

General Terms and Conditions of Sale of ZRUNEK Gummiwaren Gesellschaft m.b.H. Vienna

(hereinafter referred to as ZRUNEK)

1. Contract

- 1.1 These conditions of sale apply to all (including future) transactions between ZRUNEK and their Customers for goods which are produced or traded in by ZRUNEK. Terms and conditions provided by the Customer are only binding in the case of written acknowledgement by ZRUNEK.
- 1.2 Offers by ZRUNEK, in particular the communication of advertising material and price lists are not binding unless designated as binding.
- 1.3 Oral or telephone agreements, as well as written and oral agreements with employees and representatives of ZRUNEK are binding on ZRUNEK only if confirmed in writing by ZRUNEK.
- 1.4 The content of the agreement shall be order and acceptance (order and confirmation of order), the named goods, the resulting price, the designated ZRUNEK quality description and these general terms and conditions of sale applicable. Changes and/or amendments of this content of contract shall require the written agreement of the parties. The applicable ZRUNEK quality description will be sent to the Customer by ZRUNEK at any time upon request.

2. Goods

- 2.1 Goods are supplied according to the agreed specifications, in the case of lack of such specifications, goods shall be supplied according to the quality customary in trade.

The ingredients of the gum mixtures, in order to achieve qualities such as for example light permeability, permeability to the weather or to oil, shall meet, in the absence of definite specifications of the Customer, the recommended standards given in technical literature. Upon request of the Customer, ZRUNEK shall send copies of its data sheets from which follow the ZRUNEK standard specifications. Regarding admissible deviations in limits and measures the standard set by DIN (Deutsche Industrie-Norm) referring to the applicable article in particular DIN 7715 and in the applicable version, shall apply that is to say, the maximum admissible deviations in measure and limits.

The quantity of ordered goods which is produced according to the specifications of the Customer making the order may include a variable of plus or minus 10%.

- 2.2 Orders placed "according to specimen" shall be identified by the Customer with a written indication of the desired composition of the goods and the dimensions.
- 2.3 The Customer placing the order shall keep the goods in an appropriate way, that is to say, according to the required storage, cleaning and maintenance requirements within the meaning of the applicable DIN for the article concerned, in particular those of DIN 7716 in the applicable version. The onus of proof that the requirements for appropriate storage have been met lies with the Customer.
- 2.4 Upon request of the Customer placing the order, ZRUNEK shall send copies of the applicable DIN.

2.5 The goods are not intended to be built into out of the ordinary facilities, as for example in aircraft equipment.

3. Price

3.1 The agreed price applies net ex-works and/or ex-supply warehouse ZRUNEK, without packaging, exclusive of VAT, albeit, without costs of loading, transport and insurance ex-works costs.

3.2 The packaging in wooden boxes, crates, pails and other repositories will be billed at cost price. The cost of packaging material returned shall not be refunded. Transportpackaging and re-packaging within the meaning of the "Verpackungsverordnung" shall be returned to the factory or the warehouse of ZRUNEK. The obligation of return is deemed to be an obligation to be performed at ZRUNEK's place of business. The Customer agrees that a return made anywhere outside the factory or warehouse of ZRUNEK shall be precluded.

3.3 Variations from Points 3.1 and 3.2 may only be excluded expressly and not by reference to terms otherwise common to the trade branch, like FOB, CIF, etc.

4. Conditions of payment

4.1 ZRUNEK's prices as well as all offers and invoices are quoted in Austrian Schillings.

4.2 In the case that payment is agreed in foreign currency, ZRUNEK is entitled to demand payment either at the Schilling exchange rate at due date or at the exchange rate of Schillings on date of payment.

4.3 The amounts billed are due within 30 days from the date of invoicing without any deduction and payable without cost of freight and free of deduction. Rebates granted and special conditions shall be deemed to have been revoked in the case of commencement of bankruptcy proceedings or the rejection of the application for bankruptcy due to lack of funds. Employees and representatives of ZRUNEK shall only be entitled to accept payment if they possess a power of attorney for receipt of payment.

4.4 Advance payments do not carry interest.

4.5 Payments shall be made by the Customer at its own risk and expense to the ZRUNEK factory, Vienna and/or to a bank account designated by ZRUNEK. The place of performance for the Customer shall be Vienna. Money obligations are deemed to be an obligation to be performed and discharged at ZRUNEK's place of business.

4.6 The risk of retention of payments or compensation by the Customer due to counter-claims shall be expressly excluded.

4.7 In case of delayed payment by the Customer ZRUNEK is entitled to demand payment of interest rates in the amount of 5% above the applicable National Bank minimum lending rate. The right to demand increased costs for acquisition of credit is reserved. A Customer in delay shall bear all costs of reminders for outstanding invoices, expenses of collection, inquiries or requests for information.

5. Delivery

- 5.1 Deadlines of supply or dates of delivery are only binding if they are designated as such expressly in writing. Periods of delivery start with the acceptance of the order (date of the confirmation of order) insofar as there are no obligations of pre-performance of the Customer. In this case, the delivery periods only start with the performance of the pre-performance obligation (as the obligation for supply of further specifications for drawing up of designs and production material, the issuing of letters of credit and bank guarantees, the payment of down-payments, etc.) of the Customer. This provision applies equally to performance requirements of the Customer during the production.
- 5.2 The supply is made ex-works or warehouse ZRUNEK, part deliveries shall be admissible.
- 5.3 Should ZRUNEK be in delay with a delivery, the Customer shall in writing grant ZRUNEK another period of 4 weeks for performance. Should ZRUNEK not deliver within the period, the Customer may rescind the contract by written statement.
- 5.4 Delivery periods and dates shall be prolonged, and/or, deferred in circumstances beyond the control of ZRUNEK in particular in case of *force majeure*, measures by the authorities, strikes, riots, war, lock-outs, damages to machinery, lack of utilities and any other disruptions in production, in transport and elementary events as well as delays of delivery on the part of suppliers for the duration of such hindrance. In case the duration of such hindrance is longer than four (4) weeks, ZRUNEK or the Customer for whom the further performance of the contract is unreasonable, may rescind the contract.

6. Transfer of risk

- 6.1 The handing over of the goods to the Customer shall be made in the factory or at the delivery warehouse of ZRUNEK. In case delivery to a different venue is agreed, the transfer of goods is effected by the handing over to the forwarding agent or carrier, who shall be commissioned, should there be no more detailed designation by the Customer without liability for the choice of the carrier, on account of the Customer placing the order, with the dispatch note.
- 6.2 With the handing over of the goods the total risk, in particular the risk of loss by chance and transport is transferred to the Customer.
- 6.3 On taking over the goods, and in case of dispatch by delivery by a forwarding agent, a carrier or post, the Customer shall without delay investigate the goods and draw attention to any obvious defects in breach of ZRUNEK's guarantee obligation immediately in writing providing a detailed description. This drawing of attention to defects shall be made *vis-à-vis* ZRUNEK as well as *vis-à-vis* the forwarding agent, carrier or the post, so that damages and defects which occurred in the course of the transport, and for which ZRUNEK is not liable, may be ascertained immediately.

7. Property in production utilities and reserved retention of title

- 7.1 Forms, production utilities and other equipment which serve the production are the property of ZRUNEK even if the Customer has paid a contribution to the costs for the form and the proposals and designs for the article to be produced were made by him. The Customer indemnifies ZRUNEK should these forms, production utilities and equipment which were produced or used according to proposals and designs of the Customer infringe intellectual property or rights of third persons.

The costs for the recouplement, and/or repair of such forms, production utilities and other equipment which were damaged or destroyed as a result of *force majeure* are to be borne by the Customer.

Industrial forms, production utilities and other equipment which due to separate agreement are the property of the Customer shall become the property of ZRUNEK two years after the last utilisation for the Customer.

- 7.2 ZRUNEK retains the title in the goods supplied on the basis of this contract until any and all claims from the contract concluded are satisfied. In case of payment by cheque or bills of exchange, the retention of title is only lost with final honouring of the amounts of the bills of exchange or cheque provided to ZRUNEK.
- 7.3 In case of processing, combining or mixing, the retention of title pertains to the whole of the goods processed, connected or mixed.
- 7.4 The purchaser is entitled to sell goods the title in which is retained. In case of sale, the Customer shall assign any claims thereon arising to him *vis-à-vis* his contractual partner to ZRUNEK without any consideration whether or not these goods shall be resold with or without processing, connection or mixing, and whether they shall be resold to one or more purchasers. In case of resale, the Customer is obliged to inform his contractual partner of the retention of title in favour of ZRUNEK and enter a notice of assignment in its books and its invoices as well as keeping ZRUNEK informed of further developments.
- 7.5 The consent for re-sale, processing, combining or mixing is revoked as soon as insolvency proceedings are commenced regarding the funds of the Customer.
- 7.6 Until the retention of title is revoked, the Customer shall insure the goods sufficiently, in particular against fire and theft, and assigns the amount of the value of the goods whose title is retained to ZRUNEK. The Customer will immediately notify ZRUNEK of the occurrence of an event insured against.
- 7.7 Until the retention of title is revoked, the transfer of property for security purposes or the pledge of the goods shall be precluded.

8. Representations and Warranties

- 8.1 In accordance with Point 6 above, ZRUNEK shall for the duration of 6 months from the transfer warrant that the goods sold to the Customer are free of production or material defects. The Customer shall immediately investigate the goods after receipt as to whether or not they are complete and free of defects. At the risk of loss of any claims and right to damages, obvious defects shall be notified to ZRUNEK in writing, with a detailed description to ZRUNEK immediately, hidden defects immediately following identification.
- 8.2 If the Customer proves that he stored the goods properly (Point 2.3), ZRUNEK will at its discretion either cure the defects or supply fault-free goods instead of the faulty goods. Further warranty shall not exist. By the repair or the substitute delivery, the course of the agreed 6-month period is not extended and no new warranty period for the replaced or fixed product starts.
- 8.3 The return of the faulty goods replaced shall be made at the expense of the Customer.
- 8.4 On the delivery of secondary or lot goods, warranty claims are strictly excluded.

8.4 If the goods are built into exceptional, out of the ordinary equipment, as for example flying devices, warranties, as far as legally admissible, shall be excluded.

8.6 In the case of goods which according to order have been made "according to specimen" have been produced without written information on the desired composition (mixture) and volume, the warranty for the composition (mixture) and volume is, as far as legally admissible, excluded.

9. Damages

9.1 ZRUNEK is liable for its own negligent defects and for its willingness to perform the contract, however, not for slight negligence. No liability is accepted, not even in case of gross negligence, for the loss of profit due to delayed or faulty delivery for detriment suffered by disruption in production, for costs of transport, damage occurring in connection with the replacement of faulty goods by fault-free goods, for possible costs of removal and re-installing, for the care and damages through processing of goods which are with ZRUNEK for processing as well as for damages claimed by the purchaser of the Customer placing the order made against the latter.

9.2 Claims for damages of ZRUNEK *vis-à-vis* the purchasers or its Customer placing the order are excluded in the same proportion as those against the Customer. The Customer of ZRUNEK is furthermore obliged to similarly restrict possible claims of its purchasers in case of resale.

9.3 The liability for damages of ZRUNEK is according to the Product Liability Act excluded for damages without consideration for negligence to objects of an undertaking. Should ZRUNEK be liable jointly and severally with the purchaser and/or its successor according to the terms of the Product Liability Act, it is entitled to have recourse to any of them if it does not prove that the product fault resulting in damage was already in existence before ZRUNEK brought the product into commercial use and did not infringe its duty of giving due warning.

9.4 Claims for damage for infringement of a pre-contractual duty of warning by ZRUNEK can only be made if the Customer has notified the purpose of the goods to be supplied before the order is made in detail. If the Customer refrained from doing so, he foregoes all damage claims *vis-à-vis* ZRUNEK which may be based on the infringement of the duty of giving due warning.

9.5 In case of export of goods to countries outside the EU, any damage and other liability claims are insofar as legally admissible excluded unless ZRUNEK consented to the export to the country of designation in writing.

10. Choice of law, forum

10.1 The legal relations between ZRUNEK and the Customer are exclusively governed by the laws of Austria.

10.2 It is agreed to submit, insofar as admissible all legal disputes arising out of these legal relations to the exclusive competence of the Courts in Commercial Matters for the First District of Vienna.

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