

Triflex – Liquid applied waterproofing

General Terms and Conditions of Sale, Delivery and Payment

§ 1 Scope of application

1. Our Terms and Conditions below apply solely to business transactions with companies, juridic persons of public law and special property of public law. They apply for the entire term of the business relationship, i.e. also to future contracts, even if they are no longer expressly referred to.
2. Any differing terms and conditions of the buyer are only effective if we have confirmed them in writing. Our Terms and Conditions are 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.

§ 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 square or cubic measure we calculate the material requirements on a non-binding basis. We accept no responsibility for underordering or overordering. Any subsequent changes by arrangement or on the responsibility of the buyer will be billed to the buyer separately.
2. When placing an order, the comment "as ever" always only applies to the characteristics of a product and certainly not to the price.

§ 3 Formal requirements / Covenant against 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. Declarations for which power of agency exists by law or under the principles of agency by estoppel or ostensible authority are not affected.
3. Claims of the buyer arising from the agreements concluded with us are not assignable to third parties.

§ 4 Prices

1. Unless otherwise agreed, our prices within Europe are EXW (Ex Works – INCOTERMS 2010) and outside Europe FCA (Free Carrier – INCOTERMS 2010) excluding packaging, which is billed separately. The specified prices do not include any value added tax; this is billed separately at the statutory rate of VAT (currently 19 %).
2. We reserve the right to amend the prices in the case of contracts with an agreed term of more than six weeks. Should the wages, cost of materials or other cost factors change thereafter up to completion of delivery, we are entitled to adjust the price appropriately in accordance with the changes in cost. The buyer is only entitled to withdraw if the price increase does not just slightly exceed the increase in the general cost of living between ordering and delivery. We shall prove the changes in cost at the buyer's request. In the case of delivery by instalments, the buyer's right of withdrawal is limited to the instalment that is affected by the price increase.

§ 5 Delivery

1. Unless otherwise agreed, the transport risk is borne by the buyer regardless of who bears the carrying charges.
2. Special requests by the buyer in relation to the mode of dispatch or any insurance policies must be notified in writing and in good time and shall be taken into account where possible. The costs incurred thereby shall be borne by the buyer. Unless a special mode of dispatch has been agreed, the most expedient mode shall be chosen at our discretion.
3. The buyer will be billed 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).
4. Delivery times are always non-binding. If the contract is concluded in writing, the delivery date must also be confirmed in writing. Deliveries shall be subject to our own proper receipt of supplies. This means that the contractor is not liable because of delayed or omitted delivery if the supplier, who has of course been carefully selected, fails to deliver to the contractor at all or fails to deliver in a proper or timely manner. In this case, the contractor shall inform the client and in the event that delivery is no longer possible for these reasons immediately reimburse any price that may already have been paid for the non-rendered performance.
5. In the case of default on our part, the buyer is only entitled to withdraw from the contract if it has threatened us with withdrawal while setting a period of grace. Partial default only entitles the buyer to withdraw in respect of the part of the order on which we have defaulted unless the partial fulfilment of the contract is not of interest to the buyer.

§ 6 Force majeure / Operational disruptions

1. Cases of force majeure (e.g. riots, blockades, weather conditions) as well as events of any type that affect the pricing and operating conditions, and for which we are not responsible, give us the right to withdraw from the contract in whole or in part without the buyer having any claim to compensation against us.
2. Operational disruptions such as strikes, lockouts as well as any other cases of force majeure occurring either at Triflex's premises or those of its suppliers shall only entitle the buyer to withdraw 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 shall be postponed by the duration of the delay. Termination is however possible at the earliest four weeks after the occurrence of the operational disruption described above. Liability on the part of Triflex is excluded in these cases.

§ 7 Retention of title / Processing

1. Triflex shall reserve title to the goods until all the claims vis-à-vis 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 acts contrary to the contract, especially concerning late payment, Triflex is entitled to take back the delivery item; the buyer is obliged to surrender the goods. Should Triflex take back the delivery items, this does not constitute withdrawal from the contract unless Triflex has expressly made a written declaration to that effect. In the event of seizure or any other third-party interventions, the buyer shall inform us in writing immediately, so that Triflex 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 Triflex 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 dealings as long as it is not in default regarding the fulfilment of its obligations towards the contractor and provided it does not suspend payments. Individually the following applies:

a. Processing or transformation of the reserved goods shall take place for Triflex 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, Triflex 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 sale transactions, such as contracts for services, to Triflex with all subsidiary rights on a pro rata basis in so far as the goods are processed, mixed or blended and Triflex has obtained joint title thereto in the amount of its own invoice value or the goods have been firmly installed. If the reserved goods are processed, mixed or blended or firmly installed, Triflex is entitled from this assignment to a fraction of the respective claim arising from the resale that corresponds to the ratio of the invoice value of its own 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 a share of the claim arising from the resale in the amount of the invoice value of the vendor's reserved goods to Triflex. If the buyer has sold this claim within the scope of genuine factoring, it shall herewith assign the claim against the factor that replaces such a claim to Triflex. 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 its claims arising from the current account relationship to Triflex in the amount of the invoice value of the reserved goods.

c. Triflex hereby accepts the above assignments.

d. The buyer is entitled to collect the claims assigned to it up until revocation by Triflex. The collection authorisation shall expire upon revocation, which shall be effected if the buyer defaults on payment or suspends payment. In this case, Triflex is authorised by the buyer to inform the customer of the assignment and to collect the claim itself. The buyer is obliged to give Triflex on request an exact list of the claims owing to it 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 it 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. Pledging or use of the reserved goods or the assigned claims as security is inadmissible. The buyer shall immediately inform Triflex of any pledges, stating the particulars of the attaching creditor.

4. Triflex shall undertake to release the security that it holds at the buyer's request in so far as the value of the security due to Triflex exceeds the total claim against the buyer by more than 20 %.

5. The buyer shall hold the reserved goods in safe custody for us free of charge. It shall insure them against the usual risks such as fire, theft and water to the customary extent. The buyer shall hereby assign its compensation claims to which it is entitled based on claims of the said type against insurance companies or any other obligated parties to Triflex in the amount of its claims. Triflex hereby accepts the assignment.

6. Processing of Triflex products may only be carried out by a processing company provenly trained by Triflex in the correct processing methods and only according to the existing relevant standards as well as the currently applicable Triflex processing guidelines, system descriptions and production information.

§ 8 Due date and payment

1. Unless a different term of payment has been expressly agreed in writing, the purchase price is due for payment within 30 days from the invoice date without deduction.

2. After this time the buyer is in arrears. During the arrears period, we charge interest of 9 % above the base interest rate on the money owed. We reserve the right to prove and claim higher damages for delay.

3. Payment deferrals granted in individual cases do not rule out payment arrears pursuant to sentence 2. We grant a 2 % discount for payment within 10 days from the invoice date. We only accept cheques, bills and drafts by special agreement and on account of performance without allowance for discount.

4. Setoff against the purchase price claim is only admissible if the counterclaims have been finally established in law or have been recognised by us.

5. Triflex shall normally give prior notice of a direct debit collection with the invoice (or through another mode of communication agreed with the contracting party) no later than one calendar day before the direct debit falls due (advance information/pre-notification). The debited amount may differ in the individual case from the amount notified in the invoice or in the advance information if the contracting party received credit notes in the period between when the invoice was issued or the advance information was sent and the due date or if individual transactions were cancelled. The contracting party shall be obliged to ensure that there are sufficient funds on the account specified in the SEPA mandate and that the amounts due can be collected by Triflex. This obligation applies even if the contracting party does not receive the advance information in the individual case or does not receive it on time.

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§ 9 Payment default

1. Payment default, deterioration in the buyer's financial circumstances, suspension of payment, filing for the institution of composition or 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 we may in such cases withdraw from all current contracts with the buyer in whole or in part without the buyer being able to file compensation claims in this respect.

§ 10 Acceptance default

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

§ 11 Liability for defects and warranty

1. The buyer must notify defects immediately in writing after surrender of the goods. The buyer shall notify us in writing of any hidden defects which cannot be detected at the time of surrender, even upon careful inspection, immediately after they have been discovered.

2. We accept no responsibility for defects 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 do not constitute grounds for complaint.

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 given an assurance of this quality. In terms of the quality of goods, only the product description in our system descriptions or product information is deemed to have been agreed. Public statements, claims or advertising do not constitute contractual quality of the goods.

4. Where goods are defective and we are responsible for the defect, we are initially entitled to supply a replacement item or to repair the goods at our discretion. Our choice must take into account the type of defect and the legitimate interests of the buyer. If our goods have already been processed, this rules out repair in principle.

5. In the event of replacement by way of remedy, we are obliged to bear all the expenses necessary for the purpose of remedy, in particular transport, travelling, labour and material costs, provided they do not increase because the goods are brought to a place other than the buyer's commercial establishment, unless doing so conforms to the intended use.

6. If remedy fails after the time period agreed with the buyer, the buyer may at his discretion demand a reduction or withdraw from the contract. If the buyer chooses to withdraw 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 withdraw from the contract as a whole if he 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.

7. The warranty is void 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. The same applies to compensation claims under §§ 280 et seq. of the German Civil Code (BGB).

8. The buyer's rights and claims due to defects of quality shall become statute-barred within one year subject to compliance with § 377 of the German Commercial Code (HGB) unless

- a. the product delivered by us is an item integrated within a building in accordance with that product's habitual manner of use, constituting the cause for the defectiveness of that building, or
- b. the claims are for compensation of expense under § 479 BGB, or
- c. the defect is based on an intentional or malicious breach of duty by Triflex, its legal representatives or vicarious agents, or
- d. the claims are for compensation.

In the cases listed in a. to d. the legal periods of limitation shall apply.

The legal provisions on suspension, interruption of the running of the statute of limitations, and on the renewed beginning of the statute of limitations shall remain effective.

§ 12 Services and advice

Services which go beyond our obligations as a seller are subject to special agreement. Unless otherwise agreed, we accept no responsibility for services and in particular for the advice we give to the buyer regarding use of the goods. This does not apply in cases of intent or gross negligence.

§ 13 Other warranty and compensation claims

1. Triflex shall be liable for damages according to the legal provisions without limit if they
 - a. are based on loss of life, personal injury or illness and were caused by a wilful or negligent breach of duty on the part of Triflex or one of its legal representatives or vicarious agents, or
 - b. are based on a wilful or grossly negligent breach of duty on the part of us or our legal representatives or vicarious agents, or
 - c. are based on the Product Liability Law, or
 - d. Triflex has accepted a procurement risk or undertaken to provide a guarantee and is therefore liable.
2. If damage is only based on negligent, but not grossly negligent breach of a material contractual obligation (cardinal duty) by Triflex, its legal representatives or vicarious agents, without the simultaneous existence of a claim based on the above provisions a) to d), Triflex shall likewise be liable for compensation, however the amount shall be limited to the typically occurring and foreseeable damage. Material contractual obligations (cardinal duties) within the meaning of the above provisions are such duties whose due fulfilment the buyer relies on and may also rely on as they form the nature of the contract.

3. Furthermore, Triflex shall be liable if claims for compensation are covered by a third-party liability insurance policy.

4. The legal provisions regarding the burden of proof shall remain effective.

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

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

1. German law applies. The validity of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

2. The place of performance and place of jurisdiction for all disputes is our registered office in Minden provided that the buyer is a merchant and/or has no general place of jurisdiction in Germany. However, we are entitled to institute legal proceedings against the buyer at his place of residence or a general place of jurisdiction.

3. Should any individual provisions of the contract, including these General Terms and Conditions of Business, be or become invalid in whole or in part, the validity of the remainder of the provisions shall not be affected thereby. The wholly or partially invalid provision shall be replaced by a provision whose economic success comes as close as possible to the invalid provision. In addition, the law applies.