

## General terms and conditions of supply and payment dated 1 January 2002

### 1. Scope

- 1.1 Our supplies and transactions are based entirely on the following terms and conditions. We will only be bound by deviations and additions if we have confirmed them in writing. Erection work is also governed by the latest version of our General Terms and Conditions for dework or lump sum erection. Any terms and conditions of the buyer are expressly contradicted hereby; they shall apply only if we expressly agree to them in our order confirmation.
- 1.2 Orders of any kind, especially orders received by our representatives or received orally or by telephone, will be accepted by us only provided that these terms and conditions are accepted in their entirety.

### 2. Proposals and contracts

- 2.1 Our proposals, irrespective of their form of submission, are non-binding.
- 2.2 All agreements do not become binding until they have been confirmed in writing. Should there be contradictory documents relating to an agreement, the contractual text drafted by us shall apply. The buyer undertakes to check the confirmation received from us. If not contradicted within eight days of receiving our confirmation, it will be deemed accepted.

### 3. Data and documents

- 3.1 The data contained in leaflets, proposals, dimension drawings and price lists, etc. shall not be regarded as a guaranteed property.
- 3.2 Plans, sketches and other technical documents shall always remain our intellectual property in the same way as samples, catalogues, leaflets, illustrations and the like do. Utilisation, reproduction, distribution, publication and presentation is allowed only with our express approval.

### 4. Prices

- 4.1 All prices are generally to be understood as net prices, excluding value added tax, import or export licences, foreign exchange or other official approvals. When buyer is in default of acceptance of the goods, we are entitled to revise our prices when price increases occurred after signature. In the case of prices being left open when the contract is signed, the list prices valid on the day on which delivery is effected will be invoiced.

### 5. Payment

- 5.1 Payments shall be made as stated in our written confirmation of order. Should it not contain dates for payment, half of the price shall be paid upon receipt of the confirmation of order and the rest upon receipt of the shipping advice.
- 5.2 Bills of exchange will be accepted only following an express agreement and only on account of payment. Expenses shall always be borne by the buyer. Payments made by remittance shall be regarded as having been effected on the date on which the amount is credited to our bank account. Credits resulting from a bill of exchange or cheques shall be net of expenses subject to receipt with the availability date of the day on which we are in possession of the proceeds.
- 5.3 In the event of default in payment the buyer shall pay interest on arrears in the amount of our bank interest but at least 7 per cent above the base lending rate of the European Central bank per annum and also reimburse all prosecution costs incurred as a result of the delay. In the event of legal action the interest can be capitalised until the date of the proceedings and the out-of-court prosecution costs can be added to the capital.
- 5.4 If these terms of payment are not complied with and circumstances become known to us following signature of the contract concerned which in our opinion lower the creditworthiness of the other party to the contact all outstanding debts will become due with immediate effect. In this case we shall also be entitled to execute remaining deliveries only when payment is made in advance or to withdraw from the

contract. The right to return of the goods supplied subject to retention of title shall not be affected thereby.

- 5.5 Receipts of payment shall initially be offset against costs (expenses), then interest and finally capital. We may issue deviating declarations within four weeks of receipt of payment. We are entitled to offset even declared payments initially against unsecured and/or the oldest invoices.

### 6. Retention of title

- 6.1 Goods supplied by us shall remain our property until all outstanding debts for any legal reason whatsoever have been paid, at any rate until the subject outstanding debt has been paid. In the case of an open account the retained title shall be regarded as a security for our balance claim.
- 6.2 If our goods are processed or combined (integrated or connected) with other objects which do not belong to us, we will acquire joint ownership of this new item in proportion to the value of our goods to that of the other processed integrated items at the time of their processing or integration. Our retention of title similarly extends to the new item.
- 6.3 The outstanding debts to third parties arising from reselling of the reserved goods, no matter whether raw, processed or combined, are now assigned to us by the buyer together with all accessory rights up to the amount of the outstanding debts owed to us including interest and expenses irrespective of whether the reserved goods are sold without having been processed or combined to one or more buyers.
- 6.4 The buyer shall note assignment of the outstanding debt in his books. He shall further announce his buyers to us, allow us to inspect his books and provide us with the information and documents necessary for recovery. He shall announce the assignment as and when requested by us to his buyer. We shall be entitled at any time to disclose the assignment of the outstanding debt to the buyer.

- 6.5 As long as he does not fulfil his payment obligations to us, the buyer is entitled until notice to the contrary to recover the outstanding debts assigned to us from the subsequent disposal; on the other hand he is not allowed to possess such debts as a result of assignment. The buyer is obliged to use the money which he receives from his buyer as compensation for the goods we supplied to pay the debt still owing to us.
- 6.6 The buyer shall inform us without delay of any seizure or other detriment to our title to the reserved goods by third parties.

### 7. Place of performance, place of jurisdiction and choice of law

- 7.1 We fulfil our contractual obligations at the place of our works or stores or at the point from which we ship our goods. The place of performance for all obligations of the buyer is Auroldmünster in Austria.
- 7.2 The place of jurisdiction for both parties to the contract is Ried/Innkreis, including actions in summary bill and cheque enforcement proceedings. However we are entitled to bring an action at the general place of jurisdiction of the buyer. Only Austrian law excluding UN law relating to contracts for the international sale of goods shall apply.

### 8. Delivery period

- 8.1 Unless stated otherwise, the delivery period starts on the date of our order confirmation. We shall not be bound by delivery periods unless there is express written agreement to the contrary. They are contingent upon the supply options of our suppliers. However, we will endeavour to keep delivery within agreed periods.
- 8.2 Delivery periods will be extended for us without releasing the buyer from his obligations should the latter or his servant fail to fulfil his obligations to us from a technical, commercial or financial viewpoint such as by failing to provide plans, details, approvals, releases, etc. in good time, by not effecting the advance payments and/or the agreed securities etc. to the extent of the delay incurred thereby; the same

shall apply when the circumstances listed in the following hinder performance: industrial disputes and all circumstances independent of the intention of the parties such as fire, mobilisation, seizure, embargo, prohibition of the transfer of foreign exchange, insurrection, lack of conveyance facilities, general shortage of supplies and materials, energy consumption restraints, etc.

- 8.3 If we are responsible for a delay in delivery the buyer can demand performance from us or set us a reasonable period of time for rectification of our entire performance while threatening to withdraw. If the extension of time is not met as a result of our negligence the buyer can withdraw from the contract in writing with regard to all parts that have not been delivered or that have been notified as being ready for shipping and with regard to such parts that have been delivered or have been notified as ready for shipping but cannot be used by the alternative supplier. We will only be liable for damage caused intentionally or by gross negligence. We have a right to the agreed fee in respect of part deliveries not covered by the withdrawal.
- 8.4 Should the buyer default in accepting we may either demand performance or withdraw from the contract by setting an extension of time of 14 days. We are entitled to full compensation in either case.
- 8.5 The buyer is not entitled constantly to delay periods of delivery and delivery dates without our written consent for any reason whatsoever. Should the buyer declare that he wishes to accept the delivery or parts thereof at a date later than that agreed, we are entitled to insist on the contract being fulfilled with the contractual obligation to pay by the buyer. In either case the buyer shall be liable for any additional cost incurred, unless some other arrangement has been made, including storage charges.

## 9. Shipping and transfer of risk

- 9.1 Our obligation to perform does not include packaging. If we have to perform packaging in exceptional instances this will be done in the normal commercial manner in order to prevent the goods from being damaged in transit to the defined place of destination under normal shipping conditions. Packing materials will be accepted back only by agreement.
- 9.2 Shipping will take place at the risk of the buyer even when freight and carriage paid delivery has been agreed. We shall be obliged to take out shipping insurance only when this has been agreed in writing. The goods shall be regarded as having been sold ex "FCA Works in Aurozlmünster".
- 9.3 Should the buyer desire a special form of shipping or a special mode of conveyance we will invoice it separately. Delivery vehicles must be able to drive to the unloading point without hindrance and safely. We shall be reimbursed all additional costs and damages, including any claims of third parties, arising from any breaches of the obligation to make land or premises safe for persons or vehicles. The loading and unloading of the modes of conveyance is in any case a contractual accessory obligation of the buyer.

## 10. Warranty and damages

- 10.1 Only we have the option of satisfying claims under the warranty by improvement, replacement or a reduction in price. The buyer expressly foregoes his right of cancellation of the contract. The buyer shall furnish aids at no cost to the Contractor for work under the warranty. Should the buyer fail to meet his payment obligations or should he fail to make available without delay samples of the material that is the subject of his complaint when requested by us to do so, all claims shall lapse.
- 10.2 The warranty period is 12 months from the time of hand-over to the extent that special warranty periods have not been agreed for individual delivery items or services. It shall not be assumed that a defect that becomes apparent within six months of the delivery item or service being handed over existed at the time of hand-over already.
- 10.3 The buyer shall accurately examine our delivery without delay following its arrival, if needed by consulting experts. Any defects must be notified by the buyer in writing by registered mail without delay following the arrival of the delivery. Defects which cannot be detected in such examinations shall be reported without delay after they occur, while processing in any form shall be stopped immediately or else all claims will lapse. We can invoke the plea of lack of notification in a dispute even if we have not pleaded it out of court.
- 10.4 Warranty shall be excluded if the operating conditions, installation and erection instructions or any other directives foreseen by us are not satisfied or the defect is attributable to poor maintenance, repairs or modifications being performed poorly or without our written approval, normal wear and tear, defective operation of system parts not supplied by us, unauthorised commissioning, incorrect details or other specifications submitted by the buyer. The only properties which can be regarded as guaranteed are those we have expressly

guaranteed in writing. We will only be bound by our publicly made statements about the item or properties of samples and specimens made available by us if we expressly guarantee them in our proposal or in our confirmation of order. We shall not be bound by statements issued by the manufacturer, importer into the European economic area or by a person who describes himself as the manufacturer in any way whatsoever. Liability of all kinds for our erection instructions shall be excluded.

- 10.5 The assertion of claims under the warranty shall not entitle the buyer to a plea of non-performance nor in particular to withholding the fee. The warranty period will not be extended, impeded or interrupted owing to the elimination of a defect. Any right of recourse within the contractual chain is expressly excluded.
- 10.6 Claims on us for damages of any kind are excluded unless in case of intent or gross negligence. They shall be limited to the amount shown on the invoice for the goods. We shall not be liable for third-party or consequential damage, nor for pecuniary damage.
- 10.7 Plans, works certificates, static analyses, parts lists, bills of quantities, etc. shall be carefully checked without delay by the buyer upon receiving them. If no objection is lodged within eight days of the receipt of such documents they shall be regarded as approved.
- 10.8 Due to the fact that the contract was entered into without reservation the buyer also foregoes all precontractual protected obligations on our part to the extent we are not culpable of intent or gross negligence. This shall apply in particular when the contract is awarded in response to a request for proposals in which our goods and services are planned and transferred by the buyer or a third party appointed by him. If goods are produced by us as a result of design details, drawings or models received from the buyer, our liability will not include the correctness of the design but only the fact that performance complies with the details provided by the buyer.
- 10.9 Claims for damages without prior request for us to eliminate the defect shall be ruled out.
- 10.10 Claims under the warranty and for damages arising from work which members of our staff or agents are ordered to perform by the buyer in the course of our contractual work and services but which does not form part of our work and services are excluded in their entirety since our employees count as being temporarily hired by the buyer in this respect.
- 10.11 We will handle parts furnished by the buyer with care but will not accept liability for defects, damage or corrosion.

## 11. Product liability

The buyer declares that all the information and warnings concerning the dangerous nature of the goods are known to him. They shall be regarded as a warning by us. The buyer undertakes further extensively to warn the other parties to his contracts with regard to reselling and to impose on them the same obligation to warn the others in the contractual chain. Failing which the buyer will always indemnify us for losses and actions arising from any legal regulation whatsoever. The buyer expressly waives recourse against us if a claim is made on the buyer on account of a fault of our product or the goods supplied by us. If the fault was caused by several parties, the buyer undertakes first to claim on the other responsible parties. Claims for replacement with regard to material damage shall be excluded. The buyer undertakes likewise to agree this exclusion with the parties to his contracts and to impose this contractual obligation on other parties to contracts with regard to miscellaneous damages. The buyer undertakes to take out insurance cover of a type and to an extent customary in fair business dealings so that liabilities to pay damages as a result of a fault of a product can be satisfied therefrom. The buyer undertakes to claim on this insurance prior to any recourse against us.

## 12. Setting-off and retention

The assertion of a right of retention to the benefit of the buyer is expressly excluded. The buyer is not entitled to set off.

## 13. Ineffectiveness, additional standards

- 13.1 These General Terms and Conditions shall remain binding even if individual articles prove ineffective. Any inoperative article shall be replaced by another, operative article coming as near as possible to the intended meaning of the inoperative article of the contract. The buyer declares that having regard to the favourable pricing from his viewpoint there is no disadvantage in respect of any shifting of the legal position arising from these General Terms and Conditions.
- 13.2 In addition the relevant technical and commercial EU standards or, in the event of there not being any, the corresponding Austrian or DIN Standards shall apply.