

Triflex – Liquid applied waterproofing

General Terms and Conditions of Sale, Delivery and Payment

§ 1 Scope of application

1. Our General Terms and Conditions of Sale, Delivery and Payment below (hereinafter "Terms and Conditions") apply solely to business transactions with companies, legal entities under public law and special funds under public law. They apply for the entire term of the business relationship, i.e. also to future contracts, even if a reference is no longer expressly made.
2. Our Terms and Conditions shall apply exclusively. Any differing terms and conditions of the buyer shall only apply if we have confirmed them in writing. Our Terms and Conditions shall be solely applicable even if we unconditionally deliver to the buyer in the knowledge that the terms and conditions of the buyer conflict with or differ from our Terms and Conditions.
3. References to statutory provisions are only made for clarifying purposes. Statutory provisions shall therefore apply even without such clarifications if these Terms and Conditions are not deviating or excluding such statutory provisions.

§ 2 Offers

1. As far as price, quantity, delivery date and availability are concerned, our offers are always subject to change. For orders based on area or space measure we calculate the material requirements on a nonbinding basis without assuming any liability. We accept no responsibility for underordering or overordering. Therefore, any additional orders of the buyer will be billed to the buyer separately.
2. Our acceptance of an order containing the comment "as ever" shall only mean the same characteristics of a product and in no case the same price as before.

§ 3 Formal requirements / No assignment

1. All agreements reached between us and the buyer shall be set forth in writing.
2. All agreements, orders by telephone or arrangements, especially with our technical advisers and sales force, are only binding for us if we have confirmed them in writing.
3. Claims of the buyer arising from the agreements concluded with us are not assignable to third parties.

§ 4 Prices

1. Our prices are calculated according to the delivery terms FCA (Free Carrier - Incoterms 2020) Heinrich-Follmann-Strasse 1, 32423 Minden, Germany; in case other delivery terms are agreed upon, the prices will be recalculated accordingly. The prices are net prices and are in particular exclusive of packaging, which is invoiced separately. The prices quoted do not include value added tax, which will be charged additionally at the statutory rate.
2. We reserve the right to amend the prices for contracts with an agreed term of more than six weeks in accordance with the following provisions: should wages, cost of materials or other cost factors change up to completion of the delivery, we are entitled to adjust the price by a reasonable amount according to the changes in costs. The buyer shall only be entitled to rescind if the price increase considerably exceeds the increase in the general cost of living between the time the order was placed and the delivery. At the request of the buyer we shall verify the changes in costs. In the case of successive delivery agreements, the right of rescission of the buyer is limited to the part of the delivery that is affected by the price increase.

§ 5 Delivery

1. Unless otherwise agreed in the individual case, terms of delivery are FCA (Free Carrier – Incoterms 2020) Heinrich-Follmann-Strasse 1, 32423 Minden, Germany. If in individual cases it is agreed that we bear the freight costs, the buyer shall nevertheless bear the risk of accidental loss and accidental deterioration of the goods from the time the goods are handed over to the carrier. The buyer will be charged for any additional costs which are incurred due to lacking or incorrect delivery information from the buyer (e.g. unloading only possible with a lift truck).
2. Delivery times are always non-binding. We reserve the right to proper self-supply. Fixed delivery periods or delivery dates are to be agreed individually and in writing. Notwithstanding clause 11 and 12, our liability for damages caused by delay is limited to a maximum of 5% of the agreed purchase price per individual order. In the event of a delay in delivery, the buyer shall only be entitled to rescind from the contract if the buyer has set a reasonable additional period for performance. Partial default only entitles the buyer to rescind from the contract with regard to the part of the order with which we are in default, unless partial performance of the contract is of no interest to the buyer.

§ 6 Force majeure

1. Cases of force majeure (e.g. riots, blockades, weather conditions, epidemics, pandemics, fire, earthquakes, war, shortages of raw materials) as well as events of any type that affect our performance obligations, and for which we are not responsible, give us the right to rescind from the contract in whole or in part without the buyer having any claim for compensation against us.
2. Cases of force majeure acc. to the foregoing § 6 sec. 1. occurring either at our premises or those of our suppliers shall only entitle the buyer to terminate or rescind from the contract in the event that the buyer can no longer reasonably be expected to wait any longer; in all other cases, the agreed delivery deadline or date shall be postponed by the duration of the delay caused by the event of force majeure. Termination or rescission is however possible at the earliest four weeks after the occurrence of the case of force majeure. Liability is excluded in these cases.

§ 7 Retention of title

1. We reserve title to the delivered goods (hereinafter "reserved goods") until all our claims towards the buyer arising from the business relationship, including any claims arising in the future, even from contracts concluded simultaneously or at a later date, are settled. This also applies if individual or all the claims of the buyer are included in a current invoice and the balance has been drawn and recognised.
2. In the event that the buyer breaches the contract, especially in cases of late payment, we are entitled to take back the reserved goods; the buyer is obliged to surrender the goods. The return of the reserved goods does not constitute a rescission from the contract unless we have expressed the right to rescind in writing. In the event of seizure or any other third-party interventions, the buyer shall inform us in writing immediately, so that we can file a suit in accordance with § 771 of the German Code of Civil Procedure (ZPO) or take other suitable measures. If the third party is not able to reimburse us for the in-court or out-of-court costs of legal proceedings pursuant to § 771 ZPO, the buyer shall be liable to pay us the loss incurred.

3. The buyer is entitled to further process and resell the goods in the course of ordinary business as long as the buyer is not in default regarding the fulfilment of buyer's obligations towards us and provided he does not suspend payments. Individually the following applies:

- a. Processing or transformation of the reserved goods shall take place for us within the meaning of § 950 of the German Civil Code (BGB) without any obligation on our part. Through processing or transformation of the reserved goods the buyer shall not acquire ownership pursuant to § 950 BGB of the new item. If the reserved goods are processed, mixed, blended, or combined with other items, we shall acquire joint title to the new item with a share that corresponds to the ratio of the invoice value of its reserved goods to the total value. The provisions applicable to the reserved goods shall equally apply to any co-owner's shares created under the foregoing provisions.
 - b. The buyer shall herewith assign the claims arising from the resale or any other transactions, such as contracts for services, to us with all subsidiary rights on a pro rata basis in so far as the reserved goods are processed, mixed or blended and we have obtained joint title thereto in the amount of its own invoice value or in case the reserved goods have been firmly installed, we are entitled from this assignment to a fraction of the respective claim arising from the resale that corresponds to the ratio of the invoice value for the reserved goods to the invoice value of the item. If the reserved goods are sold by the buyer together with other goods which we have not supplied, the buyer shall herewith assign to us a share of the claim arising from the resale in the amount of the invoice value of the reserved goods. If the buyer has sold this claim within the scope of genuine factoring, it shall herewith assign to us the claim against the factor that replaces such a claim. If the claim arising from the resale by the buyer is placed in a current account relationship with its customer, the buyer shall herewith assign to us its claims arising from the current account relationship in the amount of the invoice value of the reserved goods.
 - c. We hereby accept the above assignments.
 - d. The buyer is entitled to collect the claims assigned to us up until revocation by us. The authorisation to collect shall expire upon revocation, which shall be effected if the buyer defaults on payment or suspends payment. In this case, we are authorised by the buyer to inform the customer of the assignment and to collect the claim ourselves. The buyer is obliged to give us on request an exact list of the claims (partly) assigned to us with the names and addresses of the customers, the amounts of the individual claims, the invoice date, etc. and to supply it with all the information and documents required to assert the assigned claims and to allow us to check this information.
 - e. Amounts which are received by the buyer from assigned claims shall be kept for us separately until they have been transferred to us.
 - f. The buyer shall not be entitled to pledge or use the reserved goods or the assigned claims as security. The buyer shall immediately inform us of any pledges, stating the particulars of the creditor.
4. We undertake to release our security that we hold in so far as the value of the security exceeds the total of our claim against the buyer by more than 10%.
 5. The buyer shall hold the reserved goods in safe custody for us free of charge. The buyer shall insure them against usual risks such as fire, theft and water to the customary extent. The buyer shall hereby assign its compensation claims to which the buyer is entitled based on claims of the said type against insurance companies or any other obligated parties to us in the amount of its claims. We hereby accept the assignment.
 6. Processing of Triflex products may only be carried out by a processing company provenly trained by us in the correct processing methods and the buyer undertakes to only process Triflex products according to the existing standards as well as the currently applicable Triflex processing guidelines, system descriptions and product information.

§ 8 Payment terms

1. Unless a different term of payment has been expressly agreed in writing, the buyer is obliged to pay the full purchase price before the dispatch or, as the case may be, the transfer of the products to the buyer or the buyer's carrier ("pre-payment").
2. If we have expressly agreed on payment terms other than pre-payment in the individual case the buyer is in default of payment if the buyer does not pay on the agreed date. During the period of payment default, we are entitled to interests of 9% above the base interest rate on the money owed. We reserve the right to claim and prove higher damages in individual cases. In case of an express agreement between us and the terms other than pre-payment, the buyer shall be obliged to issue to us an appropriate payment security such as a letter of credit or a payment guarantee on first written demand from a German major bank securing the purchase price.
3. We do not accept cheques, bills and drafts without prior written agreement. In case we have duly agreed to a cheque, bill or draft buyer's payment obligation shall only be deemed to have been performed when we could fully compensate the amount owed by the buyer through that cheque, bill or draft. In case of acceptance of a cheque, bill or draft discounts will not be granted.
4. Setoffs against a purchase price claim by the buyer shall be excluded, unless the counterclaim has been legally determined or have been accepted by us.
5. Normally, a direct debit collection will be notified to the buyer together with the invoice (or via another communication channel agreed with the buyer) no later than one calendar day before the due date of the direct debit (advance information/"pre-notification"). In individual cases, the amount debited may differ from the amount notified in the invoice or in the pre-notification if the buyer has received credit notes or individual transactions have been cancelled in the period between the issuing of the invoice or the transmission of the pre-notification and the due date. The buyer shall be obliged to ensure that there are sufficient funds in the account designated in the SEPA mandate and to ensure that the amounts due can be collected by us. This obligation shall also apply if the buyer does not receive advance information or does not receive it in time in individual cases.

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§ 9 Change of the financial situation of the buyer

1. The following shall only apply if other payment targets than pre-payment have been accepted by us beforehand and it shall be without prejudice to any right of us to demand pre-payment or a payment security when concluding a sales contract with the buyer. Payment default, deterioration in the buyer's financial circumstances, suspension of payment, filing for bankruptcy proceedings, a change in or liquidation of the company entitle us to demand advance payment or the provision of security for all contracts yet to be executed, subject to our other rights. Invoiced amounts not yet due shall in this instance become immediately due for payment.

2. At our discretion in cases of payment default, deterioration in the buyer's financial circumstances, suspension of payment, filing for the institution of composition or bankruptcy proceedings, or a change in or liquidation of the company, we shall be entitled to rescind from all current contracts with the buyer in whole or in part without being liable towards the buyer for compensation claims in this respect.

§ 10 Take over default

If the buyer defaults in taking delivery of the goods, we are entitled to invoice the goods and to store them on account and at the risk of the buyer without prior granting a grace period. If storage is at our premises, we charge 1% of the invoiced amount for each commenced month. The buyer is entitled to prove lower amount of damage.

§ 11 Liability for defects and warranty (Gewährleistung)

1. The buyer shall be obliged to inspect the goods immediately after delivery and, if a defect becomes apparent, notify us without undue delay. If the buyer fails to notify us within due time, the goods shall be deemed to have been approved, unless the defect was not detectable during the inspection ("hidden defect"). If such a hidden defect is discovered later, notification must be made without undue delay after discovery, otherwise the goods shall also be deemed to have been approved referred to this defect. For the preservation of the rights of the buyer the timely dispatch of the defect notification is sufficient. In addition, the other provisions § 377 of the German Commercial Code (HGB) shall apply.

2. For the avoidance of doubt, we accept no responsibility for defects which do not originate from our sphere, especially if these are caused by natural wear and tear, incorrect or negligent handling, improper storage or unsuitable or improper use or failure to follow the instructions for processing and use. Standard deviations in quality, dimensions and quantities shall not be a defect.

3. We are only liable for the suitability of our goods for specific purposes or for the attainment of a specific production result or for chemical resistance in further processing with other substances if we have expressly agreed to this in writing. In terms of the specification of the goods, only the product description in our system descriptions or the product information shall be deemed to have been agreed. Public statements claims or advertising do not constitute contractual quality or specification of the goods.

4. Where goods are defective and we are responsible for the defect, we are initially entitled at our discretion to either supply a replacement or to repair the goods ("subsequent performance"). Our choice must take into account the type of defect and the legitimate interests of the buyer.

5. If remedy of subsequent performance fails after a reasonable time period, the buyer may at his discretion demand a reduction of the purchase price or rescind from the contract. If the buyer chooses to rescind from the contract, he is not entitled to compensation as a result of the defect. If the buyer opts for compensation, the buyer keeps the goods if this can reasonably be expected of him. Compensation is limited to the difference between the purchase price and the value of the defective item unless we have maliciously caused the breach of contract. If only one part of the entire deliveries of goods is defective, the buyer may then only rescind from the contract as a whole if the buyer objectively has no interest in the remainder of the delivery or it would be unreasonable to expect him to adhere to the terms of the contract.

6. The buyer shall have no claims (neither contractual nor non-contractual) against us, especially but not limited to, if the buyer or a third-party repairs or modifies the goods contrary to our processing rules or if damage is caused through the use of unsuitable external materials.

7. The buyer's claims due to defects shall become statute-barred within one year, unless

- the product delivered is a good which has been used for a building and is usually destined to be integrated into a building (Bauwerk), in which case a limitation period of three years shall apply, or
- the claims are based on non-contractual compensation (delict or tort), in which case a limitation period of three years shall apply.

In cases listed in § 12 sec. 1 lit. a. to d. the statutory periods of limitation shall apply.

The applicable statutory provisions on the commencement of the periods of limitation shall apply. The aforementioned periods of limitation shall also apply to the exercise of the right to rescind from the contract or the right to reduce the purchase price.

§ 12 Other liability

1. We shall only be liable for damages according to the statutory provisions without limitation if

- the claims are due to a loss of life, personal injury or illness, or
- the claims are based on our wilful misconduct or gross negligence by us or our legal representatives or vicarious agents, or
- the claims are based on a legitimate claim acc. to the Product Liability Act, or
- we have accepted a respective procurement risk or have provided a respective guarantee.

2. In the case of culpable breach of essential contractual obligations (obligations whose fulfilment is essential to the proper performance of the contract and on whose fulfilment the buyer regularly relies and may rely) by us, our legal representatives or vicarious agents, unless there is a case of unlimited liability under the preceding Sec. 1 a. to d., we shall also be liable for damages, but limited to the typically arising and foreseeable damage.

3. The statutory provisions regarding the burden of proof shall remain unaffected.

4. Any compensation claims in excess of the above against us, our legal representatives or vicarious agents are excluded, whatever their legal grounds may be.

§ 13 Services and advice

Services which go beyond our obligations as a seller are subject to an express written agreement.

§ 14 Applicable law / Place of performance / Place of jurisdiction

1. All contracts concluded between the buyer and us are subject to the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Referral to a legal system other than that of the Federal Republic of Germany through the rules of private international law is excluded (exclusion of renvoi). The chosen law of the Federal Republic of Germany also applies to non-contractual obligations resulting from or in connection with the contractual relationship between the buyer and us.

2a. For buyers having its corporate seat in a member state of the EU/EEA it is agreed:

The competent courts at our registered office in Minden (Germany) shall have exclusive jurisdiction regarding all disputes (contractual or non-contractual) between the buyer and us resulting from this Terms and Conditions and any sales contract concluded thereunder. However, we shall be entitled to issue proceedings incl. interim actions against buyer at any other place of jurisdiction given by law. Mandatory statutory procedural provisions, in particular on exclusive jurisdiction, shall remain unaffected.

2b. For buyers having its corporate seat outside the EU/EEA it is agreed: All disputes arising out of or in connection with this Terms and Conditions and any sales contract concluded, including its validity, shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The arbitral tribunal shall be comprised of a sole arbitrator. The seat of arbitration is Minden (Germany); the language of the arbitration shall be English. Buyer undertakes to comply with the currently applicable data protection provisions. The buyer undertakes to take note of our data protection information in Annex 1 to these Terms and Conditions. The buyer is obliged to make the data protection information known to its employees immediately after receipt.

3. Should any individual provision of the contracts, including these Terms and Conditions, be or become invalid in whole or in part, the validity of the remainder of the provisions shall not be affected thereby.