

- 1. GENERAL**
- 1.1. With respect to all quotes, deliveries and services provided by KEIMFARBEN GmbH - in the following referred to as KEIMFARBEN or "we" - to companies, legal persons under public law or separate funds under public law as defined by § 310 para. 1 German Civil Code (BGB) (hereinafter referred to as "contractual partner") the terms and conditions of trade shall be regarded as part of the contract and these will also apply to all future business relationships without the requirement of any specific agreement or reference. The contractual partner's own Conditions of Sale or Purchase shall only become part of the contract, if and as far as we agree to them in writing; we need not specifically reject them. With regard to any supplied goods, we - before delivery - reserve the right to subject any order to the supplier's particular conditions of trade with our announcement of delivery. If and as far as the contractual partner does not reject these conditions immediately, they shall govern those parts of the contract that concern the particularities of the supplied goods.
- 1.2. Agreements between us and the contractual partner are only valid, if they are made in writing.
- 2. QUOTES, ORDERS, CONCLUSION OF CONTRACTS**
- 2.1. Our quotes are not binding. Orders placed verbally or in writing or by any means of telecommunications with our staff, field staff, agents or pages accessed using our digital media presence are strictly binding for the contractual partner for the duration of the acceptance period appropriate for the specific business arrangement.
- 2.2. Orders and sales contracts become binding upon us only if we confirm them in writing or fulfil them by delivery.
- 2.3. Our staff, field staff or agents neither have the authority to conclude contracts nor the authority to alter these terms and conditions of trade. In addition, they are not authorized to accept any payments unless they have been provided with a specific written authorization to do so by the directors of KEIMFARBEN.
- 2.4. Goods once ordered will not be taken back, in particular WDVS, blended paint and plaster. If, in exceptional circumstances and by prior arrangement, a return of goods is agreed by KEIMFARBEN, proportionate charges for return shipping and an administrative fee amounting to at least 15% of the goods will be deducted from the credit balance.
- 3. PRICE QUOTATION, TERMS OF PAYMENT**
- 3.1. The price list valid at any one time shall be binding upon choice of colour and price structure. The delivery of blended paint and of goods made to the customer's specifications shall be subject to current prices to be determined by KEIMFARBEN at its discretion, as defined by § 315 BGB. Any subsequent reductions of the amount ordered or any reduction of the agreed recalls may result in an increase to the fixed prices due to additional costs, which KEIMFARBEN may determine at its discretion as defined by § 315 BGB. Equally, the right to make reasonable prices changes due to changes in costs for wages, materials and distribution for deliveries, which take place as agreed, 3 months or later after the conclusion of the contract, is reserved for all cases, where no fixed price agreement has been made.
- 3.2. Statutory VAT at the rate applicable on the date of delivery or when the service is rendered should be added to all prices quoted by us on the price list or elsewhere.
- 3.3. Calculations will be based on the weights amounts and quantities determined by us, unless the contractual partner raises an objection immediately after delivery.
- 3.4. All invoices are due for payment upon receipt, regardless of the receipt of the delivered goods and notwithstanding potential warranties. A note on the invoice stating "payable until" (date) shall not affect the immediate maturity of the payment and shall only determine a period of time within which payment can be made without a change in the conditions of payment.
- 3.5. Discountable bills will be accepted on account of payment only when explicitly agreed hereupon in writing. Discount, exchanges and other expenses shall be borne by the customer. The crediting of exchanges or cheques shall be subject to receipt, notwithstanding an earlier due date of the invoiced amount in the case of a customer's default with the payment. The crediting shall state the value of the date on which we have the equivalent at our disposal.
- 3.6. Payment of the purchase price should only be made on one of our headed banking slips. Discount may only be deducted with a special arrangement agreed in writing.
- 3.7. Default will be declared as per statutory regulations. Default interests shall be charged according to Article 288 Section 2 German Civil Code (BGB) at a rate of 9 per cent above the base interest rate, regardless of any fault on the part of the contractual partner. The right to assert other additional damages caused by default is reserved.
- 3.8. The contractual partner may have a right of retention to the extent that this is based on the same contractual relationship. Offsetting this is only admissible where there is a claim acknowledged by us or legally enforceable against us, otherwise this is excluded, however.
- 3.9. The contractual partner may only assign a claim of any kind against us with our written consent.
- 3.10. In case of default, we are also entitled to withdraw in whole or partially from all uncompleted sales and service contracts without prior notice and/or are entitled to claim further damages.
- 3.11. Should any circumstances come to our knowledge, which impair the business associate's solvency or credit rating, we are entitled to demand a provision of security within a period of ten days or prepayment in whole within the same period. Any periods of delivery agreed upon shall be extended for this time. In the case that our demands are not complied with, we are entitled to withdraw from the contract without fixing a notice period notwithstanding the occurrence of a default.
- 3.12. Conditions of trade agreed upon for certain periods of time shall be void if the customer defaults with other claims on our behalf or when bill and cheque protests or a bankruptcy petition against the customer or an extrajudicial procedure for debt management come to our knowledge or such applications are refused due to a lack of resources.
- 3.13. In the event that our property is subject to seizure, both the pledgee and ourselves shall be informed immediately in writing. If payments are suspended or if any bankruptcy petition is filed against the customer or if a bankruptcy court passes provisional orders regarding the customer's assets, all our claims and clearing balances shall become due without any further notice. Deferral agreements shall only be valid with the express recognition of the full collateral provision in Section 4, and only as long as the contractual partner complies with these provisions in full.
- 4. SECURITIES**
- 4.1. Retention of title
- We retain title to the delivered goods until the purchase price has been paid in full. Furthermore, the title shall not be transferred until all previous and future deliveries of goods have been paid for, including all other claims resulting from the existing business relationship in addition to all supplementary claims (in the case of cheque or bill payments). This also applies when the goods are stored on the property of third parties. As long as the title is retained, the buyer is not entitled to pledge the goods to third parties or transfer them by way of security. The contractual partner should inform us immediately of any seizures by third parties or ensure that the relevant owner keeps us informed, and shall provide us with all assistance necessary to protect our rights.
- 4.2. Title on processed products or substitutes
- If the goods delivered under retention of title are combined or mixed with movable items or processed into movables (e.g. building materials), then this combining, mixing or processing is carried out on our behalf, and we will automatically acquire joint ownership of the new item proportionate to the value of the combined, mixed or processed goods to the value of the rest of the item at the time the combining, mixing or processing took place. The proportionate share of the new item is considered to be reserved goods. If, despite this ruling, we have not automatically acquired joint ownership, then the contractual partner agrees to obtain the appropriate level of joint ownership for us.
- The buyer shall be obliged to store the goods carefully on our behalf and shall on specific request store them separately, mark or pass them on.
- If the buyer resells the delivered goods or the items processed from or with the goods or if they are installed in a third party's property directly or after further alteration so that they become integral parts of this third party's property, all claims, other rights and subsidiary rights of the buyer against his purchasers or third parties that substitute the delivered goods and processed items will pass to us without a declaration of assignment as security for all our claims and other rights resulting from the business relationship. We will accept this assignment. This applies especially to the buyer's claim against his clients/customers for being granted a mortgage according to Article 648 German Civil Code (BGB) and other securities according to Article 648a German Civil Code (BGB). If the buyer insures the purchased goods or the item to which the aforementioned rights refer and if an event insured against occurs, the buyer's claims against the insurance shall herewith be assigned to us in advance. We will accept this assignment. If the contractual partner combines or mixes the supplied goods in return for payment with a majority item belonging to a third party, then he shall immediately assign to us his claims for remuneration against the third party up to the amount of the invoice value of the delivered goods as security.
- If the value of the securities, which exist for us, exceeds our total claim by a total of more than 10%, then we agree to release securities of our choice at the request of the contractual partner in respect of this.
- 4.3. Disposal of goods under retention of title
- The buyer is entitled to dispose of the items to which the retention of title applies (see 4.1. and 4.2.) only within the limits of an ordinary and orderly course of business and only for proper use, whereby he is authorized to resell, to offer for sale, to process and install these on property belonging to others. This authority to resell, to process and to install those items onto property owned by the buyer himself or by third parties is subject to the further condition that the claims and rights arising hereby - or a proportion thereof as applicable - are assigned to us according to 4.2. Prior to the installation of goods subject to the retention of title or the installation of an item created by processing good over which we have retained the title into any of his own property, the contractual partner must offer us and transfer to us an appropriate security; installation is not permitted before this has been completed.
- The buyer is not entitled to any further assignments of the claims. He is entitled, however, to collect these claims on our behalf, as long as he meets his financial obligations to us or any third parties properly. We are entitled to revoke this authority at any time and may notify the third party of the assignment and collect the claim ourselves. Amounts of money, which the buyer has already collected, shall become our property immediately; the buyer shall deposit the money on our behalf and transfer it to us without undue delay. The buyer is also entitled to assert subsidiary rights or security interests (e.g. registration of a mortgage), but shall be obliged upon demand to assign these rights and security interests to us. As soon as the contractual partner ceases to make payments and/or gets into financial difficulties, we are entitled to demand the immediate provisional surrender of all goods subject to our retention of title without the granting of a notice period or exercising the right of withdrawal, excluding the right of retention.
- 4.4. Reporting requirements
- The contractual partner agrees to make available to us all information and documents we may need to protect our property rights or to assert the substitute claims. In particular, the buyer shall - at our request - provide all names, addresses and places of delivery of the recipients to whom he further delivered the goods and of the persons who are debtors to the assigned claims or provide us with the dates on which the contracts were performed and any acknowledgements of receipt. On our demand, the contractual partner shall notify the debtors of the assignment. We may request a document on the assignment issued by the contractual partner. In the instance that any items are subject to seizure by third parties, the buyer bears all costs for any measures necessary to protect our rights. Potential claims for reimbursement against the third party shall be assigned to the contractual partner after he has fulfilled his obligations under this contract.
- 4.5. Contractual right of withdrawal and recovery of the goods
- If the contractual partner gets into arrears with payment of the purchase price or any other essential obligation under the contract, then we are entitled to withdraw from the contract without setting a deadline but with a threat of refusal. If we have arranged for the goods to be recovered, then this also means that we are also withdrawing from the contract with respect to these goods.
- 4.6. Execution
- The retention of title in accordance with the provisions above will also continue to exist if we include individual claims in a current invoice and the account has been balanced and accepted. When all of our claims arising from the business relationship have been paid in full, then ownership of the reserved goods will pass to the contractual partner automatically and the claims assigned to us will be returned to the contractual partner. This right of ownership will also apply to the haulier, to whom the goods are handed over at the contractual partner's request or if we have arranged this.
- 4.7. Matters involving other countries
- If the retention of title does not apply under the laws of the country in which delivered goods are located, then the contractual partner will provide an equivalent security at our request. If he fails to comply with this request, then we may demand the immediate payment of all outstanding invoices without regard to agreed payment terms.
- 5. WARRANTY RIGHTS, NOTIFICATION OF DEFECTS**
- 5.1. We only guarantee the suitability of our products for normal use. We will only provide a guarantee for specific, contractually agreed or presumed suitability for use or characteristic, if and to the extent that this has been agreed in writing or, where this was initially agreed orally and then confirmed in writing. We are not liable for any warranty with regard to the processing or the condition of the substrate.
- 5.2. The contractual partner's warranty rights assume that he has properly fulfilled his obligations to make inspections and give notice of defects as set out under § 377 German Commercial Code (HGB).
- 5.3. Defects should be notified in writing immediately after receipt of the delivery by the recipient and should describe the type and extent of the defect precisely.
- 5.4. If we cannot complete the shipment, whether this is because collection has been agreed or because shipment does not occur for reasons beyond our control, then our contractual partner will be notified by us that the goods are ready for shipment.
- 5.5. Regardless of any collection of the goods, notification of defects is excluded unless the examination takes place within 2 weeks after the notification was sent to the last known contact details for the contractual partner by e-mail or fax and a notification of defects has been made without delay.
- 5.6. If the contractual partner does make a notification of defects immediately in writing, then the goods will be deemed to have been accepted, unless the defect concerned cannot be identified during the examination. If a defect of this nature becomes apparent later, then the notification must be made immediately after discovery and in writing; failing this, the goods will be deemed to have been approved even in view of this defect. These provisions will also apply if goods other than the goods stipulated or a different quantity of goods from that specified have been delivered.
- 5.7. The contractual partner agrees to keep rejected goods in the same condition as that when the defect was discovered, to ensure temporary storage of these at his own expense and risk and also agrees to give us the opportunity to make an immediate investigation, if he wishes to assert the existence of defects in goods supplied by us; he may not process and resell the rejected goods or continue any processing which has already started, unless he has received written approval to do so from us. If the contractual partner acts in contravention of this, then the goods will be deemed to have been accepted.
- 5.8. In the event of subsequent performance, we are entitled to make good defects or provide a replacement at our discretion.
- 5.9. In the case of making good with defects, we will bear all the expenses required for this purpose, as long as these are not increased by the goods having been taken to a different location from the place of fulfilment.
- 5.10. We will only be liable to provide compensation for consequential losses caused by a defect where we were (jointly) responsible for the occurrence of the defect due to intentional or grossly negligent conduct.
- 5.11. In the case of recourse by the contractor (§ 445a BGB) it will be assumed that there were no defects present at the time of the transfer of risk to the contractual partner if the contractual partner inspects the goods in line with his duties, but did not report any defects, unless this assumption is incompatible with the nature of the item or defect.
- 5.12. If the contractual partner asserts a right of recourse, then he should expect that we will deem him to have implemented all legally-permissible contractual options with respect to his contractual partner (e.g. refusal of supplementary performance due to disproportionality or limitation of the reimbursement of expenses to an appropriate amount).
- 5.13. We are entitled to reject claims for recourse made by the contractual partner with the exception of claims for the new delivery of goods, under the provision that we grant the contractual partner equivalent compensation for the exclusion of his rights. We are only liable to provide consequential damages for defects, where we were (jointly) responsible for the creation of the defect due to intentional or grossly negligent conduct.
- 5.14. Claims made by the contractual partner for damages are excluded without compensation, unless we are guilty of intent or gross negligence.
- 6. DELIVERY, TRANSFER OF RISK**
- 6.1. Shipping will be charged for all deliveries ex works or from the warehouse. Freight costs, carriage and additional costs resulting from rush deliveries or express deliveries requested by the contractual partner will be at the contractual partner's expense.
- 6.2. Risk - including that of a seizure - will be transferred to the contractual partner when the handover to the shipping company or freight carrier is completed - and also when handed over to the contractual partner in the case of a self-collection - at the latest however on leaving the factory or the warehouse, in all cases, e.g. even with f.o.b. or c.i.f. transactions, therefore regardless of whether despatch of the goods was made from the place of fulfilment or who is bearing the shipping costs. The risk will also pass to the contractual partner when he receives notification that the goods are ready for dispatch or collection, if dispatch is delayed due to circumstances for which we are not responsible, or delayed at the request of the contractual partner, as well as in the case where the contractual partner delays acceptance or one of his debtors defaults.
- 6.3. If the contractual partner defaults on accepting the goods, the we are entitled to dispatch these at our discretion at the expense of the contractual partner or to store these, even outside - if necessary, if no other option is available. In this case, we will not be liable for accidental destruction or loss of or damage to the goods. If the goods are being stored by us, then we are entitled to charge for the goods one week after the delayed acceptance first occurred and to demand payment.
- 6.4. Split deliveries are permissible if reasonable for the contractual partner.
- 6.5. Disposable packaging cannot be returned to us. Instead we will provide the contractual partner with the name of a third party, who will recycle the packaging in line with statutory and official regulations.
- 7. SAMPLES**
- Our samples are authoritative for the delivery. We reserve the right to minor deviations in colour. The processing and the colours shall be deemed as having been approved upon delivery. Complaints, as long as they are made within 8 days from receipt of the goods and before they are processed and have been acknowledged by us as being justified, only oblige us to take back the goods and replace them, where possible.
- 8. LIABILITY**
- 8.1. Unless an alternative arrangement has been agreed, all further claims by the contractual partner against us and our staff, employees, colleagues, representatives and vicarious agents are excluded, in particular any claim for compensation for damages, which did not affect the delivered goods themselves.
- 8.2. The limitations of liability and exclusions of liability set out in Section 1 above and elsewhere in these Terms and Conditions of Sale, Delivery, Service and Payment shall not apply in cases of wilful misconduct, gross negligence, injury to life, body and health, or as a result of an assumed guarantee of quality or durability or in particular under the provisions of the Product Liability Act where liability on our part is mandatory. The same applies in the case of a breach of duty on our part, which endangers the achievement of the purpose of the contract, although our liability is limited to compensation for typical, foreseeable damages.
- 9. PROVIDING ADVICE**
- Our verbal and written technical advice about using our products - including from our staff, representatives, expert advisors - is provided free of charge and without obligation as well as exclusively in a dependent connection with our promotion or initiation of the sale of goods; no liability for this will be accepted except in the case of proven gross negligence or intent. Independent advice is only provided on a project-specific basis and is based on information provided in writing by the contractual partner and following a prior written agreement, which includes an agreement on liability. All information and specifications provided about the suitability and use of the goods which have been or will be supplied and also any advice does not release the contractual partner from his obligation to make his own assessment of our products for suitability for the intended procedures and purposes (and if necessary carrying out his own tests to check these) as well as making his own determination of the amount of material required by means of test coatings.
- 10. NO GUARANTEED SHELF-LIFE**
- Information relating to storage times is dependent on the storage conditions and therefore do not represent a guaranteed shelflife or any guarantee of quality. If processing takes place after the storage time has expired, then all warranty claims are excluded.
- 11. DELIVERY PERIOD, RIGHT OF WITHDRAWAL, DEFAULT IN ACCEPTANCE**
- 11.1. Statements about the delivery period are non-binding and should only be viewed as an approximate estimation of time. The delivery period starts on the date of our order confirmation, although not before all of the specific details of the contract of sale have been clarified in full.
- The start of the delivery period stated by us is based on the timely and proper fulfilment of the contractual partner's own obligations. The defence of non-performance of the contract remains reserved.
- 11.2. Significant and unforeseeable operational disruptions for which we are not responsible, delays in deliveries or missed deliveries on the part of our suppliers as well as e.g. interruptions to normal business due to shortages of raw materials, energy or labour, strikes, lockouts, difficulties in securing transportation, disruptions to traffic, official orders or cases of force majeure affecting us and our subcontractors will extend the delivery period by the duration of the circumstances preventing delivery, where these are significant in relation to our ability to deliver the goods. We will inform the contractual partner immediately about the start and end of circumstances of this kind. If these circumstances delay the delivery by more than a month, both we and the contractual partner are entitled to withdraw from the contract with regard to the quantity affected by the disrupted delivery and claims for compensation for losses will be excluded. The contractual partner's statutory right of withdrawal in the case of delayed delivery due to circumstances for which we are responsible remains unaffected by this.
- 11.3. The contractual partner may only assert a claim against us due to delayed delivery, if there is proven gross negligence or intent.
- 11.4. If the contractual partner defaults on acceptance or he culpably breaches any other obligations to cooperate, then we are entitled to demand compensation for any losses to us thus caused, including any additional expenses. Further claims remain reserved.
- 12. FRUSTRATION OF CONTRACT**
- If any circumstances, which have become the basis for the contract, have changed significantly since the contract was concluded and both parties to the contract would not have agreed the contract, or would have agreed different content of the contract, if these changes had been predicted, then we are entitled to withdraw from the contract, if adherence to the contract would be associated with considerable disadvantages for us. In particular, this also applies to a deterioration of the contractual partner's credit rating.
- 13. DATA PROTECTION**
- Notice based on § 33 Federal Data Protection Law (BDSG): We save the data, which is provided to us by the contractual partner within the framework of the business relationship and store this for the purpose of executing the business relationship.
- 14. PLACE OF FULFILMENT, LEGAL VENUE**
- 14.1. The place of fulfilment for a delivery from us is the shipping point. The place of fulfilment for payments is our registered office.
- 14.2. The legal venue for both parties to the contract, including for actions in the processing of deeds, bills and cheques, is Augsburg exclusively and without regard to the amount of the respective claim. We are also entitled to sue the contractual partner at any other justified court of jurisdiction.
- 14.3. The domestic law of the Federal Republic of Germany applies exclusively to all contractual relationships, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).