

Terms of sale and delivery Bach Resistor Ceramics GmbH valid from December 1, 2015

1. Scope

Our deliveries, products, and services are subject exclusively to these terms of sale and the relevant statutory provisions.

Any provisions which deviate from these terms – in particular the customer's terms of purchase – shall only be binding for us if we have confirmed them in writing.

The delivery of goods, the provision of products and services, or the receipt of payments does not indicate a recognition of any provisions which deviate from these terms.

2. Quotes/contracts

Our quotes are subject to change.

A contract is only entered into once we have provided written confirmation of this.

„Written“ in this case means that the statement is made in text form (e-mail, fax or letter), without requiring a personal signature.

We reserve the right to accept an order/quote within two weeks of receipt.

If a product is delivered immediately, the invoice shall replace this order confirmation.

Persons who act on behalf of our company, and who are not CEOs or who have been granted general commercial power of attorney, are not authorized to represent our company. Agreements made by such persons for our company shall only take effect once they have been confirmed by a legal representative of our company (CEO) or an appointed authorized representative.

3. Brochures

Information in documents, illustrations, brochures, catalogs or any other sales documents from our company, including information on units/quantities, material properties, dimensions and performance are non-binding, unless they have been explicitly marked as being binding.

Information on dimensions, material properties and performance provided by us in documents, illustrations, brochures and catalogs are within the usual tolerance ranges for the relevant products. In particular, they do not constitute a guarantee as to the nature of the item, that exceeds the statutory warranty.

4. Prices

Our prices are quoted in Euros.

The prices quoted only include the payment for the relevant product ex works. It does not include any applicable sales taxes. These need to be paid separately.

Other costs, in particular for packaging, insurance, additional fees and transport costs, are not included.

Unless otherwise agreed, these costs are to be borne by the buyer.

The prices listed in the order confirmations for the scope of supply and services shall apply for the product.

Costs for the examination and assessment of machines, devices or products brought by the customer, as well as fees for determining repair costs, are to be borne by the customer, even if these do not lead to the subsequent placement of a production order. In case of doubt, the usual fees (according to fee schedule) shall apply.

5. Payment/offsets

Invoices are to be paid net (without deductions) within 21 days of the invoice date. (deadline).

The customer reserves the right to prove that it has received the invoice later than 21 days after the invoice date. In this case, the deadline for payment shall be 21 days after the actual date of receipt of the invoice.

The payment is to be made by bank transfer to one of the accounts specified in the order confirmation. In the case of products which are delivered immediately, payment is to be made to one of the accounts provided in the invoice.

The costs of the transfer, in particular bank fees, are to be borne by the customer. Methods of payment other than bank transfer, in particular checks, drafts, cash payments and credit cards, are only permitted with prior agreement. If such methods are agreed, payment is to be made in a manner that does not incur any fees for us, and without any discounts or deductions.

The date of payment (fulfillment) shall be the day on which the amount is freely available to us.

The customer may only offset payments owed to us with recognized, undisputed or legally established claims. The same applies for the assertion of a lien.

If, according to the contract, we are obliged to make advance deliveries, we shall be entitled to refuse delivery after prior written notification if, after the conclusion of the contract, we become aware of circumstances which call into question the creditworthiness of the customer. In particular, this applies if a consumer credit insurer cancels the customer's credit limit or significantly reduces this limit, or if the credit limit is reached, thereby jeopardizing the fulfillment of our payment claims. The right to withhold performance shall not apply, if consideration is provided or securities are furnished for it. If the customer is in default of payment, it has to bear all the resulting damages. Furthermore, regardless of any outstanding damage claims, interest amounting to 10% p. a. is to be paid on the outstanding payment claims for the period of default.

6. Place of fulfillment, transfer of risk, shipment

The place of fulfillment of the delivery is the location of our factory or warehouse.

The risk of the loss of products ordered is transferred to the customer as soon as the product has been manufactured and is ready for collection, and we have informed the customer of this in writing.

The liability for loss due to gross negligence and willful intent remains unaffected by this.

We shall not be responsible for the shipment of the product unless a separate agreement has been made to this effect.

If shipment has been agreed upon, the packaging of the products and the selection of a carrier shall be done at our equitable discretion, and take into account the specific characteristics of the product in question, in particular any prevailing shipping regulations.

The customer shall not be entitled to the form of shipment that incurs the lowest costs.

The customer has to bear the costs for packaging and shipment. However, in the case of partial shipments, the customer is only to bear these costs if it has been agreed upon that the shipment can be made in multiple installments, or if the customer specifically requested partial shipment.

If, according to the provisions above, we are responsible for the shipment, the risk of loss of, or damage to, the products shall be transferred to the customer upon being handed over to the carrier. This shall also apply if partial shipments are made or if carriage paid delivery has been agreed.

We shall be within our rights to take out appropriate transport insurance on behalf of, on the account of, and at the cost of the customer for an amount that is at least equal to the invoice value of the products. This does not apply if the customer has declared in advance that it does not wish to have transport insurance.

The customer is to inform the freight carrier without delay of any damage that has occurred to the product to be delivered during transportation, and has to inform us of this via a written confirmation from the carrier.

7. Delivery period

If a delivery period (lead time) has been agreed, it shall begin once we provide confirmation of the order as specified in section 2 of these Terms.

If a deposit was agreed upon for the fulfillment of the order, the period shall not begin before the deposit or advance payment, as specified in section 5 of these provisions, has been paid, regardless of when the order confirmation was received or any prepayment.

If a delivery or performance deadline has been exceeded, or if we have not fulfilled a contractual obligation in a timely fashion, the customer is to provide us with an appropriate grace period of at least 4 weeks and notify us of this in writing.

If the delivery, product or service has still not been provided by the end of this grace period, and the customer wishes to exercise its right of withdrawal or claim damages instead of the good or service, it is obliged to first provide us with a second, appropriate grace period and notify us of this in writing.

When sent a request to do so upon receiving notification of the grace period from the customer, the customer is obliged, within an appropriate period, to inform us in writing of whether it will withdraw from the contract due to the delay and/or be claiming damages instead of performance, or if it insists on receiving the delivery or performance.

A delivery and performance deadline shall be extended by the period of time for which the customer, on its part, fails to fulfill his obligations to us (obligation to cooperate). In particular, this applies when it is necessary for the customer to deliver drawings, plans, calculations etc. so that an order can be fulfilled.

A delivery and performance deadline shall also be extended upon the occurrence of unforeseen events that we have no influence over, in particular in cases of force majeure, strikes, war, riots etc., which directly affect our site or suppliers and vendors. This extension shall equal the period of time for which the relevant event lasts, until conventional delivery conditions are restored.

Upon the occurrence of unforeseen circumstances which significantly change the content of the product or service we are obliged to provide, or which significantly impact our operations, as well in cases where it should only later prove effectively impossible to provide the product or service, we reserve the right to withdraw from the contract to the extent that we are no longer able to provide fulfillment in the foreseeable future. The customer is to be informed of this without delay in writing. Payments already made by the customer, for which a delivery of equivalent value has not been made, are to be refunded. The customer is prohibited from requesting a refund simply because it is unable to utilize an agreed partial delivery. Damage claims by the customer due to the withdrawal from the contract shall be considered null and void unless the actual impossibility of fulfillment and/or the obstruction of performance was caused by us due to gross negligence or willful intent.

8. Retention of title

We shall retain the ownership of the delivery item until all payments specified in the delivery contract have been received.

If the delivery item is modified or worked on by the customer, our retention of title shall be extended to cover the entirety of the new product. In the case of the processing, combination or mixing with third-party objects by the customer, we shall acquire partial co-ownership of the new product, equivalent to the percentage that corresponds to the ratio of the invoice value of our delivery item per unit to the other objects the customer used in the manufacture of the final product at the point in time of the processing, combination or mixing, per final product. If the delivery item is combined with a main object from the customer or a third party, the customer hereby also transfers to us, at this very point in time, its rights to the new product as per the percentage that corresponds to the invoice value of our delivery item, per unit. If the customer combines the delivery item with a main object from a third party for a fee, it hereby also transfers to us, at this very point in time, its claim to remuneration against the third party to the amount of the invoice value per delivery item. We hereby accept the transfer and the cession.

The customer shall be within its rights to resell the delivery item or the new product as part of its regular business operations. If the customer sells the delivery item or a product manufactured with or from it without receiving the full sale price in advance or by delivery versus payment (DvP) of the delivery item or new product affected by the retention of title, the customer is to agree upon a retention of title with its customers in accordance with these provisions. At this very moment, the customer cedes its claims resulting from this resale, as well as the rights from the retention of title it has agreed upon to the extent of the retention of title which it himself is subject to. We hereby accept this cession. At our request, the customer is obliged to inform the buyer of this cession and to provide and hand over information and documents necessary for us to assert our rights against the purchaser. Despite the cession, the customer is only authorized to assert the claims from the resale if it properly fulfils its liabilities to us from the delivery. If the value of the securities handed over to us exceeds our claims against the customer, we shall be obliged to release the securities by the extent exceeded, upon the request of the customer. If the value of the securities handed over to us exceeds our claims against the customer, we shall be obliged to release the securities by the extent exceeded, upon the request of the customer. In cases where we choose to assert rights from the retention of title: for any goods we repossess that were already in use, entirely or partially combined, processed, or mixed, or which deviate from standard commercial standards due to the fact that they are custom versions that do not correspond to our standard product lines, the customer shall only be credited for the value that remains after the exploitation of these delivery items in regular business activities after the deduction of all reworking costs.

Our assertion of the retention of title does not indicate that we are exercising our right of withdrawal unless we explicitly declare that we are exercising this right.

9. Complaints

The customer has to inspect the delivery item without delay upon receipt or delivery by the freight carrier as part of its regular business activities. All complaints, in particular for defects to the delivery item and shortfalls, are to be made in writing without delay, although no later than 8 days after collection or delivery. In the case of hidden defects, claims are to be asserted within 8 days of obtaining knowledge of these defects or after the point in time at which they should have been discovered during a reasonable inspection. If the customer does not make complaints or fails to do so in a timely fashion, the delivery item shall be considered to have been accepted despite the lack of or improper notification.

Any rights that the customer may be entitled to from a complaint shall expire after one year has elapsed.

If the customer accepts our delivery, product, or service with knowledge of a defect, it shall only be entitled to rights concerning the defect if it reserves the rights related to these defects in writing during the acceptance. A blanket reservation of rights does not fulfill these requirements.

10. Rights of the customer in the case of defects

An insignificant reduction in the contractually-agreed nature of the delivery item does not entitle the customer to assert any rights.

If the delivery item possesses any other defects, and the customer makes a complaint regarding these defects in accordance with the afore-mentioned provisions, we shall be entitled to either make an additional delivery or perform rework (supplementary performance) at our discretion. If we choose to perform rework, the rectification of the defect shall take place at our facilities. The return shipping of goods that require rework is to be done at the expense of our UPS customer number, after prior approval. The customer shall bear the costs for any other returns of goods requiring rework. If a defect is discovered during the processing of the delivery item, all further processing is to cease. The customer is to inform us of this within the deadlines specified in section 9. Defects to the delivery items occurring within a year after delivery which are due to manufacturing, workmanship, or material defects shall be rectified by us in our facilities. If the supplementary performance fails or we decide to forgo supplementary performance attempts, the customer shall be entitled to withdraw from the contract or reduce the remuneration accordingly. According to the legal prerequisites, the customer may claim damages and compensation for the costs necessary for the purposes of supplementary performance in accordance with section 11 of these Terms.

Legal recourse claims against us by the customer shall only be valid to the extent that the customer and its buyers have not entered into any agreements exceeding the legal claims for defects and these Terms. The customer shall be responsible for all further obligations.

11. Damage claims/reimbursement

Claims for damages and reimbursement by the customer, in particular due to a violation of contractual obligations and/or due to illegitimate actions against us, our legal representatives, employees and agents shall only be valid in cases where we, our legal representatives, employees or agents have acted with intent or showed gross negligence, or if the obligation violated is essential for achieving the objective of the contract and the customer regularly relies on, and is allowed to rely on, the compliance with such obligations (cardinal obligations).

This also applies to any liability from conditions precedent to the contract.

In the case of a violation, due to simple negligence, of cardinal obligations, our liability shall, regardless of subsequent deliveries, be limited to foreseeable damages typical for the contract, and shall amount to no more than double the invoice value of the goods and/or services in question, as long as this value does not exceed 20,000.00 Euros.

In the event that third-party goods are processed, the customer shall insure the goods against all risks, in particular the risk of processing. We shall be within our rights to request proof of insurance before fulfilling the order. If this proof is not provided despite the setting of a reasonable grace period, we shall be entitled to withdraw from the contract.

This exclusion of liability and/or limitation of liability shall not apply in cases involving loss of life, bodily harm, or damage to health, or where we have mandatory liability according to the Product Liability Law (Produkthaftungsgesetz) or due to other statutory provisions.

12. Statute of limitations

Warranty, damage and reimbursement claims by the customer shall expire a year after the statutory commencement of the period of limitation, except in cases of defect claims for a final product which was used for a building in a manner usual for the product, which resulted in a defect to the building. In this case, the statute of limitations is 4 years. In the case of willful actions on our part, our legal representatives, employees or agents, in the event of a loss of life, bodily harm or damage to health, or in accordance with the Product Liability Law (Produkthaftungsgesetz) or due to any other mandatory liability due to statutory provisions, the statutory limitations shall apply.

13. Legal provisions, foreign trade law and customs law

Unless individually agreed with the customer in writing, the customer shall be responsible for observing the legal and official regulations regarding the import, export, transportation, storage, use and resale of the delivery item.

In particular, the customer declares that it shall not use the delivery item to develop or manufacture biological, chemical or nuclear weapons, for the illegal production of drugs, in violation of an embargo, a legal registration or reporting obligations and/or shall not sell or deliver the product to third parties, or utilize the product itself without the required approvals as specified by the prevailing statutory regulations.

The customer shall undertake to reimburse us for all losses and damages and to indemnify us against all claims resulting from a violation of the afore-mentioned obligations by him.

The customer shall bear the risk of not being granted legal approvals for the import, export, transportation, storage, use and resale of the delivery item. If, at the time of the delivery/performance, an obligation exists to obtain legal or official approval for the export of the delivery item, and if the approval applied for by the customer is not granted, we shall be without rights to withdraw from the contract. Costs that we have already incurred are to be reimbursed by the customer. Deposits made by the customer are to be refunded if they exceed the customer's obligations. Goods that have already been produced at the customer's request before approval is granted, are to be remunerated and accepted by the customer at the prices agreed upon. We are responsible for the product identification obligations for goods we have produced. When processing the customer's products, the product identification obligation is borne by the customer, unless our processing creates a product that significantly differs from the unprocessed state.

14. Place of jurisdiction

If the customer is a merchant in the eyes of the law, the exclusive place of jurisdiction shall be the registered office of our company. If we file a lawsuit, the general place of jurisdiction of the customer shall also apply.

15. Applicable law

All legal relationships between the customer and us are governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

16. Trade provisions

If trade provisions are agreed upon in accordance with the International Commercial Terms (INCOTERMS), INCOTERMS 2010 shall be valid for their application and interpretation.

17. Severability clause

If individual provisions of these Terms should become legally unenforceable, be it fully or in part, the validity of the remaining provisions shall not be affected by this.