

1 Acceptance of contract

Contracts shall only be construed as accepted if confirmed by us in writing. The same shall apply to addenda, amendments, deletions and other agreements. The need for this written form cannot be waived by verbal agreement. The purchaser's general terms of business shall only apply if expressly acknowledged by us in writing. All future contracts between the purchaser and us shall also be based on the present general terms of business, even if no further express reference is made thereto in future business transactions.

2 Prices and deadlines

The prices quoted in the written order confirmation shall be binding. If the planned delivery date is missed for reasons for which the purchaser is responsible or to blame, prices on the actual delivery date shall apply.

Although every effort shall be made to adhere to planned delivery dates (delivery ex works), they shall not be binding. Industrial disputes and other cases of force majeure and circumstances beyond our control *at suppliers, subcontractors or in transport and communications* which affect our ability to deliver, *as well as unpredictable operational disruptions, unpredictable technical problems, disruptions to the power supply or to supplies of raw materials*, traffic disruptions, sovereign measures and war shall release us from the obligation to deliver for the duration of the effects thereof plus a reasonable recovery time. We shall also be released from any obligation if we are subsequently unable to deliver. Where impediments last longer than 3 months, the purchaser shall be entitled to withdraw from the as yet unperformed part of the contract after a reasonable period of notice.

We shall be entitled to effect part deliveries.

3 Payment

All invoices shall be due on the agreed due date, and, unless agreed otherwise, shall in principle be payable immediately. Invoices shall be paid in the currency of account.

Cheques and bills of exchange shall only be accepted in fulfilment of the invoices and shall not be construed as an extension to payment deadlines. Purchasers shall *apply an interest rate of 8 percentage points above the current base rate of the European Central Bank* to all late payments as of the due date of the invoice. Circumstances which may create the impression that the purchaser is in financial difficulty, such as protested bills of exchange or returned cheques, and applications for or the institution of insolvency proceedings shall entitle us to make deliveries of goods purchased contingent upon payment on account or suitable security (such as a bank guarantee). We shall be entitled to withdraw at our discretion from the entire or the as yet unperformed part of the contract if the purchaser fails to comply with any such request, whereby our exercising the said right shall not preclude any statutory or contractual claims for compensation to which we are entitled on the grounds of non-performance.

The purchaser shall not be entitled to offset demands for payment of the purchase price against any counterclaims or to enforce any rights to refuse performance until counterperformance is effected on the grounds of counterclaims, unless such counterclaims are uncontested or established in a final judgment.

4 Retention of ownership

We reserve the right to retain ownership of goods delivered until such time as all our claims against the purchaser have been met. The purchaser shall not assign as security or pledge goods subject to retention of ownership. Any third party pledge shall be reported to us immediately. *The purchaser shall process or finish or shall mix or connect the goods supplied with or to third party items which do not belong to us on our behalf without any obligation accruing to us. Where we do not acquire ownership or joint ownership by virtue of statutory provisions, the purchaser hereby grants us joint ownership of the new items derived from such processing, finishing, mixing or connection processes and shall take care of such for us with due diligence. The purchaser shall transfer to us in full all claims against third parties pertaining to the use of goods subject to retention of ownership, especially claims which accrue to the purchaser pursuant to the onward disposal, processing or finishing of such goods or as a result of their being mixed or connected (e.g. incorporated) with other items, such transfer to serve as security for all our claims against the purchaser.*

We shall accept the purchaser's declarations of assignment and transfer.

If the realizable value of outstanding security exceeds our claims by more than 10%, we shall release such excess security at our discretion at the purchaser's request. In the event of late payment, the purchaser shall provide us on request and without delay with any information or explanation needed in order to enforce our retention of ownership rights. In the event of late payment on its part, the purchaser shall return the goods supplied on request and shall grant us pedestrian or vehicular access to its factory premises or to the storage site of the goods for the purpose of marking the goods supplied.

5 Right of withdrawal

The following circumstances shall entitle us to withdraw from the purchase contract, in addition to our statutory rights of withdrawal:

- a) unpredictable technical problems inherent in the type of order which make it impossible or unreasonable for us to perform;
- b) industrial disputes and all cases of force majeure on our premises, at our suppliers or in transport and communications which affect our ability to deliver, especially unpredictable operational disruptions, unpredictable technical problems, disruptions to the power supply or to supplies of raw materials, traffic disruptions, sovereign measures or war.

Notice of withdrawal shall be given in writing within 14 days of knowledge of the circumstance in question entitling us to withdraw from the purchase.

Our withdrawal from the contract shall not entitle the purchaser to enforce claims for compensation.

6 Claims on the grounds of defects, liability

Although great care is taken in the manufacture of our goods, the variety of raw materials used or other unmonitorable factors may affect the end product. No warranty claims shall accrue to the purchaser insofar as such effects remain within standard tolerances in the industry or do not significantly reduce the value or serviceability of the goods.

Goods delivered shall be examined immediately after receipt in order to ensure they are in perfect order and any defects shall be reported to us immediately. The purchaser shall forfeit claims against us on the grounds of defects which are not reported to us in good time. Non-hidden defects, especially signs of damp, shall be reported to us in writing and specified within 8 days of receipt of goods and before they are processed, finished or incorporated into other items. Hidden defects shall be reported to us as and when they are discovered and before the goods are processed, finished or incorporated into other items. Where defects are not reported to us immediately and/or by the aforementioned deadlines or where goods are processed, finished or incorporated into other items, the goods shall be construed as accepted by the purchaser.

We shall be entitled in the event of legitimate complaint to supply replacement goods. We shall be entitled to make replacement deliveries contingent upon the immediate prior return of the defective goods. If at least two replacement deliveries fail to give satisfaction, the purchaser shall be entitled to withdraw from the contract or claim reduced payment.

The purchaser shall have no further claims.

We shall have no warranty obligations other than those regulated in accordance with the foregoing. Under no circumstances shall the purchaser be entitled to claim compensation for damage other than that inherent in the item delivered, such as manufacturing defects, loss of output, loss of use, loss of earnings or other direct or consequential damage. This exclusion of liability shall not apply in the event of intent or gross negligence on our part, but shall apply to intent or gross negligence on the part of our auxiliary person. Properties shall only be assured if expressly warranted by us in writing.

7 Despatch

Deliveries shall be ex works, unless otherwise agreed in writing. Risks, risk of breakage and onus of proof of proper packaging and loading shall pass to the purchaser on delivery to carrier. The same shall apply to deliveries carriage paid. Except where we have concluded insurance against breakages and transport risks, we only act as intermediaries, to the exclusion of all liability on our part. For the rest, our consignments shall be governed by the "International Chamber of Commerce Rules for the Interpretation of Trade Terms" (*Incoterms*), together with the terms of the individual bill of lading of the shipping company retained to effect carriage in the case of overseas deliveries. We reserve the right to stipulate open (unimpeded) shipping for goods delivered C.I.F. or under similar agreed terms. If ships cannot call at agreed ports of destination, especially as a result of circumstances for which we are not to blame (e.g. port iced over) and the goods have to be unloaded in ports of distress, delivery obligations undertaken shall be construed as performed in such ports. It shall be incumbent upon consignees to take delivery from carriers subject to all manner of reservation where packaging shows external signs of damage or otherwise gives reason to suspect damage. The consignee (customer) shall be responsible for taking any action required in order to enforce successful recourse claims against carriers. We shall not be held responsible for failure to take the necessary measures.

If the consignment is despatched to a country other than the agreed country of destination, we shall be entitled to apply the prices and terms which apply to the new country of destination after the event, *without prejudice to any additional claims for compensation on our part.*

8 Place of performance and jurisdiction

The place of performance for deliveries shall be the site of the factory of supply. The place of performance for payment, unless otherwise agreed, shall be *Bützberg*.

The sole place of jurisdiction for all litigation between the contracting parties shall be *Bützberg*. We shall, however, also be entitled to institute proceedings against purchasers at the place of their registered offices.

Swiss law alone shall apply. *The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN sales law) shall not apply.*

9 Riders

If any of the above terms is invalid, this shall not affect the validity of the remaining terms. The invalid term shall be replaced by another term which most closely emulates its legal and financial purpose.