

# GENERAL TERMS AND CONDITIONS FOR DELIVERY AND PAYMENT

## FRANZ KALDEWEI GMBH & CO. KG

Franz Kaldewei GmbH & Co. KG is the manufacturer and Kaldewei is the brand exclusively distributed in North America by Kaldewei USA, Inc., which acts solely as the distribution and logistics partner for Franz Kaldewei GmbH & Co. KG in North America.

- 1. Introduction:** These general conditions of sale, delivery and payment apply exclusively to direct buying accounts of Kaldewei USA, Inc. Quotations, acceptances, order confirmations and sale of all goods are subject to these conditions. Contradictory conditions or regulations of the customer are not considered, even when advised. These conditions also provide the basis of all future transactions.
- 2. Orders and Quotations:** All quotations and potential delivery dates indicated by Kaldewei USA, Inc. are subject to change. Orders are considered accepted only if confirmed. The customer is solely responsible for the accuracy of the order and the verification of the confirmation. The scope of delivery is based exclusively on the written order confirmation.
- 3. Prices:** Orders, for which no fixed price is agreed, are calculated from the list prices valid on the day of order acceptance. Any state or federal taxes applying to the invoice shall be assumed and paid by the customer.
- 4. Goods Delivery:** Unless otherwise specified, all deliveries are made Ex Works from factory or F.O.B. distribution center at the cost of the customer (including any special costs associated with special routing, expedition, lift gates, etc.).
- 5. Delivery:** Unless Kaldewei USA, Inc. confirms a fixed delivery date in writing; all delivery dates are subject to change.
- 6. Transfer of risk:** The risk of damage or loss is transferred to the customer as soon as the goods are delivered to the designated location. However, in the event of freight damage or lost shipments, the customer must make all claims to Kaldewei USA, Inc. within five [5] working days from receipt of goods.
- 7. Claims:** All claims for shortages must be made to Kaldewei USA, Inc. within five (5) working days from receipt of the goods.
- 8. Notification of defects:** Complaints must be reported before the goods are used or installed. Precise details of the fault or quality issue must be indicated and the packing note must be returned. Unless Kaldewei USA, Inc. receives written notification of any defects within ten (10) working days from receipt of the goods, the quality of the goods is considered accepted.
- 9. Returns:** Under no circumstances will Kaldewei USA, Inc., accept the return of merchandise without express written authorization. Manufactured goods ordered in error or canceled are subject to cancellation and handling fees. For further information please refer to our return merchandise policy.
- 10. Force Majeure:** In the event of Acts of God, wars, insurrections and/or industrial disputes, unrest, official action, non-appearance of consignments, defaults by suppliers or any other unforeseen, unavoidable and serious events exempt Kaldewei USA, Inc. from their contractual obligations for the duration of the fault and in line with its effect. This applies also if these events occur at a point in time in which Kaldewei USA, Inc. is in default. Kaldewei USA, Inc. will take all reasonable steps to provide the necessary information and in all good faith modify their obligations to the new state of affairs.

- 11. Terms of Payment:** As stipulated on the invoice. Unless otherwise stipulated all invoices are due in full within 30-days from the date of invoice. If all or part of the invoice amount is not paid to Kaldewei USA, Inc. on or before the due date, the customer will be considered in arrears by the outstanding amount from the following day onwards. Overdue payments incur a finance charge of 1.5% per month (annual percentage rate of 18%) applied to the previous balance deducting current payments. Unrecognized counterclaims can be neither offset nor used to assert a right of retention.
- 12. Payment arrears and deterioration in customer's financial circumstances:** If the customer is in payment arrears with previously delivered consignments, Kaldewei USA, Inc. may hold delivery of unprocessed orders pending settlement of the due invoices and/or pre-payment of the purchase price or cancel the contract. The same right exists, if after a contract is concluded, a significant deterioration in the customer's financial circumstances is revealed. The agreed payment dates must still be respected, even if warranty claims have been asserted. Should the customer fall into arrears or if judgement or insolvency proceedings are opened against them either judicially or extra-judicially, any granted discounts or shipping refunds will be annulled. The same legal consequences occur on the 31st day after invoices become due.
- 13. Retention of title:** Until all payments arising from the business relation with the customer are received, title to the delivered goods remains with Kaldewei USA, Inc. Any breach of the contractual conditions by the customer, specifically payment arrangements that entitle Kaldewei USA, Inc. to repossess the delivered object, the customer being obliged to make the return arrangements. Repossession of the delivered object does not constitute cancellation of the contract unless explicitly declared in writing. Distraint of the goods always involves cancellation of the contract. In the event of distraint or other third-party intervention, the customer must provide written notification immediately so that a third-party action can be brought. If the third-party is unable to reimburse the judicial and extra-judicial costs of such an action, the customer shall be liable for the shortfall. The customer is entitled to resell the delivered object under the terms of normal business procedure. The customer shall assign all claims up to the value of the final invoice amount, including taxes, arising from the sale, asserted against their customer or against a thirdparty, irrespective of whether the goods were resold before or after processing. The customer is entitled to collect after assignment. The authority of Kaldewei USA, Inc. to collect claimed amounts remains unaffected. However, Kaldewei USA, Inc. undertakes to refrain from collecting claimed amounts providing the customer meets their payment obligations correctly and is not in arrears. In all cases Kaldewei USA, Inc. is entitled to demand that the customer announces the assigned amounts and debtor, provides all details required for collection, submits the relevant documentation and notifies the debtor of the assignment.

Processing or conversion of the goods by the customer is always carried out on behalf of Kaldewei USA, Inc. If the goods are processed with other objects, Kaldewei USA, Inc. shall acquire co-ownership of the new product in line with the ratio of the retained goods to the other processed at the time of processing. The object created through such processing is subject to the same conditions as the retained goods. If the goods are irrevocably processed with

other objects, Kaldewei USA, Inc. shall acquire co-ownership of the new product in line with the ratio of the goods to the other irrevocably processed objects at the time of processing. If such processing involves the customer's goods being regarded as the main object, it is agreed that the customer shall transfer co-ownership to Kaldewei USA, Inc. in line with the ratios. The customer safeguards sole ownership or co-ownership. The customer shall assign the claim for security, which the customer is entitled to assert against a third-party if the goods are used as an integral part of a building.

- 14. Place of fulfillment, place of jurisdiction and applicable law:** The place of fulfillment for all obligations arising from the contract is Kaldewei USA, Inc.'s principal place of business. For all legal disputes relating to bill or check processes, the place of jurisdiction is Kaldewei USA, Inc.'s principal place of business, providing the customer is a trader, a legal entity or separate asset governed by public law. Kaldewei USA, Inc. is also entitled to bring actions before a court of competent jurisdiction, which can be responsible according to national or international law. The contractual relationship is subject to governing laws.
- 15. Salvatorial Clause:** Should individual regulations of these general conditions of Sale, Delivery and Payment be or become ineffective, the effectiveness of the remaining conditions remains unaffected.

### General statement of warranty

Franz Kaldewei GmbH & Co. KG provides to Kaldewei USA, Inc. the following warranty on all products manufactured.

For purposes of this Warranty section, Franz Kaldewei GmbH & Co. KG and Kaldewei USA, Inc., are herein referred to as "Kaldewei" Warranty:

Kaldewei guarantees the material and workmanship of the bath product for a period of 30 years. The warranty shall apply exclusively to defects arising from design and manufacturing faults for which Kaldewei is responsible. Kaldewei is not responsible for ensuring that the product is suitable for a designated purpose. If the delivered object is faulty, lacks the assured characteristics or exhibits faults within the warranty period as a result of workmanship or materials, Kaldewei, may repair or replace the goods at their sole discretion. Kaldewei must be granted the opportunity to verify the reported defect. Any defective goods must be returned immediately on request. Replaced parts become the property of Kaldewei. Kaldewei is not liable for unsuitable or improper use, sub-standard production or application by the customer or a third party, normal wear and tear, incorrect or careless handling, and improper maintenance. Should the customer or a third party carry out repair work, Kaldewei shall not be liable for any consequential loss. The same applies for any modifications made to the delivered object without the prior written consent of Kaldewei. The only valid basis of quality of the goods is Kaldewei's product description. Published statements, sales dialogues and advertisements do not constitute contractual details on the quality of the goods. Should the customer receive incorrect installation instructions Kaldewei is obliged to provide correct instructions only if the incorrect detail in the instruction contradicts correct installation.

### Labour disclaimer:

Kaldewei is responsible for replacement product only and will not pay for the labor and/or materials associated with the replacement product.