



## General terms of sale and delivery

### for customers of Chamotte- und Thonöfenfabrik Aug. Rath jun. GmbH

#### I Offers and prices

1. The seller is bound to the offer for four weeks as of the date of the offer.
2. Prices are valid ex works. Special terms must be agreed on for prepaid shipments.
3. If a mould is required the costs for the mould or parts thereof can be invoiced separately.

#### II Sales transaction

4. In the absence of any other agreements, orders are binding for the seller after his written confirmation only.
5. If the buyer provides drafts or samples he is liable for guaranteeing to the seller that no rights of third parties are violated by the use of the drafts or samples. In addition, the buyer is liable for the technical correctness, the absence of defects, and the usability of the drafts or samples. The seller is not liable for defects of goods or services which have been produced in accordance with these drafts and samples, except in cases of gross negligence.
6. Subsequent modifications of the drafts or the order entitle the seller to charge the additional costs incurred in the process.
7. The buyer is obliged to accept the number of bricks that were produced in excess of the number ordered for reasons inherent to the production process - particularly the danger of breakage - of up to 5% of the total order, or 10% if the order consists of difficult shapes or of fewer than 100 pieces per item.

#### III Delivery period

8. The agreed period of delivery only starts when all commercial and technical details of the order have been mutually agreed upon. In the case of sales over a specific period of time (master agreements, contracts) but without fixed quantities we reserve the right to agree on quantity and time of delivery for every call.
9. Unless otherwise agreed, the seller can perform partial shipments in accordance with the availability of production output.
10. The seller can postpone the date of delivery or withdraw from the order partially or

in full if the production or shipment is inhibited or made impossible by cases of force majeure such as strikes, lock-outs, lack of personnel, obstructions to transportation or shipment within the own operations or at the suppliers', shortage of energy or raw materials, breakage, faulty firing, fire, water damage, power failures, and situations arising from atmospheric conditions. Late or non-performance of delivery caused by the aforementioned circumstances do not entitle the buyer to any claim of damages, except in cases of gross negligence on the seller's side.

#### IV Production and shipment

11. The tolerances indicated by the seller - e.g. in the offers and the product information and data sheets, - especially for size variances and deflexions, are valid for the seller's products. The other values indicated by the seller, e.g. in product information and data sheets, are guideline values.

Properties can only be considered binding if specifically confirmed by the seller, samples can only be regarded as reference.

12. For the inspection of goods, the test methods usually followed by the seller apply; as a matter of principle, the European Industry Standards (EN) applies. The quality assurance of the refractory material is performed through a statistical quality control continuously executed by the seller on his premises. Any additional inspections of the material require a written agreement and are carried out at the buyer's expense. Any documentation of material inspections is only handed over to the buyer by the seller upon separate agreement and against compensation of costs. The quality control performed by the seller does not exempt the buyer from his obligation of examination and notice of non-conformity.

13. The moulds required for the production of the bricks remain property of the seller, even if the buyer pays part of the manufacturing costs of the moulds. Wooden moulds are stored for two years, metal moulds for five years as of the day of first delivery.

We treat samples etc. provided by the buyer appropriately, but we cannot assume any liability for loss or damage.

14. The shipment is considered executed and the risk is transferred to the buyer (even in the case of prepaid shipment) when the shipment leaves the sellers' facilities. The seller shall only take out



transport insurance if the buyer explicitly demands such insurance and agrees to bear the costs.

15. If goods ready for shipment remain unshipped at the buyer's disposal for reasons not inside the seller's sphere after the agreed date of shipment the seller can invoice the buyer without further delay and demand payment. The goods are then stored at the buyer's expense and risk. This does not affect the seller's right to demand that the buyer accept the goods.

16. The pallets and additional equipment which remain property of the seller must be returned to the factory of dispatch within 30 days, unless they are replaced, in which case any expenses incurred for the exchange have to be borne by the buyer. If the buyer fails to return said items within this period, the seller may charge a rental fee. The buyer is held financially liable for the costs of repair in the case of damage and for the costs of new pallets in the case of loss.

## **V Invoicing and payment**

17. Invoices, also those for partial shipments, are made out for the date of dispatch.

18. For the weight of the invoiced and shipped quantities the values of the factory scales are binding. In the case of standardised goods, the weight of a similar IT-based master pallet is taken instead of the weight of each specific pallet to be shipped. Later notice of defective weight cannot be taken into account.

19. The goods are by default packed in shrink foil on Euro pallets. Any additional packaging is invoiced separately.

20. We have the right to charge interest of at least 12% p.a on any payments that are in arrears. If the buyer's financial situation deteriorates or if he is in arrears the seller is entitled to suspend shipments until he receives a collateral or the buyer honours his debts, or to withdraw from the contract altogether without a grace period.

21. Payments are to be made exclusively into the account communicated by the seller.

22. The goods remain property of the seller until payment of the purchase price has been made in full including any other receivables outstanding. Before that the buyer does not have the right to pledge the goods to third parties or to transfer them by way of security. The buyer is obliged to inform the seller without

delay if any third parties have secured access to the goods to which the seller still has the title.

If the seller has retained the title and he demands the goods back the buyer is obliged to surrender the goods should the seller ask him to do so.

23. The buyer is entitled to sell the goods as part of his ordinary business as long as he is not in arrears. Thus he cedes the receivable involved to the seller. The ceded receivable serves as collateral for the seller in the amount of the value of the respective goods sold under retention of title. The buyer undertakes to inform the seller on request of the names of the debtors and of the amounts of the receivables. The seller is entitled to inform the debtor of the performed cession and to demand payment.

## **VI Warranty and Liability**

24. Deviances from the prescribed measurements are acceptable within the tolerances listed in offers as well as the product information and data sheets.

25. The seller is liable solely for the product quality to which he agreed. This is defined by the physical and chemical values indicated in the data sheets. In no way does he make a warranty for the durability of the products when they are used in customer specific processes and applications. The buyer is thus obliged to test the usability of the products in his specific processes and applications by means of experimental installations and pilot projects.

26. The seller is only liable for the usability of the products in buyer-specific processes and applications if the seller supplies a separately ordered engineering in which a choice of the products suitable for the customer-specific processes and applications is expressly made.

27. Warranty shall not be given for any other technical properties nor shall a time warranty be given for the durability of the refractory materials.

28. Claims on obvious defects (in particular concerning quantity, measurement, shape and colour) are to be made immediately upon delivery; other defects are also to be reported immediately after they have been noticed, in writing. Warranty claims must be made within 12 months of delivery or installation. If no delivery or installation have taken place then within 14 months from the date the goods are pronounced as ready to ship.

29. Defects applying to parts of the shipment do not entitle the buyer to find fault with the entire shipment.



30. In the case of a delivery of goods the seller fulfils his warranty with a free replacement of the shipment. If an installation has taken place the seller will try to improve it or he has to replace it by a new installation. A change in the ordered due to defects is not possible.

31. The seller is only liable for damages resulting from defects (damage payment, refund for employees' wages, transportation expenses, late fees etc.) in cases of gross negligence.

32. The seller has the right to have claimed defects checked by a research centre certified in the field. If the research centre does not confirm the defects the buyer must bear the costs of the test.

33. If the seller's staff aids the buyer's construction management in supervising the assembly or start-up then the seller is only liable inasmuch as he must select employees with the proper professional knowledge and these employees must give the necessary and technically correct advice. Claims that go beyond this, in particular for damage compensation, are not possible except in the case of gross negligence.

34. The buyer expressly waives the right to assert replacement claims in accordance with the Product Liability Act for property damages that he suffers in the course of his business.

35. Should the buyer sell the goods set forth in this contract to another businessman he shall undertake to include the other businessman in the above mentioned waiver in accordance with § 9 of the Product Liability Act.

36. In the absence of such an inclusion the buyer shall undertake and agree to indemnify and hold the seller completely harmless.

## **VII General**

37. Sole place of jurisdiction is Vienna, Austria. Austrian law is applicable except the Austrian law refers to other laws. Applicability of the UN Purchase Right is excluded.

38. Any regulations differing from these sales conditions, in particular the buyer's Terms and Conditions, are not valid unless the deviating regulation has been confirmed in writing by the seller.

Krummnußbaum, July 2005