§ 1 Bases of Contract

1. The sale and delivery shall be exclusively subject to the following General Terms and Conditions of the Company SAERTEX GmbH & Co. KG, Brochterbecker Damm 52, 48369 Saerbeck (hereinafter referred to as “SAERTEX”). These General Terms and Conditions are also applicable to all future transactions, even if they are not referred to in the Contract.

§ 2 Place of Performance

Unless otherwise stated in the order acknowledgement, the principal place of business of the Company shall be the place of performance.

§ 3 Place of Jurisdiction and Applicable Law

1. Amtsgericht [Local Court] Ibbenbüren or Landgericht [Regional Court] Münster shall be the place of jurisdiction (also for legal action based on a cheque or a bill of exchange) and the place of performance. The place of jurisdiction and the place of performance may be different. Any reference to national laws, however, shall not preclude the application of international law concerning international sales and the law governing carriage of goods by sea. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG, BGBl 1989 I p. 589, amended 1990 II p. 1699) is excluded.

§ 4 Tender, Conclusion of Contract and Subject Matter of Contract

1. If the purchase order is to be described as a tender pursuant to Section 145 BGB [German Civil Code], SAERTEX may accept this tender within 4 weeks. SAERTEX reserves the right to refuse tenders. SAERTEX shall notify the Customer of its intention to accept the tender by sending a tender acceptance by telefax or in writing to the Customer. If SAERTEX has not issued such a notification within the period stipulated, the tender is deemed not to have been accepted.

§ 5 Technical Advice on Applications

1. Technical advice on applications, for example in installation instructions, operating instructions etc., shall be given by SAERTEX at its own discretion. Unless otherwise agreed, SAERTEX shall not release the Customer from its duty to test and check the suitability and applicability of the products. Technical advice on applications furnished to the Customer shall be free of charge. If the Customer fails to observe the recommendations furnished by SAERTEX, SAERTEX shall not release the Customer from any liability for improper use or damage to the purchase items caused by such improper use.

§ 6 Delivery and Performance Period, Default

1. The commencement of the delivery period quoted by SAERTEX shall be subject to the clarification of all technical, commercial and other conditions and the Customer shall make available to SAERTEX all information and documents necessary for the performance of the Contract, including those required for the execution of third-party work. The period quoted shall be subject to the validity of all relevant laws and regulations. Unless otherwise agreed, the period shall commence at the time of the delivery of the first purchase item, unless the parties have agreed otherwise.

§ 7 Interruption of Delivery Due to Force Majeure

1. Force majeure or any other unforeseeable or exceptional events shall be deemed to be the case where the party is unable to deliver the goods or services due to force majeure or any other unforeseeable or exceptional events. SAERTEX shall inform the Customer of the force majeure or any other unforeseeable or exceptional events if the Customer has not already been informed of such force majeure or any other unforeseeable or exceptional events. If the force majeure or any other unforeseeable or exceptional events lasts longer than two months, either Party may withdraw from further performing the Contract giving two weeks’ notice.

§ 8 Passage of Risk, Packaging

1. Unless otherwise stated in the order acknowledgement, delivery “ex works” is agreed. In the event that collection has been arranged by the Customer, the Customer shall be obliged to take care of disposing of non-returnable packaging and wrapping at its own expense.

§ 9 Prices and Payments

1. The invoiced amount shall be payable by the due date without any deduction. The invoice shall be issued on the date on which the goods are delivered or made available. Additional deliveries and services shall be billed separately.

2. Any applicable value-added tax shall be calculated on the basis of gross prices and shall be added to the price. Value-added tax shall be added to the price if the party providing the delivery is not VAT registered.

3. Statutory value-added tax is not included in SAERTEX’s prices. It shall be separately shown on the invoice at the time of delivery. SAERTEX shall be entitled to pass on any changes in the statutory value-added tax to the Customer.

4. Unless otherwise stated in the order acknowledgement, the purchase price shall be due and payable net (without any deductions), within 30 days from the invoice date.

5. If the Customer defaults in payments, SAERTEX shall be entitled to assert the rights arising from Section 288 BGB [German Civil Code].

6. The Customer shall be entitled to offset any counter-claims only against amounts actually receivable by SAERTEX. The Customer shall be entitled to assert any counter-claims only against amounts actually receivable by SAERTEX. The Customer shall be entitled to assert any counter-claims only against amounts actually receivable by SAERTEX.

7. Checks and titles of exchange, which SAERTEX reserves the right to accept, shall first be deemed paid once they have been cashed / honoured. Any discount or commission shall be chargeable to the Customer.

8. The non-payment of due invoices from SAERTEX shall be an additional cause for withdrawal of the Customer’s acceptance of the Contract and shall thus become subject matter of the Contract, even if the Customer does not expressly object thereto.

9. WAIVER OF LIABILITY

1. The Customer’s warranty rights shall be subject to the condition that the Customer has duly met its obligations to the extent necessary for the purpose of attaining full compliance, particularly transportation expenses, travelling expenses, labour costs and the cost of materials, shall be excluded. In so far as expenses increase as a result of subsequently transporting the delivery item to a place other than the place of performance, unless the transportation is consistent with its intended use.

2. Warranty claims shall not exist in the event of an immaterial deviation from the agreed quality, an immaterial impairment of usability, normal wear and tear or damage that has occurred after the passage of risk due to improper or negligent handling, excessive use, unsuitable media or misuse not approved by SAERTEX, unsuitable operating resources and/or due to extraordinary external influences and/or damage that is not assumed under the Contract. If...