

### **1. Scope of application**

The terms of sale and delivery of F. W. Brökelmann Aluminium GmbH & Co. KG (hereinafter referred to as "Seller") shall only apply to entrepreneurs, a legal entity under public law or a special fund under public law within the meaning of § 310, Paragraph 1, Sentence 1 BGB. (German Civil Code)

### **2. Conclusion of contract**

a) Offers made by the Seller shall be non-binding until written confirmation of the order placed under the respective offer has been given. The contract shall only be valid if the Seller has confirmed it in writing. For the content and scope of the contract, the Seller's aforementioned written confirmation shall be authoritative.

b) The Seller's commercial agents and sales representatives shall only serve as intermediaries and shall not be authorized to conclude legal transactions.

c) The Seller's terms of sale and delivery shall apply exclusively. All of the buyer's conditions – regardless of their content – shall be inapplicable, even if the Seller has not expressly objected to them or if he carries out the delivery, without reservation, with awareness of the buyer's conditions.

d) Drafts, calculations and other documents provided by the Seller shall remain his property. These may only be used to process the Seller's offers and must not be made available to third parties.

### **3. Prices**

a) The contract shall be concluded on the basis of the prices applicable at the time. All prices are quoted ex-warehouse/ex-factory, plus packaging, freight and value added tax (VAT).

b) The Seller shall be entitled to demand an increase in the agreed remuneration according to the extent to which the labour and/or material costs have increased from the day of the order to the day

of the delivery. The Seller shall provide evidence of this cost increase to the buyer upon request. If the increase exceeds 10% of the originally agreed price, the buyer shall be entitled to withdraw from the contract within seven days of announcement.

### **4. Tool costs**

The tool costs to be borne by the buyer shall be due for payment immediately following the manufacture of the tools. The buyer shall not acquire the right to the tools themselves through the payment of a portion of the costs of the tools. These shall remain the property of the Seller. If the buyer has not purchased any products comprising the tools for more than 2 years, the Seller shall be entitled to scrap the tools.

### **5. Withdrawal from the contract by the Seller**

a) Strikes, lockouts, disruption of operations, force majeure and other impediments to production not due to a fault of the Seller shall entitle the Seller to withdraw from the contract in whole or in part. This shall also apply in the event that the Seller cannot stock up on the raw materials required for production or not at the prices valid at the time of order placement.

b) If the buyer defaults on the fulfilment of his obligation to pay, if he fails to honour bills of exchange, if garnishments are made or if other circumstances become apparent that jeopardize the Seller's entitlement to compensation due to the buyer's inability to pay, the Seller shall be entitled to refuse the performance incumbent upon him. At the same time, without regard to prior agreements, he may demand the advance payment of compensation or a corresponding collateral at the discretion of the buyer. If the buyer does not comply with this request within a period of 14 days of receipt, the Seller shall be permitted to withdraw from the contract. In such cases, the Seller shall remain entitled to withdraw all outstanding bills of exchange and cheques immediately; the resulting costs shall be borne by the buyer

### **6. Liability of the Buyer**

If the contract is not executed, the Seller may, without prejudice to his right to claim a higher actual loss, claim 10% of the sales price for the costs incurred by the processing of the order as well as the lost profit, unless the non-fulfilment of the

contract is not due to the fault of the buyer. In addition, the buyer shall be entitled to prove that the costs or the lost profit did not arise at all or were substantially lower than the lump sum.

### **7. Delivery times, default of acceptance of the Buyer**

a) Terms of delivery shall not be binding, unless they have been expressly designated as binding by the Seller in writing.

Delivery periods shall be extended if there is a delay in delivery to the Seller that is not the Seller's responsibility. The extension of the delivery period shall correspond to the duration of the delay. The same shall apply if the execution of the delivery is delayed due to force majeure. Force majeure shall apply to impediments to performance by the Seller, such as government action, strikes and lockouts (including manufacturers and suppliers or energy losses and energy deficiencies) and obstruction of traffic routes.

b) If the buyer is in default of acceptance or if he breaches other obligations to cooperate, the Seller shall be entitled to demand compensation for any damage incurred, including any additional expenses. The right to claim further damages shall remain reserved.

c) The risk of accidental loss or accidental deterioration of the delivery item shall pass to the buyer when the buyer is in default of acceptance or payment.

### **8. Acceptance**

If the goods are to be tested according to special conditions, acceptance shall take place at the Seller's plant. All acceptance costs, travel costs and accommodation expenses shall be borne by the buyer.

### **9. Process capability, shortfall or excess quantities, dimensional deviations**

a) In view of the specialized processes and metal physics involved in the extrusion process, extruded diameters can only be reproduced to a limited extent and, thus, offer only limited process capability within the meaning of long-term process capability (Cp/Cpk). The state of the art at the time of order placement shall, therefore, be authoritative.

Deviating requirements in the form of statistical evaluations can be tested on a case-by-case basis and implemented according to individual requirements. Evaluations in the form of short-term capability analyses (Cm/Cmk) can be created with the respective initial sampling.

b) If the amount delivered by the Seller deviates by up to 10% of the buyer's original order quantity, this shall not constitute a defect of the object of purchase. In these cases, the buyer shall be obliged to accept the purchased item delivered by the Seller. At the same time, the originally agreed purchase price shall change in proportion to how the quantity delivered by the Seller deviates from the buyer's original order quantity.

c) If dimensions of DIN-standard goods are objectionable, they shall not be regarded as defective if the dimensional deviations fall within the relevant DIN tolerances.

### **10. Complaints**

a) The buyer shall be obliged to examine the delivered goods immediately upon receipt. Notification of defects shall be immediately declared in writing, by telex or by telegraph. If defects occur, the treatment and processing shall be stopped immediately. For the rest, § 377 HGB (German Commercial Code) shall apply.

b) The buyer shall immediately give the Seller the opportunity to verify existence of the defect.

c) Returns shall only be permitted with the Seller's express consent.

d) If the goods are intended for incorporation or installation in other goods, the buyer must examine the inherent features of the goods that are relevant for the intended purpose prior to such incorporation and must notify us of any defects immediately in writing or in written form.

### **11. Liability of the Seller**

a) In cases of defective goods, the buyer's claim against the Seller shall be limited to a claim for supplementary

## **General Terms and Conditions of Sale and Delivery F. W. Brökelmann Aluminiumwerk GmbH & Co. KG (Version dated 01 January 2018)**

performance, unless the following provisions of this clause give rise to liability.

The Seller shall be permitted to choose whether to fulfil this claim via the elimination of the defect or delivery of a defect-free item.

b) The expenses incurred in relation to the removal of the defective goods and the incorporation or installation of the rectified or new, defect-free product shall only comprise expenses related to the removal and installation of identical goods, incurred on the basis of customary conditions and substantiated by the buyer in a suitable, written format. They shall not include futile expenses incurred by the buyer in reliance on receiving performance.

c) If the Seller refuses both types of supplementary performance pursuant to § 439, Paragraph 3 BGB or if the type of supplementary performance to which the buyer is entitled has failed or cannot reasonably be accepted, the buyer shall be permitted to demand, at his discretion, a price reduction or withdrawal from the contract.

d) We reserve the right to refuse any costs associated with supplementary performance if they are disproportionate. At the latest, this shall be the case when they exceed a value of 150% of the purchase price of goods in defect-free condition.

e) In addition, the Seller's liability for breaches of duty shall be limited as follows: He shall be liable for damages resulting from injury to life, limb and health due to a wilful breach of duty by himself, his legal representative or a vicarious agent. He shall also be liable for other damages, insofar as they are based on a wilful or grossly negligent breach of duty or a culpable violation of material contractual obligations by himself, his legal representative or a vicarious agent. Provided that the cases in the previous sentence are not caused by deliberate acts, the liability regulated therein shall be limited to the foreseeable, typically occurring damage. The buyer's right to withdraw from the contract in the event of a breach of duty for which the Seller is responsible and which does not constitute a defect in the purchased item shall remain unaffected. This shall also apply to claims submitted by the Buyer resulting from legally binding liability of the Seller.

f) The limitation period for claims against the Seller due to a defect shall be - except in the cases of § 438, Paragraph 1, Number 2 and § 634a, Paragraph 1, Number 2 BGB - one year from the beginning of the statutory limitation period, unless the Seller has fraudulently concealed the defect or assumed a guarantee for the quality of the item of purchase.

### **12. Obligations of the buyer**

a) The buyer undertakes to fully inform his customers about the quality, usability and safety standard of the goods purchased from the Seller. If the Buyer is notified of a defect in the delivered goods by his customer, he shall be obliged to immediately inform the Seller in writing, but no later than within two days.

b) The buyer undertakes, if not done yet, to take out a public liability insurance policy, including extended product liability insurance, and to notify the Seller upon request regarding the scope and amount of cover.

### **13. Shipping**

Shipping shall be ex-works and shall be at the buyer's risk and expense. For deliveries made at the buyer's risk of at least 1,000 kilograms (for profiles, or EUR 1,000 for accessories), delivery shall be franco domicile within Germany.

### **14. Packaging**

Reusable packaging (racks, wooden crates, lattice boxes, etc.) shall be provided for a maximum of 3 months by way of loan. They shall be charged at cost if they are not returned within 3 months, carriage paid and in mint condition.

### **15. Payment, set-off, retention**

a) For the transactions between the Seller and the buyer, for which credit insurance has been taken out in favour of the Seller, the following terms of payment shall apply:

The purchase price shall be due 30 days after the date of invoice. If a credit note is given within 8 days of the date of

invoice, a 2% discount shall be granted; for credit notes given within 14 days, a 1% discount shall be granted.

b) If no credit insurance has been taken out in favour of the Seller for the Seller's dealings with the buyer, or if it subsequently expires, the parties to the contract shall negotiate the terms of payment for the respective deliveries. If no agreement is reached within 10 days of receipt of the buyer's order/delivery schedule or delivery description, the Seller shall only be obliged to make delivery against payment in advance.

c) If the buyer has not fully settled an invoice at maturity, all other outstanding invoices issued by the Seller shall become due immediately, regardless of their date of issue. At the same time, with regard to these invoices, the buyer's right to deduct cash discount shall be withdrawn.

d) The Seller shall not be obliged to accept bills of exchange. However, if he accepts bills of exchange, the bank's discounting and collection charges shall be borne by the buyer on the due date of the claim and shall be paid immediately. Bills of exchange and cheques shall always only be accepted on account of fulfilment. A commitment for timely presentation and protests of bills of exchange and cheques shall not be accepted.

e) If the buyer is in default of payment, default interest of 8 percentage points above the base rate shall be charged. The right to claim further interest shall remain reserved.

f) The offset shall only be available to the buyer with undisputed or legally established counterclaims or with counterclaims that are ripe for adjudication.

g) The buyer shall only be entitled to assert a right of retention for undisputed or legally established counterclaims or for counterclaims that are ripe for adjudication that originate from the same contractual relationship with the Seller.

### **16. Retention of title**

a) The Seller shall retain the title to all goods delivered by him until the buyer has paid all claims arising from the business relationship or – if individual claims submitted by the Seller have been included in an open invoice – until the recognized balance has been settled.

b) The drafting of a bill of exchange or cheque shall not be considered as payment until the bill of exchange or cheque has been cashed by the seller.

c) In cases of a breach of contract by the buyer, in particular in cases of default, the Seller shall be entitled to repossess the goods. After repossessing the goods, the Seller shall be authorized to resell them. The sales proceeds shall be credited against the liabilities of the buyer, minus reasonable costs incurred by the sale.

d) The buyer shall be entitled to resell the delivered goods (goods subject to retention of title) within the scope of a proper business operation. However, he hereby assigns to the Seller the claims due to him from the resale in the amount of the final invoice amount of the goods subject to retention of title, irrespective of whether the goods subject to retention of title were resold without or after processing, transforming, combining, mixing or blending.

The claim thus assigned to the Seller by the buyer shall comprise the recognized balance from the transactions with the latter's customer as well as any surplus in the event of an insolvency of the customer (so-called "causal balance").

If the sales price is deferred to the customer, the buyer shall retain the right of ownership of the goods sold to the customer under equal conditions under which the Seller has retained the property upon delivery of the goods subject to retention of title. The assignment of the claims shall be provisionally silent, i.e., not communicated to the customer. The buyer shall be authorized to collect the claims until further notice. However, he shall not be entitled to dispose of the claims in any other way, e.g., via assignment.

The Seller shall have the right to revoke the authorization to collect the receivables and to collect the receivables himself if the buyer fails to meet his payment obligations from the proceeds received according to the contract, if he is in default of payment or if an application for the opening of insolvency proceedings has been filed. In this case, the buyer shall be obliged to provide the Seller with the names of the customers

and the amounts of the assigned claims at the request of the Seller, to give him all information necessary to assert the assigned claims and to notify the customers of the assignments. If the goods subject to retention of title are used by the Buyer to fulfil a work contract or a contract for labour and materials, the aforementioned regulations of this provision shall apply accordingly.

e) The processing or transformation of the goods subject to retention of title by the buyer shall always be carried out for the Seller on his behalf, but without any costs.

If the goods subject to retention of title are processed with other items not belonging to the Seller, he shall acquire co-ownership of the new items in the ratio of the value of the goods subject to retention of title (final invoice amount of the goods subject to retention of title) to the other items processed at the time of processing.

The buyer shall retain the resulting sole or co-ownership for the Seller.

f) The above regulation under Clause 16 e), Sentence 2 shall apply mutatis mutandis if the goods subject to retention of title are combined with other goods not belonging to the Seller or are inseparably mixed or blended. If, however, one of these processes creates sole ownership to the buyer, because one of his products is the main component, it shall be agreed that the buyer transfers to the Seller the co-ownership of the entire item in the ratio of the value of the goods subject to retention of title (final invoice amount of the goods subject to retention of title).

The buyer shall retain the resulting co-ownership for the Seller.

g) To secure the Seller's claims, the buyer shall assign to the Seller claims against third parties arising to the buyer from the combination of the goods subject to retention of title with a plot of land, in the final invoice amount of the goods subject to retention of title.

h) The buyer shall be obliged to insure the goods against all usual risks, in particular fire, burglary and water hazards at his own expense and at original value and to treat them with care. If maintenance and inspection work is required, the buyer shall arrange for it at his own expense.

i) Furthermore, the buyer shall be obliged to immediately inform the Seller in writing of the seizure of the goods or of the assigned claims by third parties or of other claims that third parties make regarding the goods.

j) The buyer shall be obliged to provide the Seller with information about the whereabouts of the goods delivered under retention of title and about the claims arising from the resale upon the Seller's request at any time. The costs arising from the assertion of the rights of the Seller shall be borne by the buyer.

k) If the realizable value of the existing securities exceeds the claims to be secured by more than 10%, the Seller shall be obliged to release them upon the request of the buyer. The choice of securities to be released shall be incumbent upon the Seller.

l) Upon full settlement of all claims the Seller has from the business relationship, including open invoices, the ownership of the goods subject to retention of title as well as the assigned claims shall be transferred to the buyer.

#### **17. Transferability**

The rights of the buyer under the delivery contract may only be transferred to a third party with the Seller's prior consent.

#### **18. Copyright**

If deliveries are made according to drawings, samples or other information provided by the buyer and if patent, design or trademark rights of third parties are thereby infringed, the buyer shall be liable to the Seller for the resulting damage and loss of profit.

#### **19. Place of fulfilment, place of jurisdiction and choice of law**

a) The Seller's place of business shall be the place of fulfilment for all claims resulting from the delivery contract as well as the place of jurisdiction for all disputes arising from the delivery contract. However, the Seller shall also be entitled to sue the buyer at his general place of jurisdiction.

b) For the rest – also for export contracts – German law shall be exclusively stipulated. The provisions on the international

purchase of movable goods, in particular the UN Convention on Contracts for the International Sale of Goods (CISG), shall be expressly excluded. This shall also apply if the buyer is domiciled abroad.

#### **20. Data protection**

The Seller works with EDP and has stored the company name, address, buyer representation relationships as well as other necessary order processing information