

# GENERAL CONDITIONS OF SALE AND SUPPLY OF THE ALLFACE Befestigungstechnologie GmbH & Co KG FN 279386m (USA)

We produce - and will produce - our deliveries and services exclusively on the basis of the following terms of supply and business. Any deviation from them is valid only, if this has been explicitly agreed in writing. Any contrary terms of business by the customer have not been agreed, even if orders or other kinds of written documents refer to them and are not explicitly contradicted by us in particular cases.

## 1. CONTRACTUAL RELATIONSHIP

Any statements in offers, price lists, catalogues, advertisements, sales promotions as well as in samples for inspection are always subject to confirmation and are without obligation.

A contractual relationship materialises only after our written confirmation of an order. Any omission of discussion does not count as an agreement. Any deviation from the order in our confirmation of the order must be the subject of an immediate complaint in writing; otherwise any legal action is excluded. After previous written agreement, regular customers' orders can be confirmed by us orally/by telephone.

## 2. PRICES

Only the prices specified in our confirmation of the order are valid.

Orders made/confirmed orally are regarded as posted on the day of order, according to the corresponding list price.

A cash discount on list prices is allowed only on the explicit condition that all the invoices have been paid entirely and in due time.

All quoted prices are exclusive of the legal sales tax.

## 3. SUPPLY

If not agreed otherwise, delivery takes place ex works. The unloading is always the responsibility of and at the risk of the customer.

We are entitled to deliver in parts.

We endeavour to meet the delivery date notified by us. However, we do not guarantee our delivery dates, even if confirmed by us. Any problem with delivery for which we are not responsible, including any possible delay in delivery by our suppliers, authorise us to extend our delivery time or to withdraw from the contract. Any claim for compensation by the purchaser because of delayed or omitted delivery is excluded in any case.

## 4. CONDITIONS OF PAYMENT

If not agreed otherwise, payment is due within 7 days, net without cash discount.

We are not obliged to accept a bill or a cheque; payments are treated as made only when payment is received in our bank account. Any costs connected with the transfer of funds are chargeable to the purchaser.

In case of default of payment, interest at the rate of 8 percentage points above the base interest rate specified by the Austrian National Bank, are agreed. The minimum rate will be 10% per annum. Furthermore, in case of default of payment, the purchaser is committed to reimbursing us for our expenses regarding the collection of the debt, according to the fees and expenses, defined by the Austrian Rechtsanwaltsstarifgesetz (Lawyers' Pay Act) and the Austrian Gerichtsgebührengesetz (Court Costs Act).

The purchaser is not entitled to deduct his own claims against us from the invoice in respect of the purchase price. Neither is the purchaser entitled to withhold due payments because of alleged warranty claims. The purchaser is not allowed to transfer his title to claims towards us to a third party.

## 5. RESERVATION OF PROPRIETARY RIGHTS

We always supply with the explicit reservation that the delivered goods remain our property, until our invoice in respect of the purchase price has been paid off in its entirety.

With the diligence of a prudent businessman the purchaser must keep goods specified under this condition separate from other goods and to ensure them sufficiently against all risks.

The purchaser is allowed to process the goods specified under this condition in the framework of normal course of business and/or to sell them. This further processing shall take place in our interests and shall not lead to the loss of our property. In case of incorporation or amalgamation with other goods that are not our property, we shall be credited with co-ownership, proportional to the quota.

By the terms of this contract, the purchaser has transferred to us all of his claims against a third party resulting from the resale of the goods specified under this condition, as well as all claims resulting from insurance contracts, up to a maximum of the purchase price as specified in our invoice. The purchaser has to keep incoming money from the paid, third party invoices separate from his own money, and immediately to pass it on to us, as soon as our invoice in respect of the purchase price falls due. We consent to this resale and, as a concession, we commit ourselves not to collect the resulting payments from the third parties until our invoice in respect of the original purchase price falls due.

In case of default of payment the purchaser commits himself, on our first request, to disclosing to us the purchasers of the goods specified under this condition as well as their insurers.

The purchaser is prohibited from mortgaging the goods specified under this condition or the claims transferred to us, from transferring his ownership as security on a debt, or from selling it to a third party, otherwise than as agreed in this contract, as long as our invoice in respect of the purchase price has not been entirely paid off.

Compulsory possession orders and other attempts to gain access to the goods specified under this condition by a third party that affect our legal status have immediately to be reported to us in writing. The purchaser has promptly to object to such measures, in so far as they relate to our conditional property.

## 6. WARRANTY AND LIABILITY

Complaints about obvious faults must be made in writing immediately upon receipt of the goods; otherwise any legal action is excluded. The warranty period shall be limited to six months from the date of delivery. Complaints about hidden faults must be made in writing immediately, upon their discovery and must include an accurate description of the fault. Any claim regarding quantity or quality that is justifiably raised will be settled consensually between our customers and us, according to existing commercial practice. However, claims for damages on account of the non-performance of a supply contract are excluded.

If our delivered products are based on installation plans (installation guidelines and technical information) drawn up by ALLFACE, you have to follow strictly these installation plans (installation guidelines and technical information). The installation plans (installation guidelines and technical information), created by ALLFACE, have been drawn up on the basis of data supplied by you. ALLFACE will not verify the accuracy of your data. Therefore we assume no liability for data supplied by you to ALLFACE. In this regard any warranty claims and claims for damages by you are excluded *a priori*. ALLFACE is not liable for quality defects and incorrect technical specifications that are the fault of the suppliers of the materials. Neither do we accept any liability for defects resulting from failure to comply with our installation plans (installation guidelines and technical information) or with customs and practices, generally accepted in the trade.

We warrant the quality of the products on the basis of the specifications and test standards, stated in the product range. There is no implied warranty of fitness for certain applications. We specifically are not liable for faults arising from modification or wear and tear, for defects in the supporting construction or the installation, or for damage brought about by the incorrect processing (installation) of any item.

For items produced externally we are liable only on the basis of the warranty, guaranteed by the particular producer.

Except in cases based on intention or gross negligence, no further liability, including liability to pay compensation, is accepted. Excluded in particular is any compensation for consequential loss, for other indirect damages, or loss, or loss of profit due to bad delivery, default of delivery, or delay in delivery.

In any case, our liability (regarding the amount due) is limited to the total value of the particular order.

## 7. COURT OF JURISDICTION, APPLICABLE LAW, MISCELLANEOUS

Any disputes resulting from or in connection with the business connection, are conclusively decided according to the Arbitration and Conciliation Act of the International Board of Arbitration of the Viennese Chamber of Economy (Vienna rules), by several arbitrators appointed according to these rules. The number of arbitrators is 3. Austrian law shall apply. The application of the UN purchase law is excluded.

The language of the contract as well as at court shall be German.

The fact of single clauses not being operative does not touch on the effectivity of the other clauses of these conditions of sale and supply. Should we choose not to exercise any single right, or all the rights to which we are herein entitled, this shall not mean a relinquishment of these rights.

The place of performance is Leobersdorf.

August 2006

