded, we shall also then be entitled to charge the prices current at the time of delivery, provided that the delivery periods and/or delivery dates have been communicated in a timely manner. Call-off orders must be submitted in writing in due time – and no later than two (2) weeks prior to delivery.

**VII. Force Majeure/Acts of God**

If, and to the extent that, force majeure should prevent one of the contracting partners from fulfilling its obligations, whether long-term, to an unreasonable extent or for an unreasonable length of time, said partner shall be released from performing its

obligations. The respective other contracting partner shall be correspondingly released from performing its counter-obligations to the extent and for as long as the force majeure prevents the contracting partner from fulfilling its obligations.

We therefore accept no liability for any delays in delivery or services that result from force majeure or other events which make it substantially difficult or impossible for the seller to deliver, whether these relate to strikes, lockouts, fuel shortages, fire, traffic blocks, operational or transportation disruptions, including where binding delivery periods and dates have been agreed and delays in delivery apply, regardless of whether any such incidents occur at a location belonging to the seller, a sub-supplier of the seller or any of its companies and undertakings. Such events grant us the right to delay the delivery of goods/services for the duration of the hindrance plus a reasonable amount of time to recover, or, where the postponement fails to remedy the situation, the right to withdraw, whether in whole or in part, from the contract on the grounds of the unfulfilled part thereof.

**VIII. Shipping, Passing of Risk, Packaging, Partial Delivery**

1) The goods are delivered as packaged items.

2) In all transactions, the risk (including the risk of confiscation/seizure of the material), shall pass to the purchaser at the time that the material is handed over to a carrier or freight forwarder, or at the very latest, when it leaves our warehouse.

3) The unloading costs shall be borne by the purchaser. The same shall apply in the case of pre-shipment costs where shipment by a freight vehicle is requested and, where prices have been agreed free site, to any unanticipated increased freight payments that may subsequently arise due to inspections/tests being performed by the SVG [German Motor Transportation Association].

4) With respect to the ordered supply quantity, we shall be entitled to supply partial deliveries and minor under- or over-deliveries that are customary in the industry, provided that these are reasonable for the customer and that the customer does not incur additional shipping charges as a result.

The specification of an "approximate" quantity shall entitle us to under- or over-deliver by up to 10% and to charge accordingly.

We typically supply our products on reusable Euro pallets. One packaging unit equates to one pallet. Any reduction in the packaging unit results in a diminished quantity and thus additional time and effort, which thus entitles us to raise the packaging costs by up to €40.00 per packaging unit. These pallets as well as the costs incurred for any special packaging used, e.g. sea-worthy packaging, as calculated and shown in the contract, shall be invoiced separately. You will receive a corresponding credit note for all multi-purpose Euro pallets that are returned in perfect condition, carriage paid. We are not responsible for any costs incurred due to waiting times arising for means of transportation where such times are not caused by us. We shall not be liable to pay for the return of any packaging.

**IX. Payment, Invoicing**

1) Our invoices are payable strictly net by no later than 30 days of the date of invoice. After this time period has passed, the purchaser shall automatically be considered to be in default of payment without a reminder needing to be sent. A cash discount of 2%, in the case of a direct debit a 3% cash discount, applies for all payments made within 10 days. Said cash discounts shall only be applied if all other previous invoices have been paid in full. Cash discounts are applied to the net value of the goods (excluding freight, packaging and transportation costs).

2) Notwithstanding any purchaser's terms and conditions to the contrary, we shall have the right to first apply payments to older debts and to inform the purchaser of how the payment has been applied. Where the purchaser has incurred unpaid charges and interest, we shall have the right to first apply the payment to the unpaid charges, then to the interest, and lastly to the principal service.

3) Cheques and bills of exchange are only accepted as conditional payment, provided that we have given our explicit consent. Credits from the bills of exchange or cheques that have been received as per the agreement are recorded at their value on the day when we can start disposing of them at nominal value. All payment claims and due dates shall remain unaffected until that time. The purchaser shall bear all expenses relating to protests and collection. The reservation of title for reserved goods shall only expire upon definitive settlement of the cheque or bill of exchange as provided for under the conditions for reservation of title found in these Terms.

4) Where the purchaser is in arrears, we shall have the right to charge interest in the amount of 8% above the base interest rate set by the European Central Bank. We reserve the right to assert additional claims for damages caused by the delay. The seller shall have the burden of proving that higher damage has been incurred, the purchaser of proving less damage has been incurred.

5) All of our payment claims shall be due immediately – regardless of the maturity date of any bills of exchange that have been accepted and credited – whenever our terms of payment are not observed or we become aware of circumstances which, to the best of our business judgement, undermine the creditworthiness of the purchaser.

Should this be the case, we shall, notwithstanding any further legal rights, also be entitled to demand payment in advance or collateral for any outstanding deliveries, or, after an appropriate grace period, to withdraw from the contract, or to claim compensation for damages arising from non-compliance.

Any confirmed delivery periods shall be extended by the time period in which the purchaser's account is in arrears, whether with respect to this or another contract.

We shall have the right, on whatever legal grounds, to offset our payment claims against those of the purchaser even if the respective payment claims have differing due dates. This right may only refer to the balance.

6) Where the creditworthiness of the purchaser is called into question, in particular when the purchaser fails to honour a cheque or suspends its payments, we shall have the right to deem the balance due to be payable immediately, including in cases where cheques have been accepted. If prior to making full payment for delivered goods, the purchaser should suspend its payments, the seller may invoke its rights pursuant to §§ 47, 48 of the Insolvency Code.

7) No payments may be withheld or offset due to any counterclaims which we may dispute except where the payment claim has been established as final, absolute (i.e. not only temporary) and enforceable.

8) Credit notes issued by the seller may only be applied to invoices for materials. No cash pay-outs shall be effected in respect of credit notes.

#### X. Reservation of Title

1) All goods shall remain our property (reserved goods) until settlement in full of all our payment claims, irrespective of their legal grounds, including any and all future or conditional payment claims from the current or future contracts.

The purchaser shall be obliged to handle the products with care for as long as they are subject to reservation of title and we therefore reserve ownership thereto. In particular, the purchaser shall be obliged to obtain, at its own expense, sufficient insurance cover – at replacement value – to guard against the risk of fire and water damage and theft.

In the event of an insurance event occurring, the purchaser hereby assigns all claims for compensation to us that arise from said insurance. We hereby accept said assignment. If, and to the extent that, the assignment should not be lawful, the purchaser shall instruct the insurer to render any and all payments to us. Any and all further claims owing to the purchaser shall remain unaffected.

2) As a manufacturer within the meaning of § 950 BGB [German Civil Code], no legally binding effect may be imposed on us for the reserved goods that we create and transform. The processed goods shall be considered to be reserved goods for the purpose of these Terms. If the reserved goods are processed or inextricably mixed with other products that are not ours, we shall acquire joint-ownership of the new product in proportion to the invoice value of the reserved good to the invoice value of the other products used in the processing or mixing. The resulting joint-ownership rights shall be considered to be reserved goods for the purpose of these Terms. If our products are combined or mixed with other moving products and the result is a product that is inextricably mixed in such a way that the other product is considered to be the main product, it is hereby agreed that the purchaser shall assign to us a pro-rated joint-ownership, provided that it owns the product. The purchaser shall preserve this joint-ownership for us free of charge. Products that result from being processed, combined or mixed with others shall equally be treated as reserved goods.

Should the products be processed or converted with or through the use of other products which belong neither to us nor the purchaser, we shall acquire joint-ownership of the new product in proportion to the invoice value of our supplied products to the other processed goods at the time of their processing or conversion. The same shall apply if the products are combined or mixed with other products not belonging to us or the purchaser in such a way that we should lose our full ownership. The purchaser shall preserve the new products on our behalf. In all other respects, for any item that results from our products being processed, converted or combined or mixed with others, the same provisions shall apply as for reserved products arising under the terms of 3). The purchaser may only sell the reserved goods in the ordinary course of business under its normal business conditions, provided that it has agreed a reservation of title with its customers and that the payment claims arising from the resale are passed on to us. The installation of our products in properties, on land or in facilities attached to buildings or their use in order to fulfil other work and work performance contracts on the part of the purchaser shall be considered to be a resale.

4) The purchaser's payment claims resulting from the resale of the reserved goods are hereby assigned to us at this juncture. Should the purchaser sell the reserved goods together with other products that have not been produced by us, the payment claims arising from the resale shall solely be assigned in the amount of the value stated in our invoices for the reserved goods sold in the transaction in question.

5) The purchaser shall have the right to collect payment claims arising from the resale. Should the purchaser fail to duly abide by its contractual obligations to us, we shall be entitled to withdraw such a right, however.

The purchaser is expressly not entitled to assign or pledge such payment claims to third parties. At our request, the purchaser shall be obliged to inform its customers of the assignment and to provide us with the information and documents required in order to assert the claim.

Should the reserved goods be seized or should such seizure thereof be imminent, or should they be subject to other third-party interventions, the purchaser shall, provided that ownership has not yet been transferred, be entitled to notify third parties of our ownership rights and to inform the seller in writing without delay so that we may assert and enforce our ownership rights.

6) The purchaser's right to possess the reserved goods shall expire if it fails to fulfil its obligations with respect to this contract or to another contract. We shall then be entitled to enter the purchaser's premises – without setting a grace period or issuing a rescission notice – and confiscate the reserved goods and, notwithstanding any payment or other obligations on the part of the purchaser, be entitled to exploit maximum use of the goods by freely selling them on the open market or by auction.

7) If the value of the securities to which we are entitled exceeds our total claim against the purchaser by more than 20%, we shall, upon the purchaser's request, be required to release securities at our discretion.

8) Should the purchaser breach the terms of the contract, in particular where default of payment is concerned, we shall have the right to withdraw from the contract and demand the return of the goods.

#### XI. Notice of Defects, Warranty

1) Agreements concerning assured characteristics shall take precedence over objective requirements. The customer's rights founded on liability of defects shall be based on the general statutory rights unless otherwise defined in these Terms.

2) It is the purchaser's responsibility to examine the goods immediately following receipt thereof and to notify us in writing, by fax or by e-mail of any defects no later than two (2) weeks of receiving the goods.

3) Our liability for defects shall be limited, at our sole discretion, to rectification of the defects or to replacement consignments. The purchaser shall be entitled to reduce payment or withdraw from the contract if we fail to rectify the defects or deliver replacement items. All further warranty claims are excluded.

4) If, and to the extent that, our products comply with the requirements set forth in the respective, valid provisions of DIN 18158 and DIN EN 14411 Appendix G, no complaints shall be accepted insofar as this is permissible by law.

5) We shall have the fundamental right to inspect the rejected goods ourselves or have them inspected by a representative, and/or to request samples.

6) The intention to issue a notice of defect shall not entitle the purchaser to refuse the unloading of the transported goods or to require the return of the shipment if we have not given our prior explicit consent.

7) We shall not be liable for the costs or for further damages which result from the subsequent processing of materials not used for their intended purpose. Any damage occurring in transit shall be borne by the purchaser. The purchaser shall be required to obtain transport insurance.

8) For superior grade tiling, we shall, in accordance with the provisions set forth in DIN 18158 (for clinker tiles) and DIN EN 14411 Appendix G (for stoneware) be liable for no more than two (2) years after the delivery date. For special choice goods, our liability shall extend to one (1) year. Tiles that are not designated superior grade do not need to fulfil the quality requirements. These tiles may display damaged edges, hairline fractures, burned-in brush hairs and similar without being considered to be defective. Moreover, the dimensional tolerances may also deviate from the standard; they may be slightly above or below.

As a general rule, statutory or contractual claims for defects concerning lower sorting grades are hereby excluded to the extent permissible by law. The same shall apply in the case of processed materials. A claim for defects shall only be accepted on the proviso that the article has been properly processed – in compliance with the seller's applicable processing standards – during the appropriate construction of a building.

The purchaser must request the processing standards when placing an order for the first time and/or if they are unknown to the installer. Failure to comply with these requirements, and any relevant processing standards imposed by the seller, shall release the seller from any liability in respect of defects if the defect or damage is founded on non-observance of the processing standards.

The warranty shall only apply to the damaged ceramic tiles delivered by us, not to any labour, removal, installation or other consequential costs that might result in the structure, whereby we reserve the right to deliver replacement material. The purchaser shall not receive any guarantees from us in a legal sense.

#### XII. General Limitation of Liability

Claims not explicitly permitted under these Terms, in particular claims for damages due to the impossibility of delivery, delays, infringements of contractually agreed side agreements, defaults when signing an agreement or tort, including to the extent that such claims exist in relationship to the purchaser's warranty rights, are, wherever permissible by law, hereby excluded. This shall not apply, however, when the claims are due to wilful intent or gross negligence on our part or on the part of other vicarious agents. Where infringements of cardinal obligations are concerned, liability shall also be accepted in the case of simple or slight negligence.

#### XIII. Place of Fulfilment and Jurisdiction, Applicable Law

Wehrendorf shall be the place of fulfilment with respect to our deliveries. Osnabrück shall be the place of jurisdiction, including for claims regarding cheques and bills of exchange. The contracting parties shall be bound by the laws of the Federal Republic of Germany to the exclusion of the reference norms of German international private law and the UN Convention on Contracts for the International Sale of Goods (CISG). The provisions of the CISG are hereby excluded.

Notwithstanding the above, Argelith shall be at liberty to bring an action against the customer at the purchaser's court of jurisdiction with respect to disputes arising from their contractual relationship.

#### XIV. Binding Nature of the Contract

In the event that individual provisions of this contract become ineffective, this shall not affect the remaining parts thereof. Should a provision become ineffective, whether in whole or in part, the contractual partners shall promptly strive to replace the ineffective provision with one that satisfies the intended economic outcome with legal effect.