



## TERMS AND CONDITIONS OF SALE

### 1 - SCOPE

**1.1** In accordance with Article L 441-6 of the French Commercial Code, our General Terms and Conditions of Sale form the sole basis of all commercial negotiations. They include these Terms and Conditions of Sale, which govern relations between CERMIX ("our Company") and its business customers ("the Customer"). A summary of the main provisions of our Terms and Conditions of Sale is printed on the back of each invoice. The Customer expressly acknowledges that it is familiar with our Terms and Conditions of Sale and with our After-Sales Service Procedure (mentioned in Article 9). These are also printed in our catalogue and are available on our website: [www.cermix.com](http://www.cermix.com).

**1.2** As a means of identifying our Company, we will provide the Customer, on request, with our registration certificate (*extrait K-bis*) issued within the last three months. This certificate is available free of charge once per calendar year but we will apply a fixed charge of €50 excluding VAT (€60 including VAT) for any additional request for our registration certificate.

**1.3** Our Terms and Conditions of Sale apply automatically to all sales entered into with our Company. By placing an order, the Customer agrees to comply fully and unreservedly with our Terms and Conditions of Sale.

**1.4** No failure by the Customer to enforce any provision of these terms and conditions at any given time will operate as a waiver of the right to do so subsequently.

### 2 - ORDERS / OFFERS

**2.1** By order is meant any written or electronic document issued by the Customer and containing the following information:

- product name and/or reference
- quantity
- price

**2.2** Our Company will not be liable for any penalty arising from errors or anomalies in the Customer's order, from information not sent or incomplete at the time of the order or from late placement of orders.

**2.3** We will refuse any requests relating to pre-packaging, special packaging, specific packaging requirements, changes to our labelling or inclusion of the Customer's information or references. Requests may be accepted in exceptional circumstances but we will apply an additional charge to any such requests.

**2.4** Our Company will only be bound by orders sent to us or by transactions handled by our sales agents after we have given our written confirmation. The same applies to our offers. Orders will only be accepted and confirmed if we can guarantee the physical availability of the relevant raw materials, suppliers and subcontractors. Any temporary or permanent unavailability of the latter will obstruct the formation of the contract.

An order may also be deemed to have been accepted if the products ordered are shipped.

**2.5** The quantity or quality of an order cannot be changed after our Company has confirmed the order unless a special agreement is signed by the parties. Any order amendment which is accepted while the order is being fulfilled will cause the delivery periods to be extended.

**2.6** Any special terms and conditions indicated at the time of placing an order will be binding on us for that order only.

**2.7** Information in our catalogues is given for illustrative purposes only and may change without notice. Product photos have no contractual value. The same applies to samples delivered by our Company and/or our sales agents, which cannot serve as reference in relation to the characteristics and quality of our products.

### 3 - PRODUCTS FOR DELIVERY

**3.1** Product dimensions, weights, colours and shades are subject to inevitable variations and therefore benefit from the usual tolerances. Product information is given for illustrative purposes only and we cannot give any formal guarantee as to the same.

Therefore, no complaints will be accepted in relation to products once they have been used.

**3.2** As regards jointing mortars and coatings, since colours depend on the conditions of application, we cannot guarantee that colours will match the samples provided. The samples merely serve as an illustration of the shades provided as reference. No complaints will be accepted for any differences in shade which may occur from one delivery to another. The Client is recommended to place its orders for the whole of its site.

#### **4 - PRODUCT DELIVERY TERMS**

**4.1** Delivery can take any of the following forms: direct handover of the product to the Customer; delivery to a consignor or carrier; or simple notice that the product is available for collection from our premises.

**4.2** In the latter case, the Customer must take delivery within eight days of receiving notice. Once that period has ended, our Company may, at its discretion, cancel the order but only after instructing the Customer to collect the products within 24 hours and only if the Customer has not done so. In this case, the Customer will automatically owe our Company a sum equivalent to 50% of the order amount. Our Company may, in all cases, apply custody and storage charges. The Customer will assume any risks attached to products that remain uncollected.

**4.3** We reserve the right to make complete or partial deliveries.

#### **5 - DELIVERY TIMES**

##### **5.1 Permanent Products**

Our delivery time in France (excluding French overseas territories and departments and Corsica) is 5 working days (not including public holidays) following our confirmation of the order. Our delivery times are stated for guidance only and remain indicative times until the date when our Company makes arrangements regarding delivery. The delivery hours indicated are subject to a two-hour tolerance. If the delivery agent or carrier has to wait for more than two hours, it reserves the right to depart without delivering the goods and without being penalised. In this case, the new delivery will take place at the Customer's expense.

For our supply purposes, our Company has an estimated stock of products, which is calculated on the basis of the volume of sales in the previous year. If there is a significant variation in the volume of orders, our Company cannot be held liable for having insufficient stock and no penalty of any kind whatsoever can be imposed on us.

##### **5.2 Promotional operations**

Where our Company and the Customer jointly decide on a promotional operation, the Customer must place a preliminary order in writing for the products concerned in the estimated quantity at least 10 weeks before the scheduled delivery date. Our Company must receive the final orders at least five weeks before the actual delivery date. A tolerance of  $\pm 10\%$  by volume is allowed between the preliminary order and the final order.

##### **5.3 Penalties**

Our delivery times are, in principle, stated for guidance only.

We will not be liable for any late delivery penalties and we may make complete or partial deliveries.

Even in the case of mandatory delivery times, no goods can be refused or returned on the grounds of late delivery and no penalties can be imposed for late or missing deliveries until our Company has had the opportunity to verify jointly the substance of the complaint and until we have given our prior written consent.

If it is specially agreed that penalties for late or missing deliveries may be applied in year N and our Company has duly consented to those penalties, the Customer will send a detailed statement about the circumstances giving rise to the invoices for penalties or debit notes by no later than the following dates: 30/04 for penalties for which the triggering event takes place in the 1st quarter; 30/07 for penalties for which the triggering event takes place in the 2nd quarter; 30/10 for penalties for which the triggering event takes place in the 3rd quarter; 31/01/N+1 for penalties for which the triggering event takes place in the 4th quarter.

The Customer must comply with these provisions as an essential condition governing the application and acceptance of any penalties. Penalties not raised by the dates indicated above will be rejected for being out of time.

**5.4** Deliveries will take place according to production capacity and in the order in which the product orders arrive. However, our Company may warn the buyer about any delay in the indicative lead times given as soon as we learn of any difficulty occurring.

**5.5** Delivery can only be made within the agreed delivery times, including those agreed as being mandatory delivery times, if the buyer has fulfilled its obligations towards our Company.

**5.6** If our Company receives a formal notice to deliver, sent by recorded delivery letter, but delivery is not made within a period of

two months, and excluding force majeure events, the buyer may, pursuant to Article 1224 of the French Civil Code, ask for the contract to be rescinded and for a refund of any instalments previously paid. However, the Customer cannot, under any circumstances, claim damages or penalties for late delivery or for rescission of the sale.

**5.7** In the event of force majeure or any event which makes it difficult for our Company to fulfil the order within the agreed time periods, the indicative delivery times will be extended until the event preventing the normal performance of the contract has ended. Our Company may cancel all contracts or orders in progress without owing any compensation if a force majeure event prevents the normal performance of the contract or the normal fulfilment of an order.

The following are considered to be force majeure events: any strike, lock-out, fire, epidemic, flood, bad weather, damage to equipment, riot, war, loss of power, interruption of energy supplies, shortage of raw materials, increase in raw materials, changes to rules and regulations either within our Company or among our suppliers or carriers, late delivery by our suppliers or subcontractors, even if only partial delays, and regardless of the reason for the same.

If a force majeure event continues for more than four weeks, the order may be cancelled upon simple notification given by our Company and no compensation will be payable to the Customer.

## **6 – PRICES**

**6.1** Our prices are stated ex works and according to the price list in force on the day of delivery unless special exemptions apply.

**6.2** Specific taxes or duties arising from current regulations are added to the prices stated in the current price list. All specific taxes or duties are excluded from the calculation of any discounts, refunds or year-end rebates and from the calculation of remuneration for any separate or specific services that our Company might owe.

**6.3** The product delivery date represents both the invoice issue date and the start point of the due date in the case of payment by instalments.

**6.4** An invoice will be issued for each delivery.

## **7 – SHIPMENTS**

**7.1** Our Company will decide on the shipping arrangements, which will be determined according to our constraints (transport, handling, safety) and, in particular, according to the type and format of pallets.

**7.2** Any specific request made by the Customer in relation to shipping arrangements will require our prior approval and we may charge extra fees to cover the additional services provided.

**7.3** Our shipments may be made using Euro pallets, which remain our property.

The Customer will return these pallets to our Company's agent, whose details will be provided to the Customer. The Customer must return the pallets in accordance with the instructions specified by the agent. We will charge the Customer for any pallets that are not returned on the basis of current prices.

## **8 – TRANSPORT**

**8.1** Our goods and their packaging are always carried at the Customer's risk, irrespective of the payment method and even where payment is made by bill of exchange, or where carriage is paid.

**8.2** The usual reservations provided for in Article L 133-3 of the French Commercial Code must be substantiated and communicated to the carrier as soon as the goods are received and must be confirmed by recorded delivery letter within 3 days, excluding public holidays.

## **9 - RECEIPT - COMPLAINTS - RETURN OF GOODS – WARRANTIES**

For goods that are found to be defective or non-conforming, our liability is limited either to replacement of the goods on a like-for-like or equivalent basis or to their invoiced value. No goods can be refused or returned on the grounds of non-conformity until our Company has had the opportunity to verify jointly the substance of the complaint, following the procedures and conditions described below, and until we have given our prior written consent. We accept no liability for any indirect damage caused.

### **9.1 Patent defects, breakages and non-conformity**

**9.1.1** The Customer must check conformity with the order at the time of delivery. Without prejudice to the measures to be taken

against the carrier, complaints about patent defects, breakages or non-conformity of the delivered products must be sent to us, by recorded delivery letter, within eight days (excluding public holidays) of the products being received or made available. Any complaints lodged after that period will be rejected. A copy of the transport note indicating the reservations expressed must be forwarded to our Company.

**9.1.2** Any complaint about missing items which is not recorded at the time of receipt and not mentioned in the reservations on the consignment note will be rejected.

**9.1.3** All complaints must be substantiated. The Customer must allow our Company to check that the alleged defects or non-conformities are correct and to remedy the same. The Customer will not undertake this action itself or arrange for a third party to do so.

**9.1.4** The Customer is not permitted to return disputed products without our Company's prior written consent.

**9.1.5** Supplies that our Company has acknowledged as being non-conforming must be returned within eight days, excluding public holidays. Products can only be returned if they are in perfect condition and in their original packaging. The Customer assumes the costs and risks of returning products.

If the complaint is justified, our warranty is limited either to the replacement of the disputed products or to the issue of a credit note. Our warranty expressly excludes any damages and any costs or compensation for transport, handling or installation.

## **9.2 Latent defects**

**9.2.1** Any complaint about latent defects must be lodged with our departments within eight days (excluding public holidays) of their discovery. Complaints must be sent by recorded delivery letter and accompanied by all supporting documents (packaging reference, production date, invoice, delivery note, photo, etc.). Any complaints lodged after that period will be rejected. Actions in respect of latent defects must be brought within one year.

Our Company warrants that it will repair or replace free of charge (on a like-for-like or equivalent basis or at the invoiced value) any product that presents a latent defect in its material or manufacture. Our warranty expressly excludes any damages and any costs or compensation for transport, handling or installation.

**9.2.2** Our warranty excludes any use of products that is abnormal or does not conform to the specifications indicated by our Company (such as in catalogues, product data sheets, instructions, etc.) or does not meet professional standards or does not comply with current laws and regulations. The same applies to faults and damage caused by natural wear and tear, by defective maintenance, by installation not carried out by us or by any other event unrelated to us.

## **9.3 Qualities specific to certain products**

The instructions contained in our price lists and specifications explain the directions for use of our products (substrate preparation, installation, finishing, etc.). We cannot be held liable under any circumstances for problems arising from the use of our products where these are used incorrectly through:

- failure to comply with the directions for use printed on our packaging and/or contained in our specifications.
- failure to meet professional standards (French building code, technical requirements specifications, etc.).
- use of impaired products (frost, moisture, expiry date printed on packaging has passed, etc.).
- use of products in conditions other than those specified (temperatures, humidity, etc.)

**9.4** The Customer is responsible for the presentation of products with a view to their resale to consumers. If our goods are not ready for retail sale, the Customer is also responsible for affixing labels and regulatory information. We cannot be held liable on this account or for the Customer's failure to fulfil its consumer obligations.

**9.5** If the Customer believes that the delivered products may cause harm or damage to consumers or if it has been warned by any person or authority about the existence of such a risk, it is obliged to notify us as follows:

Telephone (working hours): +33 (0)3 21 10 10 40

All telephone calls must be confirmed by email sent to the following address: [contact@cermix.com](mailto:contact@cermix.com).

These confirmations must clearly indicate the product references (batch no., date, etc.) ink-jet printed on the packaging or on a label and the reasons prompting the telephone call.

## **10 – PAYMENT**

**10.1** Any complaint about an invoice must be sent by fax or by email and confirmed by recorded delivery letter within eight days (excluding public holidays) of the invoice being received. Any complaints lodged after that period will be rejected.

**10.2** Invoices are payable immediately. However, Customers who place regular orders and whose creditworthiness has been verified by our Company may ask to pay by instalments.

**10.3** The fact that a Customer may have been granted a payment facility does not mean that we are obliged to maintain that facility.

**10.4** If a sale requires several deliveries, failure to make payment for any one of these deliveries, including non-acceptance of a draft, may automatically, at our discretion and without the need for formal demand or notification, bring about the immediate cancellation of the sale without prejudice to any other remedy.

**10.5** In the event of a payment incident and, more generally, in the event that the Customer's creditworthiness deteriorates, we may be justified in demanding guarantees, immediate payment or payment by sight draft, before we fulfil any orders.

**10.6** Offsetting: unless specially agreed in writing beforehand by our Company, the Customer will not be permitted to carry out any offsetting or deduction (particularly in relation to penalties or discounts) with respect to the sums owed to our Company. Any offsetting or deduction unilaterally decided by the Customer (for example, as a result of late delivery, cancellation, missing items, non-conformity) will constitute a payment default under Article 11 of these Terms and Conditions of Sale, with all consequences attached thereto. In any event, if our Company collects payment orders containing deductions or setoffs, relating in particular to invoices for penalties or for commercial cooperation, this will not under any circumstances be deemed to constitute approval or acceptance of the sums deducted or of the services supposedly carried out.

## **11 - PAYMENT DEFAULT**

**11.1** Unless a special extension is granted by our Company, any sum that is not paid on its due date or within eight days of the event of default will, without the need for prior notice, be automatically liable for late payment interest calculated on a pro rata basis at three times the legal interest rate, with effect from the due date. Late payment penalties are payable without the need for any reminder. The Customer is also automatically liable for a fixed recovery charge equal to 10% of the amounts remaining outstanding with a €40 minimum in the event of late payment. All legal expenses and debt recovery costs will be borne by the Customer.

**11.2** Any protest or return of a bill will be treated as a payment default as will any non-payment of any single instalment in the case of payments by instalments.

**11.3** If the Customer fails to perform its essential obligation to make timely payment, such failure will constitute a serious breach and we may, at our discretion, automatically suspend current orders and deliveries.

**11.4** Late payment of any single invoice or instalment will automatically cause all sums owed by the Customer to fall due, even if they have given rise to drafts.

**11.5** Furthermore, if the Customer fails to pay a sum owed or shows any sign that it is unable to pay its debts as they fall due, our Company may, at its discretion, as of right and without the need for prior notice, cancel the sale, through the fault of the Customer, of all products delivered under any contract and which have not yet been paid for, whether or not payment is due. Provided that they still exist in kind, these products must be returned immediately to our Company. Our Company may invoke this clause at any time as long as an outstanding sum remains payable, and even after firstly pursuing payment, or as long as the Client is still unable to pay its debts as they fall due.

## **12 – RETENTION OF TITLE**

**12.1** Our Company retains full title in the products delivered until full payment of the invoiced price has been made. Until that date, products will be regarded as having been placed in the custody of the Customer and the latter will assume the risk of any damage that they may sustain or cause for any reason whatsoever.

**12.2** Until full payment is made, products cannot be resold without our prior approval.

**12.3** Notwithstanding anything to the contrary in the contract, if the Customer fails to make any of its payment instalments, our Company may, without losing any other rights, choose either to demand, by simple recorded delivery letter, that the products be returned at the Customer's expense until it has fulfilled all of its commitments or to terminate the contract as of right.

**12.4** Payment is understood to mean the actual collection of the price. The remittance of drafts or any other instrument or document creating an obligation to pay does not constitute payment giving rise to a transfer of ownership.

## **13 – RETURN OF STOCKS**

Once transfer of ownership has taken place following full payment of the price, our Company will not accept any return of stocks

that remain unsold for any reason such as technical obsolescence or where the expiry date has passed.

#### **14 - QUALITY COMMITMENT – AUDIT**

**14.1** Our Company is certified according to the ISO 9001 standard, which sets out requirements for the implementation of a quality management system in terms of our customer satisfaction and product conformity, and their continual improvement. Our Company will provide the Customer with proof that we are ISO 9001 certified.

**14.2** We will not accept any audit of our Company carried out at the Customer's request. If our Company has, in exceptional circumstances, given its prior express consent in writing to an audit requested by a Customer, that audit must be conducted by a third party who is strictly independent from the Customer. The Customer will assume all costs and fees incurred in carrying out that audit. Even if we have given our prior consent, our Company may at any time refuse or limit access to any information of any kind whatsoever without having to give reasons for our refusal. A copy of the audit report must be handed over to our Company. Our Company will not accept the application of any penalties, financial charges or corrective actions resulting from our refusal to undergo an audit or from an audit ordered by the Customer.

#### **15 – DURATION – NOTICE**

**15.1** The purpose of these Terms and Conditions of Sale is to set out the conditions governing commercial relations between our Company and the Customer. They will continue to apply for as long as these commercial relations exist.

**15.2** The parties may end their commercial relationship by notifying the other of their intention by recorded delivery letter. The following notice periods must be observed:

- six months if the length of the commercial relationship is between more than one and five years,
- twelve months if the length of the commercial relationship is between more than five years and ten years,
- eighteen months if the length of the commercial relationship is more than ten years.

**15.3** Commercial relations can only be severed by means of a recorded delivery letter which expressly specifies the notice period indicated in Article 15.2. No other form (e.g. simple letter, email, fax or even notification of a tender procedure) can be used to mark the start of the notice period.

**15.4** If one of the parties is in serious breach of its contractual obligations, the other party may end the commercial relationship but only after serving a notice to perform and only if the defaulting party fails to do so within fifteen days.

#### **16 – PROPERTY**

**16.1** All studies, plans, sketches, models or prototypes created at the Customer's request will remain the exclusive property of our Company.

**16.2** All creative rights, in particular copyright, trade mark rights, patents and know-how, remain strictly reserved for our Company.

**16.3** The Customer is prohibited from misappropriating our know-how, from using our product formulations directly or indirectly through any intermediary and from entrusting the manufacture of those products to a third party.

**16.4** All use of photos of our products, our catalogues and our promotional documents is reserved exclusively for our Company's products. The Customer cannot make use of the same by associating them with products that are not those of our Company. If the relationship between our Company and the Customer ends, the latter must return them or certify that it has destroyed them.

#### **17– DISPUTES**

**17.1** The governing law is French law and the parties expressly agree not to apply the Vienna Convention on the International Sale of Goods.

**17.2** Even where a third party is joined to the proceedings or where there is more than one defendant, the LILLE METROPOLE Commercial Court will have exclusive jurisdiction to hear any disputes relating to the formation, validity, interpretation, performance or non-performance of these terms and conditions of sale and of the orders that arise herefrom. The LILLE METROPOLE Commercial Court has sole jurisdiction in the event of a dispute over the commercial relationship between the parties or over how this relationship will be severed.