



## General Terms and Conditions for Sale

of

**Flabeg GmbH & Co.KG**  
Nürnberg

(Version of 12 September 2003)

### I. Introduction - Scope

All our supplies of goods and services shall be exclusively governed by the following general terms and conditions for sale. These general terms shall apply for all future business transactions between the parties to the contract without any further reference thereto. These terms shall also apply without any explicit reference thereto in future contracts, including when we unconditionally supply goods and services to the customer while being aware that the customer's general terms and conditions contradict our terms or are different therefrom.

### II. Offers and Formation of a Contract, Scope of Performance

1. Our offers to the customer are nonbinding. The customer's order shall be considered a binding offer. This offer shall be accepted at our discretion within four weeks by sending an order acknowledgment or by the unconditional supply of the goods or services ordered. Additional agreements, changes and specifications for performance must be confirmed by us in writing.
2. We reserve all rights of ownership and copyrights in cost estimates, drawings, plans, and other information; these may be released to third parties only with our prior written consent and shall be returned to us on request free of charge.
3. Any information that is part of our offer, in particular illustrations, drawings, indications of weights and dimensions, performance and consumption data as well as technical data and descriptions contained in the product information or advertising material is nonbinding. Such information neither constitutes agreed properties nor warranties of properties or durability of the goods or services to be provided by us.
4. We shall be entitled to change the materials indicated in our offer or agreed with our customer without the customer's consent as long as such changes do not imply any modification of the properties or functions of the goods ordered.
5. For samples or specimen on which a sale is based we solely warrant that these are workmanlike samples, this does not constitute a warranty under section 276 (1) German Civil Code and no warranty for the quality or durability of the products to be supplied by us as defined in section 443 German Civil Code.
6. The scope of supplies for devices related to safety at work and environmental protection is determined by the agreements made, if the supplied product is destined for use outside of Germany, in case of doubt it shall be determined by the provisions applicable in Germany. The customer shall be responsible for compliance with statutory and other regulations applicable at the point of use.
7. The Incoterms of the International Chamber of Commerce in Paris in the version applicable on the date the contract is made shall apply for the interpretation of any customary clauses agreed for the manner of supply.

### III. Prices, Terms of Payment, Late Payment

1. The prices agreed at the time the respective contract is made, specifically when mentioned in the order form or the order acknowledgment, shall be valid. If no price has been explicitly agreed or if the customer buys goods at list prices, the prices applicable on the day of delivery according to our price list shall apply. Unless specifically agreed otherwise all prices shall be ex works including loading at works, however, exclusive of packaging and other ancillary costs. All prices are net plus statutory VAT in the amount valid at the time. All state taxes (taxes, fees, customs etc.) arising from the making or performance of the contract outside of Germany shall be borne by the customer.
2. We reserve the right to reasonably adjust our prices, if costs change after the contract was made, such cost changes include increases due to wage agreements, price increases of sub-suppliers or exchange rate fluctuations. We shall substantiate the reasons for the price adjustment to the customer on request.
3. Payment terms for all billings are ten days after invoicing, without any deduction, unless specified otherwise in the invoice. Interest upon defaults in payment shall be charged for each day after the due date pursuant to section 288 German Civil Code while reserving the right to further claims.
4. We shall be entitled to apply any payments received firstly to earlier receivables, next to costs and interest of the principal receivable and finally to the principal receivable. The customer shall only have rights of retention or offsetting of payments, if counterclaims have been finally established by a court and are not disputed or have been acknowledged by us. Furthermore rights of retention shall only arise, if the counterclaim asserted relates to the same contract as our claim.
5. Contrary to previous arrangements, we shall be entitled to declare the customer's outstanding debts due immediately and to demand prepayments or security or - if the goods have been delivered previously - the payment of any amount due and relating to the same legal transaction, if the customer fails to pay invoices due or exceeds the payment terms or if we receive unfavourable information which casts doubts on the customer's ability to pay or its creditworthiness. Specifically this shall apply, if the customer stops payments, cheques negotiated by the customer are not honoured, bills of exchange issued by the customer are not paid, insolvency proceedings have been initiated for the customer's assets or bankruptcy proceedings were dismissed because of insufficient assets after a petition in bankruptcy had been filed.

### IV. Date of Delivery of Goods or Services, Delay in Performance: Partial Delivery

1. Any delivery dates agreed shall merely be approximations, unless a fixed-date purchase has been specifically agreed in writing. Specially agreed delivery periods begin upon the dispatch of our order confirmation. The delivery deadline shall be deemed as observed if the goods have left the plant,

or readiness for shipping has been announced, by the time the deadline expires.

2. Compliance with delivery deadlines is subject to correct and timely performance on the part of the customer's obligations. Any agreed delivery period shall not begin before receipt of an advance payment if such payment has been agreed, nor before any documents, permits or releases etc., required for our performance and to be obtained by the customer have been received. We reserve the right to the defence of non-performance of contract.  
If shipping is delayed due to circumstances for which we are at fault, the customer shall be entitled to rescind the contract in writing after unsuccessful expiry of a reasonable grace period granted by it.
3. We shall only be in default after expiry of a reasonable grace period granted by the customer. Instances of force majeure and other unforeseeable, unusual events beyond our control such as or disruptions of operations by fire, flood and similar events, breakdown of production plant and machinery, delays or suspension of deliveries by our suppliers and disruptions of operations by shortage of raw materials, power or labour, strike, lockouts or other difficulties to obtain transport, disruptions of traffic, government actions, insofar as these events prevent us from performing on time without any fault on our side, shall entitle us to extend delivery deadlines consistently with the impediment plus a reasonable start up period. If the delivery of the goods or services is thereby delayed by more than one month, both parties' shall be entitled to rescind the contract concerning the volumes affected by the impediment to delivery excluding any claims to damages.
4. Our liability for damages for each instance of delay shall be limited as provided for in Clause VIII (1) to (6).
5. If reasonably acceptable for the customer we shall be entitled to make partial deliveries of goods and services within the periods agreed.

#### **V. Transfer of Risk, Transport and Packaging, Taking Delivery**

1. In the absence of any special written agreements between the parties to the contrary, deliveries shall be made ex our works or warehouse. In this case the risk of accidental loss or deterioration of the goods supplied shall pass to the customer at the time it receives information about the goods' availability for pick-up after the goods have been made thus available. Otherwise the risk of accidental loss or deterioration of the goods supplied shall pass to the customer at the time of their delivery to the haulage contractor. The customer shall bear the risk of accidental loss or deterioration of the goods supplied also for partial shipments or if we exceptionally assumed additional services such as the freight charges, delivery or installation, unless our own vehicles or means of transport are used for such delivery. If shipping of the goods is delayed for reasons for which the customer is responsible, the risk will be transferred to the customer as of the day the goods were ready for shipping. At the customer's request and expense we shall buy insurance for the goods against theft, breakage, damage in transit, by fire, water, and other insurable risks.
2. If the goods are to be shipped by us by agreement with the customer and no written agreements concerning the method of shipping and the shipping route have been made, these shall be determined at our discretion. In this case the provisions in Clause V (1) sentence 3 – 6 apply as well.
3. We do not take back disposable packaging. Instead we shall name a third party which will take back the packaging according to the packaging regulations at the customer's request.
4. The customer shall accept goods delivered, including such with immaterial defects, without prejudice to the rights established in section VII.

#### **VI. Retention of Title of Ownership**

1. The retention of title shall not be affected by the inclusion of the purchasing price claimed from the customer into open accounts and the confirmation of a balance.
2. The customer is obligated to treat the goods delivered by us with care; in particular the customer shall buy insurance coverage for such goods against loss, damage, and destruction such as by fire, water and theft at replacement value and at its own expense. The customer herewith assigns its claims under the insurance contracts to us. We hereby accept the assignment.
3. The customer may not sell the goods subject to our retention of title, pledge them or transfer them as security. The customer shall, however, be entitled to sell such goods in the ordinary course of business subject to the following provisions. Such entitlement shall not apply to the extent the customer effectively assigned or pledged the claims arising from any resale against the other party to the contract in advance or agreed non-assignment with such partner.
4. To secure the satisfaction of our rights listed in Clause VI (1) the customer herewith assigns to us any claims arising from the resale of the goods supplied by us - including accessory and conditional claims and future claims, in the amount of their value, our rights shall have priority over the remainder of the customer's claims. We hereby accept the assignment.
5. The customer shall be entitled to collect the receivables assigned to us from its customers in the course of normal business as long as and to the extent the customer meets its payment obligations towards us. For these claims the customer may, however, not agree an open account or non-assignment with its customer or assign or pledge these claims to third parties. If the customer and the buyer of the goods subject to our retention of title maintain a relationship of open account contrary to the provision in sentence 2, the claim assigned in advance shall also apply to the confirmed balance of such account and, in case of the buyer's insolvency, to the balance at that time.
6. At our request the customer shall provide individual evidence for each of the claims assigned to us, inform its debtors of the assignment and request them to pay to us up to the amount corresponding to our claims. We shall be entitled to inform the customer's debtor of the assignment and to collect the debts at any time. However, we shall not exercise these rights as long as the customer pays duly and on time, no petition for bankruptcy proceedings has been filed and the customer did not stop payments. If any of these conditions arises we may request the customer to inform us about the claims assigned and the debtors and to provide all information and documentation required to collect the debts.
7. The customer shall immediately inform us in writing in case of seizures or any other intervention by third parties to enable us to file suit under section 771 German Code of Civil Procedure.
8. Any processing or changes of the goods supplied by us subject to retention of title shall be made by the customer on our behalf, excluding any obligations for us therefore. If the goods to which we retained the title are processed with other materials which are not our property we shall acquire co-ownership of the resulting good in proportion to the value of our goods to that of the other goods processed at the time of the processing (invoice total including VAT). To the good thus created the same provisions shall apply as to the good supplied subject to the retention of title. If the goods we provided are inseparably mixed or combined with other goods which are not our property we shall acquire co-ownership of the new good proportionately to the value of the goods subject to the retention of title to that of the goods they are mixed/combined with at the time of the mixing/combining (invoice total including VAT). It is hereby agreed that the customer transfers to us proportionate co-ownership of the goods, if the result of the mixing/combination is such that the goods of the customer must be deemed dominant. The customer shall keep the goods subject to our sole or co-ownership on our behalf. The

customer shall be entitled to sell the goods resulting from processing, modification, mixing or combination in the ordinary course of business, as long as it duly complies with its obligations under the business relationship with us. Under no circumstances shall the customer be entitled to resell or otherwise dispose of the new goods by agreeing a non-assignment with its customer, by pledging or assigning these goods as a security. As a security the customer herewith assigns its claims from the sale of these new products subject to our retention of title to us in proportion to our share of ownership in such goods. If the customer mixes or combines the goods supplied with a dominant good it herewith assigns to us its claims against third parties up to the value of our goods. We hereby accept these assignments.

9. At the customer's request we hereby agree to release any amount of the securities we are entitled to by which the realizable value of our security exceeds our secured claims by more than 10%; we shall select the securities to be released at our discretion.
10. In case of non-conformance by the customer, in particular in case of late payments of more than 10% of the amount of the invoice for a substantial period, we shall be entitled to rescind the contract and demand the return of the goods supplied, without prejudice to further (damage) claims we may be entitled to. We shall be entitled to realize the goods previously supplied after taking them back. The proceeds of the realization shall be offset against the customer's debts after deduction of a reasonable amount for the expense for the realization.

#### VII. Customer's Rights in Case of Defects

1. The customer shall inform us promptly and no later than seven working days after the receipt of the goods and in writing of obvious material defects, delivery of merchandise other than that stipulated, and deviations in quantity. Hidden defects shall be notified in writing within 7 working days after their discovery. At our request the defective goods shall be made available to us for testing. In case of transfer of risk under Clause V (1) complaints about obvious or hidden defects made later than two months after the transfer of risk shall be excluded and considered late. The customer's rights arising from defects shall be forfeited if the defect is complained about late under Clause VII sentences 1 - 4, unless the defect was deceitfully concealed by us.
2. The customer shall not be entitled to rights for the warranty for defects for used goods or such that have been agreed to be of a lower quality category. The same shall apply in case of deviations, specifically deviations of dimensions, thicknesses, weight, performance data or colour nuances, which are within the tolerances customary in the industry, as well as in case of immaterial reduction of the value or usability of the goods.
3. The customer shall have rights of recourse against us under section 478 German Civil Code (Recourse of the contractor) only to the extent it has not agreed any warranty for defects exceeding the statutory level with its customer.
4. When goods delivered by us are defective we are obligated to remedy the defects or deliver non-defective goods at our discretion (subsequent performance). If we are not prepared or capable to perform subsequently, especially if this is delayed beyond the reasonable time-limits for reasons for which we are responsible, or if the subsequent performance fails for other reasons, the customer may at its discretion rescind the contract or demand a reduction of the purchasing price. A remedy of defects shall be considered as having failed after three attempts, unless the nature of the matter or other circumstances suggest otherwise. Our liability for any damage the customer may have suffered due to defects of goods supplied by us or for any futile expenses, is determined by the provisions in Clause VII (1), Clause VIII and Clause IX.

#### VIII. Liability

1. Our company shall only assume liability for damage or futile expenses - irrespective of the legal foundation therefore - if such damage or futile expenses were caused by
  - a) culpable violation of a material obligation under the contract by us or one of our assistants or
  - b) gross negligence or intentional violation of duties by us or one of our assistants.
 Contrary to Clause VIII (1) (a) we assume liability for damage or futile expenses caused by any advice and/or information not subject to separate remuneration, only in case of intentional or grossly negligent violation of duties, unless such violation of duties constitutes a material defect of the goods supplied by us as defined in section 434 German Civil Code.
2. If we assume liability under Clause VIII (1) (a) for the violation of a material obligation under the contract and there is no gross negligence or intent, our liability for damages shall be limited to the foreseeable damage which can be typically expected. In this case we shall not be liable for any profits lost by the customer nor any indirect unforeseeable damage. The limitations of liability set out in sentences 1 and 2 equally apply for damage caused by our employees or agents by gross negligence or intent, unless the persons in question are managing directors or executives of our company.
3. If we assume liability under Clause VIII (1) (a) for the violation of a material obligation under the contract in the absence of gross negligence or intent, our liability for damages shall be limited to an amount of Euro 1.5 million per damaging event. We agree to buy and maintain insurance coverage for this amount (at least Euro 1.5 million for damaging event).
4. The limitations of liability set out in Clause VIII (1) to (3) above shall not apply in case of mandatory liability under the provisions of the Product Liability Act or if further claims are asserted against us because of injury to a person's life, limb or health. If the goods supplied by us lack a warranted quality we shall assume liability only for damage resulting from the lack of the warranted quality.
5. Any further liability than that set out in Clauses VIII (1)-(4) shall be excluded - irrespective of the legal nature of the claim asserted. This applies in particular to damage claims for *culpa in contrahendo* pursuant to section 311 (3) German Civil Code, for positive breach of contract pursuant to section 280 German Civil Code or for tort pursuant to section 823 German Civil Code.
6. If our liability for damages is excluded or limited under Clause VIII (1) to (5) this also applies to the personal liability for damages of our employees, staff, agents, and assistants.

#### IX. Prescription of Claims

1. Any claims by the customer for defects of goods or any services performed in breach of our obligations - including damage claims and claims for reimbursement of futile expenses - become statute-barred within one year after the statutory beginning of the period of limitations, unless provided otherwise in Clauses IX (2) to (6) below.
2. The claims for subsequent performance, price reduction and/or reimbursement for futile expenses due to defects of new products delivered by us of customers who are consumers become statute-barred two years after the supply of these products.
3. Claims by customers who are consumers who have satisfied consumer claims resulting from defects in new products delivered by us which were supplied to the consumers as new products against us pursuant to sections 437 and 478 (2) German Civil Code will become statute-barred at the earliest two months after the date on which the customer has satisfied any non-statute-barred consumer claims, the same applies, if such consumer claims were satisfied by another buyer along the supply chain as a contractor. This suspension of expiration of prescription described in

sentence 1 will end no later than five years after the date on which the product in question has been supplied to the customer by us.

4. Customer claims relating to any new products supplied by us that are used in structures in accordance with their regular purpose of use, thereby causing the defectiveness of such structures become statute-barred five years after the statutory beginning of the period of limitations. Contrary to sentence 1 a two-year period of prescription shall apply, if the customer used the products supplied by us for the performance of contracts which fully incorporate part B of the Contracting Rules for Award of Public Works Contracts (Verdingungsordnung für Bauleistungen). The period of prescription according to sentence 2 above shall become effective no earlier than two months after the date the customer satisfied its customer's claims resulting from defects in structures caused by products supplied by us, unless the customer could successfully plead lapse of time with regard to its customer/partner. The claims of the buyer against us for defects of products delivered by us will become statute-barred in any case as soon as the claims of the our customer's customers/partners for defects of such products against our customer have become statute-barred, at the latest five years after the delivery date of such goods to our customer.
5. Any claims against us based on our providing advice and/or information without separate remuneration and unrelated to the delivery of goods in breach of duty, or without such advice and/or information provided in breach of duty constituting a quality defect as defined by section 434 German Civil Code of the goods supplied by us, shall become statute-barred within one year after the commencement of the statutory limitation period. Any claims of the buyer against us for violation of obligations under the contract, pre-contract representations or law not constituting a quality defect as defined by section 434 German Civil Code of the goods supplied or to be supplied by us shall become statute-barred within one year after the commencement of the statutory limitation period. If such breach of duty constitutes a quality defect (as defined by section 434 German Civil Code) of the goods supplied by us in connection with such advice and/or information, the provisions in Clauses 1 to 4 and 6 shall apply for the prescription of any claims arising therefrom.
6. The provisions in Clauses (1) to (5) shall not apply to the prescription of claims arising from injuries to life, limb or health or of claims under the Product Liability Act or for legal defects of the goods supplied by us consisting of an interest in property of a third party due to which the restoration of the goods supplied by us may be demanded. Neither shall these provisions apply to the prescription of the customer's claims based on defects of the goods supplied by us which we deceitfully concealed, or if we violated any of our duties intentionally or with gross negligence. The statutory periods of limitation shall apply to the claims arising from the situations set out here in Clause IX (6).

#### **X. Place of Performance, Venue and Jurisdiction**

1. The place of performance as well as the jurisdiction and venue for any claims between ourselves and merchants or public law entities or funds under public law shall be the principal place of business of our company unless an imperative provision of law applies. In addition, we shall be entitled to bring action against a customer under the general statutory jurisdiction of such customer at our discretion.
2. The legal relationship between the customer and ourselves or third parties and ourselves shall be exclusively governed by the law of the Federal Republic of Germany, in the same way it applies to German merchants. The CISG/UN Convention on Contracts for the International Sale of Goods and of German private international law are expressly excluded.

#### **XI. Final Clauses**

1. If any of the provisions of this agreement shall be ineffective or excluded by a special agreement, this shall not affect the effectiveness of the remainder of the agreement.
2. We keep customer data for the purpose of our business relations in compliance with the German Federal Act on Data Protection.
3. The German version of these terms and conditions shall be the binding version, the translation into English is a courtesy translation.