

GENERAL TERMS AND CONDITIONS (GTC)

We work exclusively on the basis of our general terms and conditions printed below, which you can also view at www.ardex.at.

ARDEX guarantees quality. We guarantee the perfect quality of our products. However, we also point out that, according to general terms and conditions, our guarantee is subject to our products being used properly. Products are to be used and processed exclusively in accordance with our product documentation. This requires special knowledge and compliance with all factual and legal framework conditions. In no event can we assume any execution or any other risks.

General terms and conditions of ARDEX Baustoff GmbH
Hürmer Straße 40, A-3382 Loosdorf, Rev. 02/2022

1. Scope of validity

1.1. We work exclusively on the basis of these general terms and conditions. The terms and conditions are also available at www.ardex.at. Deviating conditions of contact, negotiation or contractual partners or other parties involved shall not apply. For better readability, all contact, negotiation and contractual partners as well as other parties involved are referred to below as customers. In the case of personal pronouns and abbreviations, the form chosen applies to both genders.

1.2. Any side arrangements, amendments and additions must be made in writing. This also applies to the written form requirement. E-mails are sufficient if they are confirmed by our authorised representative.

1.3. The terms and conditions shall apply to all deliveries and services that we carry out or provide, regardless of whether a contract is concluded or not. The terms and conditions shall also apply, for example, if we only present products or train, advise or support someone. The terms and conditions shall therefore apply to every presentation, training, advice and support which we provide to anyone and in whatever form, be it for free of charge or without any strings attached.

1.4. The GTC are in any case part of the contract. The customer confirms that all contractual provisions were negotiated in detail before the contract was concluded.

1.5. We are entitled to offer the customer conditions that deviate from the GTC in writing if we consider it necessary in individual cases.

2. Recommendations, information, estimates, quotations and offers

2.1. Our recommendations, information, estimates, quotations and offers are non-binding. They are based on information we receive from our customers. We reserve the right to make changes. The customer is responsible for the correctness of the information. We are entitled to request additional information at any time.

2.2. We are entitled to refuse orders. A contract shall only be concluded when the customer receives our order confirmation. Claims for compensation due to a contract that has not materialised are excluded.

2.3. We reserve the right to make subsequent changes, in particular in terms of quantities, dates and deadlines. The customer cannot derive any claims from this.

3. Prices and terms of payment

3.1. As a rule, our prices are based on our current price lists at any given time. Price lists may contain incorrect information and/or typographical errors. If a price list does not contain a price for a specific product or service, the price will need to be agreed upon in a separate arrangement. Only the prices that we offer the customer in each case are binding. If our price calculation is based on information provided by the customer, we reserve the right to change the price.

3.2. All prices are net prices in EUR and apply ex works. In addition, sales tax as well as all costs, duties, fees and contributions that are incurred directly in the execution of the delivery or service shall apply.

3.3. All invoices are due for payment within eight days of the invoice date. All payments are posted to the oldest claim, then to interest and then to the outstanding invoice amount. In any case, the customer bears bank and transfer fees themselves.

3.4. Payment is considered on time if it has been credited to the account specified by us within the due date.

3.5. If the payment term is exceeded through fault, we will charge default interest of 9.2% above the base rate annually and 4% otherwise. Furthermore, the customer has to reimburse all costs for the pursuit of our claims.

3.6. Performance deviations of any kind entitle us to set new prices. This applies both in the case of changes in services based on orders from the customer and in the event of any disruption when providing services. Prices shall only apply when the entire offer is ordered.

3.7. If the customer is even partially in default of acceptance or payment, we are entitled to cease deliveries and services in full, to assert lost deadlines and to make all outstanding claims due, to withdraw from the contract with a grace period of two weeks, to sell products at the customer's own expense and to assert claims for damages. This also applies if the customer's creditworthiness deteriorates.

3.8. We are entitled to request a guarantee from the customer for the outstanding fee up to the amount of one fifth of the agreed amount plus sales tax at any time and, in the case of contracts that are to be fulfilled within three months, up to two fifths of the agreed amount plus sales tax. The security must be provided in the form of an abstract bank guarantee. If the customer does not meet the request for security or only insufficiently or belated, we are entitled to cease deliveries and services in full, to assert lost deadlines and to make all outstanding claims due, to withdraw from the contract with a grace period of two weeks, to sell products at the customer's own expense and to assert claims for damages.

3.9. If we justifiably withdraw from the contract, the customer has to indemnify us and hold us harmless and cannot derive any claims from our withdrawal. Regardless of whether the customer is at fault or any damage, we are entitled to claim a replacement amount of 10% of the total invoice amount.

3.10. If the customer is based outside Austria, they shall be obliged to comply with the sales tax regulations of the European Union. This includes, in particular, the unsolicited disclosure of the sales tax identification number (UID). The customer is also obliged to provide all information we require about their company upon request.

4. Deliveries and services

4.1. We deliver promptly within Austria, but no later than eight days from receipt of the order at the e-mail address verkauf@ardex.at. We only deliver to other countries (EU member states and non-EU member states) according to ad-hoc agreements. The delivery period is met in any case if the delivery item has left our factory before the period expired, or if we have notified the customer by then that the item is ready for dispatch.

4.2. We deliver exclusively at the expense and risk of the customer. We reserve the right to use a dispatch method and route of our choice. We only take out insurance after a written order has been placed on behalf of and for the account of the customer. We are entitled to make partial deliveries at any time.

4.3. The risk passes to the customer as soon as the delivery item or the partial delivery has left our factory. If asked to provide support in loading or transport, the customer shall hold us completely harmless and provide full indemnification in this context.

4.4. If the dispatch is delayed for a reason for which we are not responsible, the customer shall bear the risk from the point in time at which we have notified them that the item is ready for dispatch.

4.5. If the dispatch is delayed for a reason for which the customer is responsible, they shall indemnify us and hold us harmless. As compensation for additional storage costs, the customer has to pay us at least 0.5% of the total invoice amount per month. Furthermore, we are entitled to cease deliveries and services in full, to assert lost deadlines and to make all outstanding claims due, to withdraw from the contract with a grace period of two weeks, to sell products at the customer's own expense and to assert claims for damages.

4.6. If we justifiably withdraw from the contract, the customer has to indemnify us and hold us harmless and cannot derive any claims from our withdrawal. Regardless of whether the customer is at fault or any damage, we are entitled to claim a replacement amount of 10% of the total invoice amount.

4.7. Our services include in particular the presentation of products as well as training, advice and support for our customers. The customer is obliged to inform us in a timely, complete and comprehensive manner about all circumstances concerning the provision of our services. In particular, they have to point out all obstacles that might arise in the course of providing our services. The customer is liable for all consequences that arise from the breach of these obligations. In any case, the customer bears the entire execution as well as all other risks themselves.

4.8. The information provided by the customer forms the basis for the provision of our services. Deviations and related costs of whatever kind are borne by the customer in full.

4.9. The customer has to ensure, at their own expense, that we can reach construction sites and work-places without restrictions. They must also take the technical precautions at their own expense to enable a smooth, unhindered and safe provision of our services. In general, the customer has to create all the prerequisites for our services at their own expense and on their own initiative by obtaining official approvals

and permits, organising preliminary work and acceptances or establishing agreements with third parties, among other things.

4.10. The customer is not entitled to issue instructions to our staff that deviate from the manner or scope of our services.

5. Retention of title

5.1. We retain title to the delivery item until all claims to which we are entitled against the customer for whatever legal reason have been paid in full.

5.2. The customer is only entitled to resell the delivery item after full payment of our claims. The customer agrees to notify us immediately by email of any lawsuit or enforcement concerning the delivery item. The customer bears all costs associated with the appropriate pursuit of our claims.

5.3. If the delivery item is resold before our claims have been paid in full, the customer shall transfer the purchase price to us.

5.4. If the customer is even partially in default of payment, we are entitled to cease any further deliveries and services in full, to assert lost deadlines and to make all outstanding claims due, to withdraw from the contract with a grace period of two weeks, to reclaim the products delivered, to sell them at the customer's own expense and to assert claims for damages.

5.5. If we justifiably withdraw from the contract, the customer has to indemnify us and hold us harmless and cannot derive any claims from our withdrawal. Regardless of whether the customer is at fault or any damage, we are entitled to claim a replacement amount of 10% of the total invoice amount.

6. Guarantee and liability

6.1. We guarantee only the flawless quality of our products, the accuracy of our technical product documents and every presentation, training measure, consulting service and support measure we provide, whereby this guarantee applies to the point in time at which products, documents or services are provided; we also guarantee that deliveries and services will be provided in accordance with the contract in question using state-of-the-art systems and technologies. We do not offer any other guarantees, not even for product properties that are usually expected, and we also offer no guarantees for subsequent updates or the specific suitability of a product. Recommendations, information and data, cost estimates, price quotes and offers are generally non-binding and do not constitute a guarantee or any other type of liability.

6.2. Our guarantee is subject to the proper use of our products. The products are to be used and processed exclusively in accordance with our product documents, with any warranty and liability being excluded otherwise.

6.3. The use and processing of our products requires special knowledge. In this respect, the customer is to be regarded as an expert who has to and can observe all factual and legal framework conditions. They are also absolutely responsible for any deficiency in the relevant knowledge and skills. The customer cannot exonerate themselves with the lack of the required properties. In any case, the customer bears the entire execution as well as all other risks themselves.

6.4. The customer is obliged to report any defects immediately and at the latest within 14 working days by email, stating the number and date of the invoice and the delivery note. Failure to notify us of defects or notifications that are submitted too late exclude our guarantee. The notification of defects must state the details of the defects and the accompanying circumstances under which they occurred. We are to be reimbursed for costs caused by unjustified or unconditional notifications of defects.

6.5. The guarantee period, including any statute of limitations on the assertion of claims in court, amounts to one year from acceptance of the respective partial or one-time delivery, or partial or one-time service. The guarantee period for products – in particular supplemental system products – that have a limited shelf/ storage life and are designed to be used within a short period of time amounts to six months. It shall not be assumed that defects which emerged during the guarantee period were already present upon acceptance.

6.6. In cases in which our guarantee applies, we can, at our discretion and within a reasonable period of time that shall amount to at least four weeks, either replace the defective item or its defective parts with a defect-free item or defect-free parts, or repair such items or parts. We shall also issue the customer a credit corresponding to the price reduction, or else cancel the contract and reverse the entire transaction. Replaced parts become our property. Any correction of defects carried out or commissioned by the customer shall nullify our guarantee and we shall not reimburse any costs associated with such corrections.

6.7. We are only liable for damages that we have caused intentionally or through gross negligence directly through our deliveries and services. In all other cases, we are not liable. This restriction does not apply to personal injury and product liability cases in private use.

6.8. In cases in which our guarantee applies, we rectify direct damages only; any costs or damages beyond those of a direct nature shall not be reimbursed. The amount of any type of liability shall be limited to the insurance cover available.

6.9. The customer is obligated to notify us immediately by email of any case of liability or applicability of our guarantee, provide us with all necessary documents and give us the opportunity to document, examine and defend ourselves against all claims. The customer shall only be entitled to recourse in cases in which the aforementioned conditions have been met. The contracting parties further agree that any recourse taken on the basis of our guarantee, a damage claim or other reason shall be subject to the provisions of this agreement, and in particular the limitations described in 6.5., 6.7. and 6.8.

6.10. In the event that unjustified claims are made against us because of the customer, or if we have to assert claims, the customer shall in all cases completely indemnify us and hold us harmless.

7. Force majeure

7.1. Force majeure includes unforeseeable and inevitable events that are beyond our control or that we cannot influence, such as strikes, industrial disputes, energy emergencies, crises such as pandemics and delays in the delivery of raw materials or components.

7.2. In the event of force majeure, we are not bound by any dates and deadlines. Deadlines are suspended until the effects cease to exist. We are entitled to set new dates and deadlines. The customer cannot derive any claims from this.

8. Industrial property rights and copyrights

8.1. Our products and all documents such as catalogues, brochures, plans and sketches as well as our brands, samples and all marks such as logos and our know-how are protected by law, in particular by industrial property rights and copyrights.

8.2. We grant the customer the licenses and work usage permits required for their activities. The licenses and work usage permits are limited in time, space and with regard to their actual use. The customer may only use the industrial property rights and works during the term of the contract, and exclusively for the given purpose, without editing, changing or expanding them or having them edited, changed or expanded.

9. Data protection and confidentiality

9.1. The customer agrees that we collect and process all data in connection with the deliveries and services while maintaining data protection. In addition, the customer agrees that we may pass on data to third parties if necessary for deliveries or services.

9.2. The customer is obliged to keep our business and company secrets. This particularly includes calculations and know-how. In addition, the customer must treat all information confidentially and only make it accessible to third parties if necessary in connection with our deliveries or services.

10. Place of performance, applicable law and disputes

10.1. The place of performance is Loosdorf.

10.2. Austrian law applies with the exceptions of the UN sales law and reference standards.

10.3. Disputes entitle us to stop deliveries and services. The customer cannot derive any claims from this.

11. Arbitration agreement

11.1. All disputes and claims arising from or in connection with this contract, including disputes concerning its validity, infringement, dissolution or nullity, must be asserted at the International Arbitration Institution of the Austrian Chamber of Commerce (VIAC) and shall be dealt with in accordance with the arbitration rules of the VIAC (Vienna Rules) by an arbitrator appointed in accordance with these rules.

11.2. The place of arbitration is Vienna.

11.3. The language of the proceedings is German.

12. Final provisions

12.1. This contract replaces all verbal and written agreements on the subject matter of the contract and contains the entire agreement between the contracting parties. All annexes are binding components of the contract.

12.2. The customer is not entitled to cancel our claims by offsetting them against claims of any kind.

12.3. The customer waives the right to contest the contract for errors or for any other reason.

12.4. The contract shall be transferred to each legal successor of the contractual partner. The contracting parties each agree to commit themselves accordingly.

12.5. The customer bears all contractually unregulated costs, taxes and fees that may arise in connection with the establishment and implementation of the contract.

12.6. The invalidity, inadmissibility or impracticability of individual provisions shall not result in the ineffectiveness of the entire contract. The contractual partners will replace such provisions with a provision that comes as close as possible to the original purpose.