

General Terms and Conditions

General Terms and Conditions of Business (Sale) (GTC)
of KMD Natursteine GmbH & Co. KG, Südstraße 15, 99867 Gotha

1. Applicability

These General Terms and Conditions of Business supplement the content of all contracts concluded by us relating to the production and delivery of natural stone products or subproducts and other products or services, even if in ongoing business relationships there is no later explicit reference to them. This applies to both commercial customers and consumers (Article 13 of the German Civil Code). The business terms of the customer will not apply to us, even if the customer has indicated that its general terms and conditions of business are exclusive and has excluded any inclusion by reference of our GTC.

Any agreements to the contrary shall require written confirmation and shall be binding for the respective individual contract without being applicable to other contracts.

2. The legal nature of our supply contracts

If the transaction is a transaction between traders in the meaning of the German Commercial Code, besides the law on work and delivery contracts pursuant to the German Civil Code (the "BGB") the contractual security right under Article 648a of the German Civil Code shall apply without limitation, including where, according to the legal nature of the transaction, a purchase contract is to be concluded. In addition, it is agreed that Articles 377, 378 and 381.2 of the German Commercial Code will apply, with the additional requirements stipulated in section 7 of these GTC. The customer's right of termination under Article 649 of the German Civil Code is excluded. Provisions to the contrary must be agreed in writing.

For consumer transactions, the German Civil Code shall apply with the following limitations, to the extent that they can be agreed in accordance with Article 305 et seq. of the German Civil Code.

3. Mutual offers and consumer notice

Our company has to reconcile the different needs of its suppliers and customers. The following therefore applies: offers of customers are binding with respect to us. Our offers to customers are non-binding and subject to confirmation. Concluded contracts and other agreements will only be binding once they have been confirmed by us in writing. Any amendments and additional agreements will only be effective if they have been confirmed by us in writing.

Consumer notice

Where a contract is initiated by the customer over the Internet or by e-mail, etc. (Article 13 of the German Civil Code) the following will apply: orders submitted by customers via electronic media such as the Internet, e-mail, etc. will be deemed to be offers submitted to KMD. A contract will only come into being upon written confirmation or delivery by KMD, with the full text of these General Terms and Conditions of Business attached.

If a contract on the supply of goods with the use of telecommunications devices in the meaning of Article 312b par. 2 of the German Civil Code comes into being and the customer is therefore entitled to a right of revocation or return under Articles 355 and 356 of the German Civil Code, it will be notified that the delivered goods can be returned within two weeks from the receipt of the goods and this notice by the customer without giving reasons. This does not apply to goods which were manufactured according to the customer's specifications or tailored to its personal needs. With regard to goods which cannot be shipped in a package, their return can be declared by way of a written request (a letter or e-mail) for collection sent to either info@KMD-Natursteine.de or KMD Natursteine GmbH & Co KG, by letter of fax on 03621/737641.

For the time limit to be deemed to have been met, it is sufficient for the goods or the collection request to be sent in good time. The costs of sending goods back will be borne by KMD, unless the value of goods delivered in accordance with the contract is less than € 40.

In the event of an effective revocation or return notice, the performances received by both parties and any benefits derived (benefits from use) must be returned. If the condition of the goods has deteriorated, compensation can be demanded. The obligation to provide compensation can be avoided if the goods are not used and nothing is done which could affect their value.

- End of revocation notice for customers in the meaning of Article 13 of the German Civil Code -

4. Security

The type of security in the meaning of Articles 232 et seq. and 648a of the German Civil Code can be determined by us. Security can also be provided by making payments into a notary or lawyer trust account with a notary or lawyer of our choice, with the condition of trust that payment will be made from the security to the person amicably agreed by the parties or specified in a legally binding court order. Judgments by default in this respect against which an appeal has been lodged shall have no legal consequence for the trustee until a legally binding decision has been made regarding the appeal. In such a situation, the trustee can also represent our interests.

5. Shipping, transfer of risk and delivery times

Shipping will always be carried out at the customer's expense and it will bear the risk for the inventory of goods. The risk will be transferred to the customer not later than upon the handover of the goods to the carrier/shipowner or when the goods are dispatched. The goods will only be insured if the customer makes a request to that effect in writing and at the customer's expense.

The above also applies if the goods are sent directly to the customer by our suppliers. The transfer of risk also applies to the risk resulting from poor packaging or loading. If delivery to the building site is agreed, the place of unloading will be deemed

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to be the place which can still be reached by a normal articulated lorry. Information on delivery times is only estimated and is valid subject to timely, complete and correct delivery by our own suppliers. Anything contrary to the above will only apply if delivery time limits have been explicitly agreed between the parties or confirmed by us. If our supplier fulfils its contract with us incorrectly or late, we cannot be held liable for compensation for damage incurred by the customer, for example additional costs for extra construction time or taking over/payment of compensation for contractual penalties etc. We will not on any account be held liable for delays (even if culpable) on transport routes outside our place of business, including if delivery times have been agreed with binding effect.

The provisions of section 5 above will not apply in the event of willful misconduct or gross negligence.

6. Supply quality, samples, post-contractual provision of samples

We supply natural products which are extracted from quarries, which means they are subject to variations due to the diversity of the stone in the extraction region of each quarry. We therefore ensure that a general appraisal certificate is regularly issued for our stone, which specifies its technical properties. Please note that such general appraisal certificates only represent a snapshot appraisal on the basis of the test specimen used. It is agreed that if stone which has been or is delivered has other values, it does not constitute a deviation from the contract, unless specific values have been agreed and cumulatively recorded in our order confirmation.

Otherwise the following shall apply: technical diversity and surface variations relating to the grain, variations in color and structure such as blemishes, veins, discoloration and loose veins, fissures and open and porous sections are a product of nature and are therefore deemed by the parties to be intrinsic properties of our products. These properties do not constitute a defect. They will only be deemed to be a defect in the material or product if the tolerances specified in national production standards or international production standards applicable in the sphere of our operations are not maintained.

The following is therefore agreed: in principle, samples for technical properties and appearance only serve the purpose of providing a first impression. Samples do not constitute a binding specimen. Samples only constitute binding specimens if they are established as such before pricing and the conclusion of the contract and if with regard to the surface appearance a reference object has been established for the purpose of comparison.

If sampling is requested retroactively with regard to technical properties and/or appearance, we will have the right to determine the price and terminate the contract if the price is not accepted. Until such time we must be paid for any expenses incurred. We are also entitled to claims under Article 649 of the German Civil Code in such a situation.

If models are selected after the conclusion of the contract, we will not be liable if stone material is not available in sufficient quantities at the quality level of the sample. In the event of a dispute, the customer must demonstrate that a sufficient quantity is available.

The principal cannot claim that natural defects in the stone which have been rectified by professional or standard-compliant means are a fault or defect. Natural defects will be deemed to be intrinsic properties of our products, provided that functionality according to the DIN and DIN-EN standards or other guidelines applicable to natural stone craft is not affected.

7. Acceptance, complaint procedure and warranty

The principal is obliged to examine the goods immediately after it receives them for identifiable defects and to ensure the delivery is complete, and to immediately give written notification of any objections regarding their correctness, quality and quantity, by fax or e-mail. Both of these acts must occur within two business days after the receipt of the products. Saturday is deemed to be a business day. This does not apply to hidden defects with regard to which complaints must be submitted within the statutory time limit provided for in Articles 377 et seq. of the German Commercial Code.

If the products are stacked or packed and the principal is unable, due to operating procedure (for example, the need for the packaging to be intact in further transportation), to inspect the products within two days and, if necessary, state objections in writing, it will be able to demand (in writing) an extension of the inspection and objection period by a further week (to a total of nine days), giving reasons. Such a demand must be submitted in writing, by fax or e-mail, within the first two days after delivery. If the notice is submitted on time, the time limit will be automatically extended by one week.

If the notice is not submitted or is delayed, the inspection and objection period will remain at two days.

The physical receipt or appropriation by the principal of the products delivered by us constitutes acceptance and will cause the above-mentioned time limits to come into force. If the products are delivered by a carrier or haulage company, their shipping transfer note and delivery note will mark the moment of acceptance and trigger the time limit for notifying objections.

The transfer of risk to the customer in the event of ex works delivery through third parties is not affected by the above provisions relating to acceptance and the notification of objections.

Installing or processing products, whether or not they have been the subject of a complaint regarding a defect, will constitute acceptance of the goods without reservations and will cause the warranty to be forfeit except for hidden defects.

As a rule, we will respond to late objections and objections despite the products being installed either by carrying out an on-site visit or by making an improvement offer. Such acts

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will never constitute acknowledgement of legal obligations under warranty and will serve the sole purpose of ascertaining whether an accommodation is appropriate on the basis of goodwill.

If the customer refuses to accept the products due to purported defects which we do not recognize, we can have a certificate issued confirming that the products are free from defects by an approved expert for natural hewn stone listed by the German Natural Stone Association (DNL) in Würzburg.

Our warranty obligation is limited, at our discretion, to supplementary performance, i.e. delivering a replacement, cancellation of the contract or a price reduction. The customer's statutory right of rescission is not affected.

If the customer sets time limits for the supplementary performance with regard to imported goods, they will only be deemed to be effective if they take into account the duration of production and, in the case of imported raw materials, land or (where applicable) sea transportation plus one week for unforeseeable events in transit. We will be obliged to provide the customer with information on the duration of transportation and production before it sets a time limit, if it makes a request to that effect.

Compensation of any kind (under warranty and/or relating to improper performance or rescission), including for consequential damage such as additional costs for removal, re-laying, re-fitting, taking over/compensation for contractual penalties etc., as well as material consequential damage in the broader and narrower sense, pursuant to Articles 636 or 437 in conjunction with Articles 280, 281, 283 and 311 of the German Civil Code, is excluded. This does not apply in the event of damage caused due to gross negligence or willful misconduct.

8. Prices, payment terms and goods credit

Our prices should be understood as prices from the supplier's premises plus transportation and statutory VAT. The supplier's premises may be located a long way from our company's business location. Our invoices will be immediately due and payable.

As the contractor, we will have the right, according to the scope of the order and the duration of the processing, to demand proportional part payments and/or issue partial invoices.

Following the conclusion of the contract, we will also have the right as the contractor to decide at any time, in the event of successive supply contracts or multiple orders, to set an amount of goods credit above which we are entitled to withhold our performance. This also applies if the amount of goods credit has been exhausted but the due date of payments according to the agreed payment targets has not yet been reached. We can only exercise the right to withhold our performance which arises in this manner if it is provided for in the contract or if we announce the amount of goods credit post-contractually with a notice period of one week.

In the event of a delay in making payment, we will have the right to suspend the further production and delivery of the products until payment has been made in full for the respective partial invoice. To effectively exercise this right to withhold our performance, besides the partial invoice being due a declaration to that effect made by us will be sufficient. We will not be required to set a time limit.

Pursuant to Article 648 of the German Civil Code, we will have the right to demand that appropriate security for outstanding deliveries be provided within an appropriate time limit, bearing the related costs, and to refuse to render the performance if the security is not provided within the time limit we have set. Article 648 of the German Civil Code applies in its full scope. Instead of guarantees, security such as provided for in Article 232 et seq. of the German Civil Code can be provided.

If it transpires that invoices relating to this or different orders are not paid or are not paid punctually or if the amount of goods credit is almost or completely exhausted or has been exceeded, as an alternative to demanding security we can demand prepayments for the production of further products or payment in money on delivery. Furthermore, further deliveries can be made conditional on all claims which have thus far arisen and are due in connection with the business relationship being immediately settled.

Withholding payments or setting off any reciprocal claims of the principal which are disputed by us or have not been established by a legally binding court judgment is not permitted. Should the customer maintain that it has a counterclaim in the meaning of the preceding sentence, which it wishes to set off or exercise the right to withhold, and we do not accept the counterclaim, the customer can then make the payment into a lawyer or notary trust account, on the condition of trust, for an invoice issued by us, until the dispute has been settled.

9. Retention of ownership and downstream and extended retention of ownership

The supplied goods will remain our property until all receivables have been completely settled. In the case of a running account, the retained ownership will be deemed to be security for our claim to the balance.

The retention of ownership will also extend, as far as possible, to outcomes which result from the processing, combination or connection of our products, to the full value thereof, in which case we shall be considered to be the manufacturer. In the event of processing, combination or connection with goods of third parties with ownership rights, we will acquire joint ownership in the proportion of the invoice values of the processed goods.

Exercising retention of ownership will not constitute rescission of the contract. In the event of a delay in making payment, we will have the right to collect our goods from the building site at any time. If partial deliveries have been paid for, the principal will bear the burden of proving that the retrieved

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goods have already been paid for and the ownership title has transferred to it.

If the principal sells goods obtained from us to third parties under retention of ownership, the rights of the principal stemming from the claim of retention of ownership will be deemed to be assigned to us, as of now, particularly the claim for the surrender of the delivered goods. The principal hereby authorizes KMD to claim retention of ownership on its behalf with the full scope of all rights. In particular, KMD can set time limits for payment for the third party and declare the rescission of the contract on behalf of the principal with respect to the third party. KMD is deemed to be exempted from the restrictions under Article 181 of the German Civil Code.

Furthermore, all receivables of the principal from its principals stemming from the processing of our goods are deemed to be assigned to us in the amount of the contract volume which has been agreed between us and the customer or which can be expected according to the offer or specification (extended retention of ownership) plus 10%. The effect of the assignment will be reduced automatically by the amount of a paid invoice or in the amount of any security provided under Article 648a of the German Civil Code, which despite the extended retention of ownership can be demanded and will in any event take precedence over the extended retention of ownership.

If the principal has not provided any other security or has provided insufficient security, we will be entitled to demand information as to who the main principal is. This is a key obligation of the principal and if it is not fulfilled we will have the right to withhold our performance.

We will have the right to notify the main principal of the assignment. We are authorized to demand information from the main principal as to whether and to what extent receivables still exist or to what extent pleadings and objections exist against the receivables. If we establish that there is a shortfall of security for our contract volume taking into account other security, we will have the right to immediately cease deliveries and production and to make their continuation conditional on other appropriate security being provided.

The principal cannot pledge the object of a delivery or assign it as security before payment has been made in full. In the event of distraint or seizure or other interventions by third parties, it must immediately notify the contractor to that effect.

10. Flat compensation and the payment obligation for goods produced in advance

If, after the effective issuing of an order, for reasons which do not lie in the contractor's sphere of rights the principal terminates the contract or otherwise ends it without any action on the part of our company, we will have the right to demand flat compensation in the amount of 20% of the gross order amount or unpaid balance. If there is any doubt regarding that amount, the amount of compensation will be calculated on the basis of the order volume specified in the offer, the specification or

similar. This will not affect our right to demand any higher amount of compensation for any damage which may have arisen. The contractor will have to substantiate the amount which exceeds the flat amount. The principal will be responsible for presenting counter-evidence that the damage is less than the agreed flat amount.

All partial performances produced in advance must be accepted against payment in accordance with the agreement. If the principal fails to accept the goods within the set time limit, a lawsuit can be filed for payment without a motion having to be filed with a court for payment against handover of the goods. In the event of litigation, the principal will be responsible for collecting the goods after payment has been made.

If the goods deteriorate in the course of judicial proceedings or from the end of such proceedings to their collection, the principal will have no claim for the money it has already paid to be returned. At the principal's request, the contractor will be obliged to carry out re-manufacturing or additional manufacturing work against payment. This will be considered to be a separate order on the terms and conditions set out herein.

11. Place of performance and place of jurisdiction

The exclusive place of performance for both contractual partners is the location of our registered office. Among traders in the meaning of the German Commercial Code, Erfurt will be deemed to be the agreed place of jurisdiction. We can also make legal action dependent on the place of performance or on the place where the goods supplied by us were processed, if we consider it useful for the purpose of making the provision of evidence or the course of the proceedings easier.

12. Amendments, ineffectiveness clause, miscellaneous

Any amendments to these General Terms and Conditions of Business must be made in writing. If any individual parts hereof become ineffective by operation of law or due to an individual contract, the effectiveness of the other provisions hereof will not be affected.

If a provision is ineffective, the other provisions of these General Terms and Conditions of Business will not be ineffective as a whole. The ineffective clause will be replaced by a statutory provision or the provision which would otherwise reasonably have been selected by the Parties.