

AGROB BUCHTAL GmbH

(formerly doing business under the name of Deutsche Steinzeug Keramik GmbH)

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General Terms and Conditions

- A. Validity of the Terms and Conditions of **AGROB BUCHTAL GmbH** (hereinafter “**AB**”)
- B. Conditions of Purchase and Order
- C. General Terms and Conditions

Special clause concerning the BDSG (Federal Data Protection Law):

Our contractual partners authorize us, by waiver of a separate notification, to store and to process personal data in the scope of the BDSG as far as required for the performance of the contractual relationship.

Business partners

We conclude contracts exclusively with business enterprises, not with consumers.

A. Validity of the Terms and Conditions of AB

These Terms and Conditions shall be valid at all times and for all transactions and contractual relations between **AB** and its business partners, even if, in the event of individual transactions, no special reference is made to these terms. Possible terms and conditions of our business partners shall not apply.

B. Conditions of Purchase and Order

B.1

For orders and purchase orders placed by **AB**, the Conditions of Purchase and Order of **AB** shall be decisive exclusively.

B.2.01

All orders from and purchases made by **AB** shall - unless present terms fail to clearly frame there extent - **exclusively** be effected in accordance with relevant legal regulations.

B.2.02

The contractual partner of **AB** has to warrant and to pay damages to the extent and for the period of time provided by law.

B.2.03

Complementary to the legal regulations, the following terms shall apply.

B.3

Our written purchase order is decisive for the content of the contract, if applicable in conjunction with our written confirmation of the contract.

B.4

The written form in the meaning of these conditions is also adhered to in case of fax or eMail.

B.5.01

The price quoted in the purchase order is binding.

B.5.02

Provided that no deviating agreement according to the Incoterms 2010 of the International Chamber of Commerce (ICC) is concluded, the prices are free domicile.

B.5.03

The prices do not include statutory value-added tax.

B.5.04

The prices include the costs of packaging and the transport insurance.

B.5.05

The prices also include possible other costs of the supplier.

B.5.06

Additional services are not separately reimbursed.

B.5.07

AB shall be entitled to return packagings in good condition to the supplier at the supplier's expense. Shipping instructions for packagings must be particularly emphasized on the delivery note.

B.6.01

If not otherwise agreed, payment shall be made within 15 days with a cash discount of 3 % or effect net payment within 30 days by means of payment chosen by **AB**.

B.6.02

For the computation of the payment and discount period, the date of the receipt of invoice is decisive. A delivery carried out prior to the agreed date does not affect the beginning of the payment period depending on the receipt of invoice.

B.7.01

Without the written consent of **AB**, the supplier can not assign its contractual delivery commitments to third parties - neither as a whole nor partly.

B.7.02

The supplier agrees that **AB** can offset claims existing against it or its subsidiaries and associated companies with all of its claims of all of its affiliated companies. The offset is also permissible if on the one side cash payment and on the other side payment in bills or any other performance has been agreed on account of performance.

B.8.01

Agreed delivery dates are fixed dates and must be absolutely complied with.

B.8.02

If the supplier realizes that it can not comply with agreed periods and fixed dates, it has to notify **AB** of this immediately in writing.

B.8.03

The place of performance for all deliveries and services is the place of destination specified by **AB**.

B.8.04

In the case of default of delivery, **AB** shall be entitled - after the fruitless expiry of a reasonable period - to the legal claims, i.e. withdrawal from contract and damages instead of the performance.

B.9.01

If and as far as **AB** is obliged to inspect the delivered goods, the period for the inspection of the goods and for lodging a complaint in case of an apparent defect shall be 14 days from receipt of the delivery.

B.9.02

The time limit for lodging a complaint in case of hidden defects is 40 days from the detection of the defect. Hidden defects are, among other things, those defects which in case of shrink-wrapped goods can be detected only after opening the packaging. If the goods are delivered to a place of destination which is not identical with the address of one of our headquarters, the time limit for lodging a complaint of 40 days from the detection of the defect shall always apply.

B.9.03

AB shall be entitled to claim damages for any defects as provided by law without restrictions. The right to claim damages shall also apply to the deliveries of subcontractors of the supplier.

B.9.04

It is up to **AB** to demand as subsequent performance the remedying of the defect or the delivery

of goods free of defects or the production of new goods in consideration of the appropriateness.

B.9.05

The subsequent performance shall be carried out as quickly as possible as agreed with **AB** and in consideration of the internal interests of **AB**.

B.9.06

If no subsequent performance is effected within a reasonable period of time or if it is unsuccessful twice, **AB** shall be entitled to the rights of cancellation, reduction of purchase price, payment of damages and/or repayment of expenses.

B.9.07

The right to claim damages for any defects is struck by the statute of limitations pursuant to the legal regulations.

B.9.08

All costs of the subsequent performance shall be borne by the supplier, including the costs e.g. for taking back, dismantling, transport, ways, work, material, planning, documentation services which arise from the subsequent performance.

B.9.09

As far as **AB** incurs any costs due to the subsequent performance, **AB** shall be entitled to invoice them with the local prices.

B.10

Should individual provisions contained in these conditions be invalid as a whole or in parts, the validity of the other conditions remains unaffected thereby. Instead of the invalid provisions, the § 133, 157, 242 of the German Civil Code have to be used - for the purpose of plugging the gap - for the settlement of the facts by way of the supplementary interpretation of the contract.

B.11

The supplier will maintain silence with regard to third parties about all internal processes, facilities, plants, documents etc. of **AB** and its customers which it gets to know in connection with its activity for **AB**, also after submitting the respective offers or the performance of the con-

tract. It will impose corresponding obligations on its assistants or vicarious agents.

B.12

Pursuant to § 33 of the Federal Data Protection Law (BDSG), **AB** points out that it will store data of the supplier in the scope of the BDSG. The supplier agrees to that.

B.13.01

In case of goods arriving too early, the value date of the invoice is fixed to the delivery date desired by **AB** under the contract. The value date is deemed to be the date of receipt of the invoice.

B.13.02

In case of defective goods or performance or part delivery not conforming to the contract, the value date of the invoice is fixed to the date on which the goods are free of defects or of complete delivery. The value date is deemed to be the date of receipt of the invoice.

B.14.1

The contracts between **AB** and its business partners shall be governed by German law exclusively under exclusion of the UN agreement on Contracts for the International Sale of Goods (CISG).

B.14.2

The exclusive place of jurisdiction is Bonn. **AB**, however, has the right to proceed against the business partner also at the business partner's registered office.

C. General Terms and Conditions

C.1. Confirmation of order / content of contract / minimum order values / communication / etc.

C.1.01

These Terms and Conditions shall exclusively and at all times apply for the contractual relationship between **AB** and its business partners, even if, in the event of individual transactions, they are not specifically referred to.

Any General terms and conditions as may be stipulated by any of the business partners of AB are deemed to be null and void even if not particularly objected to.

C.1.02

The content of the respective contract, shall be based on **AB's** pertaining written confirmation of order. Any oral arrangements as may have been made by non-authorized **AB** personnel in conjunction with contractual agreements shall not be valid unless confirmed by **AB** in writing.

C.1.03

Quality statements concerning the products and services of **AB** are attributable to **AB** only if these statements are originally made by **AB** or expressly on behalf of **AB** or if they are expressly authorized by **AB**, or if **AB** has known these statements for four weeks or had to know them without dissociating from such statements. Authorized distributors or customers of **AB** acting as retailers are no vicarious agents of **AB** in the meaning of § 434 section 1 BGB (German Civil Code). An adequate correction of quality statements in the meaning of § 434 section 1 BGB can be effected in any case on the homepage of **AB** under the address www.agrob-buchtal.de.

C.1.04

The basis for the quality of the contractual goods is the DIN EN 14411 in its relevant parts, in particular Annex G, B I a. Apart from this, quality statements attributable to **AB**, which in-

clude measurable values, are to be understood with a tolerance of $\pm 10\%$.

C.1.05

The customer must send purchase orders and execution wishes in writing exclusively to the fax numbers or eMail addresses announced to it for this specific purpose.

C.1.06

Should the customer choose any other communication channels, it is taking the risk of delaying processing.

C.1.07

Ceramic tiles and panels are manufactured in many different sizes. Thus, different piece numbers per square metre of laying area are required. At the calculation of the price per square metre, the respective joint widths for laying specified in the relevant standards are included.

C.1.08

The goods are packed in cardboard boxes and shrink-wrapped on pallets. According to the requirements of the Ordinance on Packagings, the company INTERSEROH, contract no. 25454, is charged with the recycling of the packagings put into circulation by us. All other special packagings shall be charged to the customer. Products from the segment of processing materials are supplied without shrink wrapping. Upon request of our customers, shrink wrapping can be carried out. The resulting costs are charged to the customer.

C.1.09

As far as packaging is required, **AB** packages the goods according to the existing regulations and proceeds pursuant to § 4 of the Ordinance on Packagings.

C.1.10

Products marked as 1st choice meet the requirements of the relevant standard DIN EN 14411. Products marked as 2nd choice do not

meet the requirements of the aforementioned standard and have technical and/or visual defects, which exclude a qualification as 1st choice.

C.1.11

Due to the particular character of ceramic manufacturing, the goods delivered are not uniform in colour and polish and therefore mostly also do not correspond with samples which have been submitted. Especially in the case of mosaics, colour variations frequently are quite normal. In addition, there are tolerances customary in trade with regard to size and thickness.

C.1.12

The wear to which every floor covering is subject depends, on the one hand, on the area of application, the duration and frequency of exposure to stress, the type and degree of soiling as well as, on the other hand, the hardness and wear-resistance of the covering material. The classification in stress groups refers to the wear-resistance of the glazes, but not to their loading capacity with regard to pressure and heavy weights. In the case of glazed earthenware tiles the point loading capacity is limited to 2,500 N.

C.1.13

Only those products are suitable for processing (especially laying) in commercial and public buildings which have been expressly approved by **AB** for these areas of application. The customer should therefore pay attention to the respective recommendations of use for the products.

C.1.14

In the case of some art and decorative glazes crazes - sometimes forming only after laying - are typical of the appearance of these products. Crazes do not impair the utility value of the tiles.

C.1.15

Drawings, execution plans, design proposals, laying schemes, quantity statements, drafts of

bills of quantities and the like made available by **AB** only constitute a favour. They are not binding and have to be checked for correctness in any case by the customer. **AB** does not assume liability for their correctness.

C.1.16

AB shall be entitled to sell and to assign claims against its customers. Contractual prohibitions of assignment shall not apply.

C.2. Brands and protection of proprietary rights

C.2.01

AB shall be entitled to attach its own company and brand logos. The customer shall not be entitled to remove such logos attached by **AB**.

C.2.02

Any later surface modifications by renewed firing of the goods, in particular the application of decors, require the prior written consent of **AB**.

C.2.03

The contractual partner of **AB** shall be obliged to agree the arrangements **C.2.01** and **C.2.02** when reselling the products to others as well.

C.3. Logistic concept, passage of risk and freight charges

C.3.01

ATTENTION! The clauses of this point 3 govern a special logistic procedure applicable between **AB and the customer.**

C.3.02

To facilitate an efficient flow of goods and to be able to work economically by means of productive logistics, the collection of the goods must be organized so precisely that e.g. a capacity overload of the loading ramps is avoided. This is achieved, among other things, by a fundamental separation of the types of delivery. A distinction is made between **EXW**-deliveries and **carrier-bound** deliveries.

C.3.03

In general, the following applies:

As far as **C.3.04** is not relevant, deliveries are made ex works. This means that all deliveries are made EXW, which means:

- the collection requires an advance notice with a period of three working days by fax or eMail **and**
- it requires the compliance with an exact time-frame of ± 60 minutes made available by **AB**.
- If these conditions are not complied with, the goods can be collected only after a new time arrangement with **AB**.

In that case, **AB** reserves the right to charge the customer € 100.00 net as administrative lump sum for the rearrangement.

C.3.04

For the German mainland (i.e. not for German islands) as well as for the foreign regions listed in the currently valid **freight rate table** (sent upon request), the principle of the carrier-bound delivery applies: this means that the delivery is exclusively carried out by a carrier charged with it by **AB** within the scope of a complex logistics system.

C.3.05

For the transports, the customer shall pay a flat-rate price which results from the currently valid freight rate table which is made available to the customer on demand.

C.3.06

All purchase contracts are concluded as sale to destination according to buyer's instructions in the meaning of § 447 BGB (German Civil Code). § 447 section 2 BGB shall not be applicable.

C.3.07

The risk shall pass to the customer as soon as the goods are transferred to the carrier.

C.3.08

The freight charges are borne by the customer.

C.3.09

The customer shall not be entitled to give the carrier instructions with regard to the transports.

This shall also apply to part deliveries (see **point C.5.02**).

C.3.10

Even if the principle of the carrier-bound delivery according to point **C.3.04** applies in general, the following exception to it is possible:

The customer shall be entitled, if it proves in the individual case that a transport organized by itself would be cheaper for it, to collect the goods or have them collected by itself in compliance with the following conditions:

- a collection by the customer requires an advance notice with a period of three working days by fax or eMail **and**
- it requires the compliance with an exact time-frame of ± 60 minutes made available by **AB**.
- Because of the administrative costs related to this, we reserve the right to charge a lump sum of € 100.00 net in case of each collection by customer.

C.3.11

Per single purchase, always only one place of destination is possible. This means that e.g. in case of a purchase order for a quantity of goods to be dispatched to two different places two confirmations of order are generated by **AB** with separately invoiced freight charges according to the freight table.

C.3.12

The combining of several consignments for one place of destination is only possible if the customer expressly wishes this by fax or by eMail and **AB** has appropriate planning scope. Periods of delivery are extended and delivery dates are postponed in that case according to point **C.4**.

C.3.13

A change of the place of destination by the customer shall not be possible after the conclusion of the contract.

C.3.14

Freight charges are separately reported and excluded from the granting of any rebates and deductions of cash discounts.

C.3.15

An insurance of the delivery is effected only upon the written request of the customer and in that case at the customer's expense.

C.3.16

Also in case of other types of delivery, any risk shall pass to the customer as soon as the goods are leaving the factory of **AB**.

C.3.17

If shipment is delayed due to circumstances for which the customer is responsible, the risk shall pass to the customer as soon as the goods are ready for shipment; if collection by the customer was agreed, as soon as the goods are ready for collection on the agreed delivery date.

C.3.18

In case of collection by the customer, **AB** accepts, if the goods are packed on Euro-pallets, the same number of exchangeable pallets of identical type and quality. Only those pallets are exchangeable which require no repair. For each pallet for which no exchangeable one is handed over to **AB**, **AB** shall charge the customer € 7.50 net.

C.3.19

If goods are packed on gassed pallets, € 12.50 shall be charged for each of such pallets.

C.3.20

If **AB** takes back goods on a good-will basis, i.e. if there is no obligation to take them back, the freight charges shall be borne by the customer.

C.3.21

The freight charges for the dispatch of commercial samples which **AB** makes available on the customer's request shall be borne by the customer.

C.4. Term of delivery**C.4.01**

Possibly agreed periods of delivery shall be effective ex works unless expressly otherwise agreed. Such periods of delivery start with the date provided in the order, at the earliest however when the documents, approvals, call-offs and addresses for shipments to be procured by the customer are available, all details of the order have been clarified (also see **C.3.12**) and the customer has made advance payments or provided collateral as agreed. As far as a **period** of delivery has been agreed, this period shall be reasonably extended if the customer is in default with the furnishing of documents, approvals, notifications of addresses for shipments, advance payments or collateral to be procured by it. If a delivery **date** has been agreed, this date shall be reasonably postponed if the customer is in default with the furnishing of documents, approvals, notifications of addresses for shipments, advance payments or collateral to be procured by it. Such a postponement of delivery dates or extension of periods of delivery also takes place if the conditions for the services to be rendered by **AB**, which the customer has to render by itself or through third parties do not exist in time, or if arrangements are modified on the customer's request in the meaning of **C.3.12**.

C.4.02

Should the customer wish any modifications of the order after the confirmation of the order, the period of delivery shall begin only with the confirmation of the modification by **AB**. The delivery date shall be postponed accordingly.

C.4.03

The time for performance shall be reasonably extended if unforeseen hindrances occur which **AB** can not avert despite reasonable care

in view of the circumstances of the case, e.g. a total or partial loss of subcontractors, for which **AB** does not have to take responsibility. In such a case, **AB** can withdraw from the contract.

C.4.04

A claim for damages instead of performance or for damages for delayed performance is excluded in the cases of point **C.4.03** if **AB** has immediately informed the customer about the performance hindrances.

C.4.05

The same shall apply in the case of fixed-date purchases if the aforementioned delays are not discontinued in time.

C.4.06

Damages possibly to be paid by **AB** because of delayed performance is limited to the negative interest.

C.5. Part deliveries / surplus quantities and shortage in quantities

C.5.01

If the goods are manufactured as special production on the customer's request, **AB** shall be entitled to supply a surplus quantity of up to 10%; this shall not be deemed to be a breach of duty. The purchase price changes correspondingly.

C.5.02

Part deliveries are also permissible to an extent reasonable for the customer.

C.5.03

If **AB** makes use of the right of part delivery or delivery of a surplus quantity, payments for goods already supplied can not be withheld for this reason.

C.6. Prices

C.6.01

Unless otherwise agreed, the prices shall be quoted ex works or ex warehouse, **exclusive of** packaging.

C.6.02

The prices, and the same applies to costs and interest, do not include the value-added tax valid at a time.

C.6.03

If the cost factors change after the conclusion of the contract, in particular the prices for raw materials or supplies as well as wages and transport costs, **AB** shall be entitled to adjust the prices appropriately if a period of more than 4 months lies between the confirmation of order and delivery.

C.6.04

The price lists valid on the day of the order shall be applicable. The price lists are sent out upon request.

C.6.05

In principle, the price lists are always valid for one calendar year. **AB** however reserves the right of changes during the year. Such changes shall always become effective at the end of a quarter after a period of six weeks from their announcement on the internet or by notification.

C.6.06

No rebate or cash discount shall be granted for separately invoiced freight charges and packaging costs, and they are also not taken into account at the calculation of possibly agreed bonuses.

C.7. Terms of payment

C.7.01

For advance payments, the provisions of the Value-Added Tax Law shall apply.

C.7.02

Unless otherwise agreed, payments are due immediately.

C.7.03

The receipt on the account of **AB** shall be decisive for the punctuality of payment.

C.7.04

In case of advance payment, a cash discount of 2% is granted; in case of payment within 14 days, a cash discount of 1% is granted.

C.7.05

Payments to be made to **AB** are due after 30 days from the date of invoice at the latest. By exceeding this date, the debtor defaults on payment.

C.7.06

In case of a delay in payment of the customer, **AB** charges a dunning charge in the amount of 5.00 EUR for every prompt note.

In case of default in payment of the customer, **AB** shall be entitled to claim interest on defaulted payment at the rate of 10 % above the base interest rate. The proof and the assertion of any further damage remain unaffected by that.

C.7.07

The place of performance for payments is the registered office of **AB**.

C.7.08

The customer can offset only with indisputable or legally effective counter claims.

C.7.09

The customer has no right of retention.

The rights pursuant to § 320 BGB (German Civil Code), however, shall continue to apply as long and as far as **AB** has not fulfilled its warranties.

C.7.10

If **AB** accepts checks for payment, this is only done as performance in full discharge of an obligation.

C.7.11

The payment by means of bills is excluded; bills are not accepted by **AB** for payment. If **AB** accepts bills due to a special opposing agreement, this is only done as performance in full discharge of an obligation.

C.7.12

Bills accepted as a special exception must be discountable. Discount charges and other costs are chargeable to the customer and shall be due immediately without deduction after issuing the invoice.

C.7.13

In case of payment by means of bills agreed as a special exception, **AB** can demand, without this being separately agreed, the immediate payment of all outstanding trade debts, including those not yet due and otherwise undisputed if invoiced discount charges are not paid within 8 days, bills received are not discounted by the bank of **AB** or discounted bills are reversed, or if a bill is not paid.

The same shall apply if a check of the customer is not cashed.

C.7.14

If on the part of the customer - should a declaration of intention of the customer still be required for the conclusion of the contract, after the last declaration of intention of **AB** concerning the conclusion of the contract - a substantial deterioration of its financial situation occurs after the conclusion of the contract, if e.g. bill and/or check protests happen, **AB** shall be entitled to demand advance payment or the furnishing of collateral for all performances and deliveries not yet carried out under contracts from the same legal relationship (§ 273 BGB) at **AB's** discretion. If the customer does not satisfy this demand, **AB** shall be entitled to withdraw from these said contracts or, after fixing a time limit, to claim damages instead of performance, in fact 25% of the order value not carried out without particular proof, unless the customer proves a lower damage.

AB shall also be entitled to claim damages exceeding the flat-rate percentage.

C.7.15

The redemption of several debts receivable as well as of principal claims, interest and costs shall be effected pursuant to §§ 366 section 2 and 367 section 1 BGB (German Civil Code). The debtor, however, shall be entitled to the defence of nonperformance of contract pursuant to § 320 BGB.

C.8. Duty of inspection and to lodge complaints

C.8.01

The deliveries of **AB** have to be inspected by the customer immediately upon receipt with regard to their fitness for use and correctness. In case of a violation of this provision, any possible warranty claims are excluded.

C.8.02

First of all, the customer must inspect the delivery with regard to damage of the packaging or irregularities concerning the packaging. Whenever this is the case, the customer has to remove the packaging and to inspect the goods. If a few defects are detected, it has to intensify the inspection. In case of a violation of this provision, any possible warranty claims are excluded.

C.8.03

In any case, the customer has to take samples of the supplied goods. The more defects are detected, the more intensive has to be the inspection by the customer. In case of a violation of this provision, any possible warranty claims are excluded.

C.8.04

AB must be informed about apparent defects in writing within 6 days after the arrival of the goods at the place of destination by precisely specifying the specific complaints.

C.8.05

The customer must lodge complaints concerning hidden defects immediately after their detection also in this form.

C.8.06

In case of a violation of the provisions **C.8.04** or **C.8.05**, any possible warranty claims are excluded.

C.8.07

Defects detectable only after the opening of bundles must also be reported in writing within the aforementioned period, however, six months after receipt at the latest, in any case prior to the processing of the supplied goods. In case of a violation of this provision, any possible warranty claims are excluded.

C.8.08

Prior to processing (this means in particular: laying), the goods must be also inspected with regard to colour deviations by cleaning the tiles.. If they are processed nevertheless, the processed goods shall be deemed to be accepted.

C.8.09

The processing of goods with apparent defects must not be carried out. If they are processed nevertheless, the processed goods shall be deemed to be accepted.

C.8.10

If the defectiveness becomes apparent during processing, processing must not be continued. If the goods are processed nevertheless, they shall be deemed to be accepted.

C.8.11

If goods with special characteristics are ordered, which can not be found without special experimental check, such as e.g. surface coatings, the packaging of the goods must be checked for the presence of a note referring to these special characteristics. If this is not the case, we must be notified of the absence of the note within seven days after delivery. If the goods are processed in spite of the missing

note, any warranty and liability for the absence of the respective special characteristic shall be excluded. In the event of violation of the duty to lodge a complaint and in case of processing, the processed goods shall be deemed to be accepted.

C.8.12

Non-conforming goods must be kept ready for inspection by **AB** in the condition in which they are at the time of detecting the defect. In case of a violation of this provision, the customer has to prove that the condition of the goods has not deteriorated due to its behaviour and a subsequent performance has not become more expensive.

C.8.13

Non-conforming goods are to be properly stored by the customer until the complaint has been settled. Any deterioration of the goods due to a violation of this provision and a loss of the goods due to that shall be chargeable to the customer.

C.8.14

If a defect is detectable only after processing, a dismantling (removal of the tiles) may be carried out only after **AB** was given the opportunity of inspecting the defect within a reasonable period and in an appropriate manner or if **AB** has agreed to the dismantling in writing. In case of a violation of this provision, any possible warranty claims are excluded.

C.8.15

For distribution partners of **AB** with written distribution partner agreements, for the modalities of the notice of defects the **AB** distribution partner conditions shall apply in addition..

C.9. Warranty

The following limitation of warranty shall not apply in case of damage from injuring of life, body or health which are due to an intentional or negligent violation of duty of **AB** or one of our legal representatives or vicarious agents. It also shall not apply if any other damage is due to intent or gross negligence.

C.9.01

The statutory warranty period shall apply.

C.9.02

Contrary to C.9.01, the warranty period for goods which the customer has sold to resellers is 5 years from delivery to the customer. Should the customer be entitled within this period to plead the statute of limitations with regard to its customer, only the shorter warranty period of the customer with regard to its customer shall apply - if it does not do that in time - also in the relationship to **AB**.

C.9.03

For insignificant violations of duties and negligible defects, any liability and warranty shall be excluded. For the case that the customer is entitled to subsequent performance, **AB** decides whether the subsequent performance is effected by remedying the defect or by delivery of flawless merchandise.

C.9.04

Works concerning goods supplied by **AB** or other services rendered by **AB** shall be deemed to be works for remedying defects or rework only

- **if** the defectiveness has been expressly acknowledged by **AB**
- **or if** customer's complaints have been evidenced
- **and if** these evidenced complaints are justified.

Failing these prerequisites, such works are to be considered as special performance with costs.

C.9.05

And also apart from this, reworks or substitute deliveries are carried out by **AB** as special performances with costs unless they are expressly effected on the basis of the acknowledgement of a legal obligation.

C.9.06

As far as the warranty period is retarded or interrupted by the works or substitute deliveries carried out by **AB**, such a retardation or interruption only applies to the quantity concerned by the substitute delivery or rework.

C.9.07

For carrying out reworks and substitute deliveries in the scope of warranty, the customer must give **AB** the necessary time and opportunity. Only in urgent cases, i.e. to prevent excessively great damage, the customer shall be entitled - provided that **AB** is immediately informed, or if **AB** is in arrears with the remedying of a defect - to remedy the defect by itself or by a third party and to demand the reimbursement of the necessary expenses from **AB**.

C.9.08

If a subsequent performance to be carried out has not resulted in the remedying of the defect after a reasonable number of attempts to be assessed for the individual case, the customer shall be entitled to withdraw from the contract. For the subsequent performance, at least three attempts are considered to be reasonable.

C.9.09

If **AB** has refused a subsequent performance despite a legitimate right to subsequent performance of the customer, the customer shall be immediately entitled to withdraw from the contract.

C.9.10

The same shall apply if **AB** has not carried out a subsequent performance to which **AB** is entitled within a reasonable extension of time to be fixed by the customer.

C.9.11

The customer shall have the right to a reduction of the purchase price (reduction) only if **AB** agrees to that.

C.9.12

Any further claims of the customer shall be excluded.

C.9.13

AB shall not warrant for damage for which **AB** is not responsible. This includes for example damage caused for the following reasons: inappropriate or improper use, faulty installation by the customer or by third parties, natural wear, incorrect or careless treatment.

C.9.14

AB shall not warrant for components provided by the customer. For the suitability and quality of such components, the customer shall be responsible exclusively, unless expressly otherwise agreed.

C.9.15

Within the scope of subsequent performance, **AB** shall not be obliged to reimburse costs incurred by the customer due to the fact that it had already processed the goods.

C. 9.16

AB gives warranty for the system KeraTwin K20 only if the approval of the construction supervisory authority of the Deutsches Institut für Bautechnik (German Institute for Structural Engineering), approval number Z.-33.1-1175, is entirely complied with.

AB gives warranty for the system KerAion K8 only if the approval of the construction supervisory authority of the Deutsches Institut für Bautechnik (German Institute for Structural Engineering), approval number Z.-33.1.-18, is entirely complied with.

AB gives warranty for the system KerAion Quadro only if the approval of the construction supervisory authority of the Deutsches Institut für Bautechnik (German Institute for Structural

Engineering), approval number Z.-33.1.-21, Z-33.1-27 is entirely complied with.

C.10. Transfer

C.10.01

The contractual partner must not transfer the rights and obligations under the contract to third parties without the written consent of **AB**. This shall not apply to the assignment in advance of a purchase money claim in the scope of an extended reservation of ownership.

C.11. Compensation for damages

C.11.01

The limitations of liability according to these Terms and Conditions shall not apply to damage on account of an injury to life, body or health of a person. In all the other respects, the following provisions apply.

C.11.02

AB shall only be held liable for damage which **AB**, a legal representative or a vicarious agent have caused intentionally or grossly negligently. In all the other respects, liability shall be excluded.

Should **AB** be obliged to provide compensation for damages, **AB** shall only be liable, as provided by the following stipulations, for the immediate damage, i.e. not for damage which has not been caused to the item delivered as such.

C.11.03

Liability for consequential damage due to a breach of obligation, also within the scope of an obligation of subsequent performance, is excluded.

C.11.04

This shall also apply in case of damage due to tort.

C.11.05

In extension of the above-mentioned stipulations, **AB** shall be liable for damage which ex-

ceed the damage caused to the item delivered as such only in case of intent or gross negligence, in the scope of the product liability law and in the case of lack of properties which are expressly warranted, provided that this warranty was specifically intended to protect the purchaser against damage which have not been caused to the item delivered as such.

C.11.06

AB shall only be liable for damages typical to the contract hereto and which are reasonably foreseeable, except in cases of intent or gross negligence.

C.11.07

The obligation of replacement does not cover consequential damage even in case of liability on account of breach of essential contractual duties.

C.11.08

Within an ongoing business relationship, **AB** shall be entitled to settle pecuniary claims of the customer, unless these are due to tort, by credit notes. On termination of the business relationship, any existing credit note amounts are paid off by **AB**.

C.12. Call-off orders

C.12.01

If call-off orders are not called off within 4 weeks after expiry of the call-off period, **AB** shall be entitled to demand payment.

C.12.02

This also applies to call-off orders without agreed call-off period if more than 4 months without call-off have expired since **AB**'s notification of readiness for shipment has been received.

C.13. Storage / default in acceptance of delivery

C.13.01

Should storage of finished goods at **AB** for a limited period of time be expressly agreed in exceptional cases or should storage become necessary due to default in acceptance of delivery, **AB** shall not be liable for damage which might occur in spite of reasonable precautions having been taken.

C.13.02

AB shall not be obliged either to insure any stored goods.

C.13.03

In case of default in acceptance of delivery, **AB** shall be entitled to store the goods at the customer's risk and for the customer's account at a commercial warehouse.

C.13.04

In case of storage at **AB**, **AB** shall be entitled to invoice 0.5% of the invoice amount per month, at least however € 30.--, and another € 25.-- as of each second completed cubic metre of goods per month.

C.13.05

The two figures above shall also apply in case that shipment should be delayed for over two weeks beyond the notified date of readiness for shipment at the customer's / purchaser's request.

C.13.06

If the customer does not accept the ordered goods, despite a deadline being fixed, **AB** shall be entitled independently of the proof of the damage actually occurred to demand 25% of the agreed price as lump sum remuneration, unless the customer furnishes proof of a lower damage.

C.14. Reservation of title

C.14.01

All shipments shall be made subject to the reservation of title.

C.14.02

This retention of title in addition to the following elaboration shall apply until the payment of all claims from the business relationship with the customer and up until the complete exoneration regarding contingent liabilities **AB** has undertaken in the customer's interest.

C.14.03

The items delivered must not be pledged.

C.14.04

AB shall be entitled to request surrender of its reserved goods for important reasons, especially in case of default in payment, against offsetting the proceeds of sale. This request for surrender shall not constitute a rescission from the contract.

C.14.05

If and to the extent that the goods returned can be sold otherwise as new by **AB** in the usual course of business, the customer shall be liable to pay 10% of the invoice amount of the goods as costs for return shipping without any further proof. If sale as new is not possible within the usual course of business, the customer shall be liable to pay another 30% of the invoice amount of the goods without any further proof for loss of value. The customer reserves the right to furnish proof of a lower percentage.

C.14.06

AB shall retain the right to assert higher damage.

C.14.07

Processing and handling of the goods delivered by **AB** shall always be effected on behalf of **AB**, so that the goods remain **AB**'s property in any

state of processing, handling and as finished goods, with the consequences of § 950 BGB (German Civil Code) being excluded. If the reserved goods are processed together with other items delivered which are also subject to the exclusion of the legal consequences of § 950 BGB, **AB** acquires the co-ownership in the new object in the proportion of the invoice value of the goods of **AB** to the invoice value of the other processed items.

C.14.08

The customer hereby assigns all claims resulting from resale, processing, installation and other exploitation of our goods to **AB**. To the extent that the products sold, processed or installed by the customer include items which are not the customer's property and for which other suppliers have also stipulated a reservation of title with a clause regarding sale and advance assignment, assignment shall be effected to the extent of the share of co-ownership of **AB** which corresponds to the fraction of the claim; otherwise, to the full amount.

C.14.09

The authorization to collect retained by the customer despite assignment shall expire due to revocation which shall be admissible at any time.

C.14.10

If the value of the collateral due to **AB** exceeds the claims of **AB** against the customer by over 20%, **AB** shall be obliged at the customer's request to release collateral to the corresponding extent at **AB**'s choice.

C.15. Place of performance

C.15.01

The place of performance for the services to be provided by **AB** shall always be the registered office of **AB**.

C.15.02

The place of performance for shipments shall also be the registered office of **AB**, especially if **AB** effects transport on their own.

C.16. Place of jurisdiction and applicable law

C.16.01

Bonn shall be agreed as place of jurisdiction for all disputes resulting from transactions based on these Terms and Conditions, with merchants, legal entities of public law and special funds under public law. Notwithstanding the above, **AB** shall be entitled in any case to sue the business partner at its registered office.

C.16.02

The law of the Federal Republic of Germany shall apply exclusively. The application of the UN agreement on Contracts for the International Sale of Goods and other uniform laws shall be ruled out.