

## **General Terms & Conditions of Purchase Leonhard Moll Betonwerke GmbH & Co. KG**

### **1. General**

1.1 The conditions of purchase of the company Leonhard Moll Betonwerke GmbH & Co. KG – hereinafter referred to as Moll Betonwerke – apply exclusively; Moll Betonwerke does not acknowledge contractual conditions contrary to or deviating from these conditions of purchase and hereby expressly dissents, unless Moll Betonwerke has expressly acknowledged these in writing. The terms and conditions of purchase of Moll Betonwerke are then also valid if Moll Betonwerke accepts the delivery with knowledge of conditions which are contrary to or deviate from the terms and conditions of purchase of Moll Betonwerke.

1.2 The conditions of purchase of Moll Betonwerke are also valid without limitation for all future business transactions with the supplier.

1.3 Deviations in content in commercial letters of confirmation by the supplier shall not become the terms of contract.

1.4 For all contracts it is agreed in principle that the conditions of the VOB/B (*German Construction Contract Procedures / Execution of Construction Works*) have priority. Should the VOB/B not be applied then the provisions of these General Terms and Conditions of Purchase are applicable in extension of the regulations of the BGB (*German Civil Code*).

### **2. Quotation**

2.1 The supplier undertakes to accept the order from Moll Betonwerke within a period of 3 working days by signing and returning confirmation of order; after expiry of this period Moll Betonwerke is no longer bound to the order. Delivery schedules are deemed to be accepted if not dissented to in writing within 8 working days.

2.2 Subject to a deviant formal agreement in individual cases though authorized representatives the contractual declarations of Moll Betonwerke are made solely in written form and orders placed by telephone or verbally also require confirmation in writing by Moll Betonwerke.

2.3 Moll Betonwerke retains the ownership rights and copyright on all illustrations, drawings, calculations and other documentation; they may not be made available to third parties without the expressed written consent of Moll Betonwerke. They are to be used exclusively for the production based on the order from Moll Betonwerke; after the order has been processed and if not required for further orders, they shall be returned to Moll Betonwerke immediately and without a specific request to this effect. For an unlimited period after completion of the order they shall still be kept confidential in respect of third parties.

2.4 Further basic compliance required for orders from Moll Betonwerke:

DIN regulations and the pertinent acknowledged standard of technology

VDE regulations (*German Electrical Engineering Association*)

Accident Prevention & Insurance Association (UW)

Road Traffic Licensing Regulations (StVZO)

Law on protection against construction noise (BLG) and

Laws and regulations on immission protection

Trade and Industry Regulation Act (GewO)

and other pertinent legal and official regulations in the respective version valid at the time of delivery.

### **3. Prices /invoices / terms of payment**

3.1 The price stated in the order is binding and includes delivery free domicile including packaging. Return of packaging requires a specific agreement.

3.2 The statutory sales tax is not included in the price.

3.3 Invoices shall be submitted immediately after delivery, in triplicate, separate for each order, stating the statutory sales tax and with details of the complete order number/contract number and parts number.

3.4 The payment and prompt payment periods begin with receipt of the invoice, however, not before delivery has been made in full. Moll Betonwerke shall make payments by a method of its choice within 14 days after this date with 3% prompt payment discount or net within 30 days.

3.5 Should the payment period be exceeded by up to 3 working days there is no entitlement to subsequent prompt payment billing.

3.6 Moll Betonwerke is entitled to offset and retention rights to the extent provided in law.

3.7 Unless otherwise agreed in writing, the delivery shall be made free receiver plant

#### **4. Assignment of claims**

Claims of the supplier against Moll Betonwerke may be assigned to a third party only with prior written consent. Moll Betonwerke is obliged to consent if the supplier has a justified interest in the assignment. Paragraph 354 a HGB (*German Commercial Code*) remains unaffected.

#### **5. Bearing the risk / delivery procedure**

5.1 The supplier supplies at his own risk and on his own account during the customary working hours at the contractually agreed destination. Risk is not transferred to Moll Betonwerke until the handover at the destination. In particular, the transport risks are the onus of the supplier.

5.2 Should delivery not be made to the contractually agreed destination, Moll Betonwerke has the right in urgent cases to have the goods brought to the destination without further notification at the expense of the supplier.

5.3 A delivery note must be handed over with every consignment and must contain details of the date and number of the order, identification and number of the packaging, number of pieces or quantity of the goods supplied.

#### **6. Right of rescission**

6.1 Moll Betonwerke reserves the right to withdraw from the agreement up until the point of time of delivery by means of a written declaration to the supplier. In the case of right of rescission being exercised, the supplier is entitled to claim remuneration to the amount provided for under paragraph 645, section 1 BGB (*German Civil Code*).

6.2 If by Act of God Moll Betonwerke no longer requires the purchased goods, Moll Betonwerke may withdraw from the contract in part or completely or may request execution of delivery at a later time, without incurring a claim on the part of the supplier against Moll Betonwerke.

6.3 Further reaching mandatory rights of rescission remain unaffected.

## **7. Delivery time**

7.1 The delivery time in the order is binding and is deemed as complied with only when the goods arrive at the right time at the destination.

7.2 The supplier undertakes to notify Moll Betonwerke immediately in writing if circumstances occur or if he recognizes any reasons that the agreed delivery time cannot be complied with.

7.3 In the case of default in delivery Moll Betonwerke has a right to statutory claims, especially for compensation of the default damages. In this case the supplier is liable for all direct and indirect damages which arise as a consequence of delivery not within the set period or on time. Further, - irrespective of other possible further-reaching rights as set forth in paragraph 376 HGB (trade purchase with fixed date delivery) – Moll Betonwerke reserves the right in the case of delivery not within the set period or not on time to withdraw from the agreement and/or to require a substitute elsewhere at the cost of the supplier. The same applies to part-delivery agreements. In the case of part-delivery agreements, in the case of default delivery with a part-delivery Moll Betonwerke is entitled but not obliged to keep part-deliveries and for the rest, to withdraw from the agreement.

## **8. Inspection of defects / warranty**

8.1 With reference to the quality assurance undertaken by the supplier, Moll Betonwerke inspects the delivered goods only in respect of quantity, identity and transport damage and for obvious defects; there is no further individual inspection. The contractor shall therefore waive the objection that notification of faults was too late. Moll Betonwerke undertakes to notify the supplier immediately of any defects he has discovered or by the latest within 14 days of having knowledge of these.

8.2 The supplier takes on the risk that his deliveries are in conformity with the contractual agreements and are not faulty.

8.3 Insofar as a fault can be attributable to the supplier which at the same time is also subject to guarantee, the purchaser has the option either of either asserting the statutory guarantee claims, especially for subsequent fulfilment (rectifying the fault or new delivery of goods); the supplier undertakes to bear the costs of all measures necessary for the purpose of remedying the fault or supplying a substitute. Moll Betonwerke has the right to undertake remedial work itself to faulty goods at the expense of the supplier if he has to wait for the supplier to bring the faulty goods in order and this means that substantial further damage may occur, or if the substitute delivery also proves unsuccessful. Failure is deemed especially to be if the supplier is not prepared to or not in a position to keep the reasonable period of notice stipulated by Moll Betonwerke or if the supplier refuses a substitute delivery. Further compensation entitlements remain unaffected.

8.4 In the case of faults in deliveries, Moll Betonwerke has in any case the right – unaffected by any other further-reaching claims – of compensation of costs incurred through loading and unloading, inspection and sorting of the defective goods.

8.5 If defective machines, devices and other equipment are delivered, until such time as proper delivery has been received Moll Betonwerke is also entitled free of charge to provisional, substitute objects which can be used for the intended purpose if these are urgently required by Moll Betonwerke and the supplier can make such a substitute object available or can acquire such.

8.6 For building materials, auxiliary building materials and construction parts, the period of warranty is 5 years from the day of delivery, otherwise 36 months from the transfer of risk insofar as no other period has been agreed by contract or a longer statutory period takes precedent.

8.7 Insofar as Moll Betonwerke notifies the supplier of defect within the period set forth in 8.1 above, the rights set forth under 8 are reserved by Moll Betonwerke for a period of 6 months calculated from the date of notification.

8.8 Moll Betonwerke has the right to make deductions from the next payment on account of the defects. At the same time as the payment, the supplier will be informed of the reason for the deduction. The supplier may enter an objection within 14 days after receipt of this information. Should no objections be submitted, this is deemed as acceptance of the reduction insofar as Moll Betonwerke has pointed this out to the supplier in his letter of notification. For the granting of the period of notice this is deemed to be the date of receipt of objections in writing at Moll Betonwerke.

## **9 Protected rights**

9.1 The supplier gives his assurance that in connection with his delivery, no third party rights are contravened.

9.2 If in this respect Moll Betonwerke receives claims from a third party, the supply undertakes to release Moll Betonwerke from these claims at the first written request; the supplier shall undertake the legal representation of Moll Betonwerke at his own expense, together with all costs and compensation arising from the laying of claim.

9.3 The obligation on the part of the supplier to release Moll Betonwerke applies to all expenses necessarily incurred to Moll Betonwerke arising from or in connection with the laying of claim by a third party.

## **10. Return transport for packaging**

10.1 The supplier undertakes to collect and take away all types of packaging under the terms of paragraph 3, subsection 3 of the VerpackV (*Packaging Regulations*) as set forth in paragraph 8 of the Packaging Regulations at his own expense from the contractually agreed destination.

10.2 Should the purchaser demand the transfer of goods in transport and outer packaging, the supplier shall also collect the packaging from the agreed destination. Should the supplier operate a system in conformity with paragraph 6, subsection 1 to subsection 3, sentence 1 VerpackV, which in this case means that the collection of packaging is taken over by another company then this company is obliged to collect the packaging and take it away.

10.3 The Item 10.2 sentence 2 of the terms and conditions of purchase also applies to sales packaging.

## **11. Retention of title / provisions / tools**

11.1 Insofar as Moll Betonwerke has provided parts to the supplier, Moll Betonwerke retains title to these. Processing or reforming for Moll Betonwerke is undertaken by the supplier. If the conditional goods are processed by Moll Betonwerke together with other objects not owned by Moll Betonwerke, then Moll Betonwerke acquires co-ownership of the new objects in proportion to the value of the object of Moll Betonwerke to the other processed objects at the time of processing.

11.2 If the objects provided by Moll Betonwerke are inseparably mixed with other objects which do not belong to Moll Betonwerke, then Moll Betonwerke acquires title to the new object in proportion to the value of the conditional part to the other compounded objects at the time of processing. Should the mixing be undertaken in such a way that the supplier's object can be regarded as the main object, then it is agreed that the supplier assigns

proportional part-title; the supplier shall keep safe the sole property or the co-property for Moll Betonwerke.

11.3 Moll Betonwerke retains title to tools; the supplier undertakes to use the tools exclusively for the manufacture of goods ordered by Moll Betonwerke. The supplier undertakes at his own cost to insure to new value against fire, water and theft all tools which belong to Moll Betonwerke or to customers of Moll Betonwerke. The supplier undertakes at his own cost to have necessary maintenance and inspection works carried out in good time. Any breakdowns shall be notified to Moll Betonwerke immediately; should he not do so culpably, the compensation entitlements remain unaffected.

## **12. Confidentiality / protected rights of third parties**

12.1 All technical data and other non-public commercial and technical details which become known to the supplier through the business relationship with Moll Betonwerke shall be kept confidential. Such data shall only be used for the execution of orders from Moll Betonwerke and shall be made available only to those employees of the supplier who are involved in the execution of the order according to the operational procedures of the supplier. The supplier shall place such employees under the same obligation of strict confidentiality as in sentence 1.

12.2 Any sub-suppliers shall also be placed under this obligation by the supplier in accordance with Item 12

12.3 The supplier shall accept liability that in his delivery or in the use of the delivered goods there is no violation of the rights of a third party, especially protected rights such as patents, brand names or utility model and copyright. The supplier undertakes to release Moll Betonwerke from all claims by third parties arising from any alleged violation of rights and to compensate any expenses incurred.

## **13. Quality Management Agreement**

If necessary, Moll Betonwerke shall enter into quality assurance agreements on measures to be taken in respect of quality assurance and which are supplementary to these terms and conditions of purchase.

## **14. Act of God**

If the delivery date or the delivery period is exceeded as a result of Act of God or industrial disputes beyond the control of the supplier, Moll Betonwerke has the right to demand delivery of his order at a later point of time without any claims to the supplier or if the set period of notice expires without success, Moll Betonwerke has the right to withdraw from the agreement in part or completely.

## **15. Product liability / release**

15.1 Insofar as the supplier is liable for a fault in a product, he undertakes to release Moll Betonwerke from claims for compensation of damages by third parties insofar as these make their claim in the first instance against Moll Betonwerke, if the cause lies within the management and organization of the supplier and he is liable in external relations. This also includes the costs of the required legal consequences.

In this connection, the supplier also undertakes to refund any expenditure arising under the terms of paragraphs 683 and 670 BGB, which are incurred to Moll Betonwerke on the grounds of a recall of products carried out by Moll Betonwerke.

15.2 The supplier accepts liability for all damages to persons, property or assets which arise as a result of the supply of a faulty object to Moll Betonwerke or the absence of an assured property if the cause lies within the management and organization of the supplier.

**16. Place of jurisdiction / place of performance**

16.1 Place of performance for all contractual obligations is the registered office of Moll Betonwerke in Munich, Germany.

16.2 Exclusive place of jurisdiction for all disputes between Moll Betonwerke and the customer is the court responsible at the registered office of Moll Betonwerke. Moll Betonwerke however, has the right to bring legal action against the supplier at the supplier's general place of jurisdiction.

16.3 The law of the Federal Republic of Germany applies exclusively for all legal relationships between the supplier and Moll Betonwerke. The Uniform Law on the International Sale of Goods according to the Hague Convention is not applicable.

**17. Requirement for written form**

All amendments or supplements to these conditions of sale must be made in writing in order to be valid. This also applies to the change of the requirement for the written form itself. Additional verbal agreements to these terms and conditions of sale shall not be made.

**18. Invalidity of individual provisions**

18.1 Should one of the provisions of these terms and conditions of sale be or become invalid, then also in the case of negotiation of a single provision, the validity of the remaining provisions shall not be affected. In such a case the invalid provision shall be replaced by a valid provision which is as close as possible to the commercial intent of both contractual parties.

Status: 9-2003 Moll Betonwerke GmbH & Co. KG

**General Terms & Conditions of Sale  
Leonhard Moll Betonwerke GmbH & Co. KG**

**1. General**

1.1 The conditions of sale of the company Leonhard Moll Betonwerke GmbH & Co. KG – hereinafter referred to as Moll Betonwerke – apply exclusively for all performance rendered by Moll Betonwerke.

1.2 Moll Betonwerke does not acknowledge any conditions of sale which are contrary to or deviate from these conditions of sale and hereby expressly dissents, unless Moll Betonwerke has expressly acknowledged these in writing. Amendments and supplements and any general terms and conditions of business of the customer which deviate from these conditions of sale are then only acknowledged when these are confirmed in writing as a supplement to these conditions of sale. The same applies if the confirmation of order differs from the order. The principle of silence of a commercial letter of confirmation is thus ceded.

1.3 The conditions of sale of Moll Betonwerke also apply if Moll Betonwerke provides goods or services without reservation in acknowledgement of contrary or deviating conditions of sale of Moll Betonwerke.

1.4 The conditions of sale of Moll Betonwerke are also valid without limitation for all future business transactions with the customer.

1.5 The conditions of sale in their content apply solely to business enterprises, legal persons by public or private law and other – not private – customers who act in the execution of a commercial trade or independent business activity.

1.6 Irrespective of these conditions of sale, for all contracts with the customer it is agreed that the VOB/B (*German Construction Contract Procedures / Execution of Construction Works*) has priority. Should the VOB/B not be applied then the provisions of these General Terms and Conditions of Sale are applicable in extension of the regulations of the BGB (*German Civil Code*).

**2. Quotations and prices**

2.1 All quoted prices are deemed ex works excluding packaging, transport and sales tax.

2.2 The quotations from Moll Betonwerke are subject to change and are non-binding. A contract comes into being only with the written confirmation of order by Moll Betonwerke, at the latest however with the acceptance by the customer of the consignment or performance.

2.3 If after conclusion of the contract the costs relating to the order change substantially then the contractual parties undertake to agree on an adjustment of the prices.

**3. Delivery and acceptance obligations**

3.1 Delivery periods begin insofar as all details of the execution have been clarified and the customer has fulfilled all preconditions. Day of delivery is the day of dispatch. Should dispatch be delayed, however, without fault on the part of Moll Betonwerke, day of delivery is deemed to be the day of availability for dispatch. Also for agreements on dates, Moll Betonwerke is in default only through reminder.

3.2 In addition, deadlines are then only binding if Moll Betonwerke has confirmed these in writing.

3.3 Part deliveries are permissible insofar as these are not in conflict with a recognizable interest on the part of the customer.

3.4 If Moll Betonwerke is prevented from delivery at the right time through breakdowns in its own operational procedures or the operational procedures of sub-suppliers which are proven as having a substantial influence on Moll Betonwerke, or through labour disputes, then the period of delivery is extended for the duration of the obstacle, at the longest however for 14 days.

3.5 Compensation claims by the customer in the event of a default or impossibility for a reason not attributable to Moll Betonwerke are excluded. Compensation for default in delivery is limited to the amount of the foreseeable damage, maximum however, to 5% of the value of the consignment. The limitation of liability does not apply in the case of gross negligence or intent on the part of Moll Betonwerke.

3.6 For call-off orders without an agreement on a running period, production lot quantities and acceptance dates, Moll Betonwerke can demand a binding stipulation for these at the latest three months after confirmation of order. Should the customer not comply with this demand within 21 days, Moll Betonwerke is entitled to specify a fourteen day extension period and after expiry of this period without a successful result, to withdraw from the agreement or to refuse delivery and to demand compensation.

3.7 Should the customer wish necessary inspections to be undertaken by Moll Betonwerke, the type and scope of such inspections is to be agreed. If this does not happen at the latest on conclusion of the agreement, the costs are to be borne by the customer.

3.8 If a technical acceptance according to specific conditions is agreed, the customer shall carry this out at his own expense at the premises of Moll Betonwerke immediately after notification of the availability for acceptance. Should the inspection not be carried out despite a reasonable period of grace having been set, Moll Betonwerke is entitled to dispatch the goods or to store them at the expense of and at the risk of the customer; the goods are deemed to be accepted.

3.9 The customer is not entitled to refuse acceptance on the grounds of insignificant defects.

3.10 As far as possible, (part) acceptance shall be undertaken at Moll Betonwerke works.

3.11 Rescission by the customer on the grounds of delay in delivery is only then possible if the delay in delivery can be attributed to Moll Betonwerke and a period of grace of at least 7 days was set. At the request of Moll Betonwerke, the customer shall declare immediately whether despite the delivery delay he wishes to adhere to the contract or not.

#### **4. Dispatch and transfer of risk**

4.1 Risk is transferred to the customer when the goods leave the premises of Moll Betonwerke. This also applies if dispatch is undertaken at the expense of Moll Betonwerke.

4.2 If transport is delayed for reasons attributable to the customer, the risk is transferred to the customer on notification that the goods are ready for transport.

4.3 The transfer is considered to be undertaken if the customer is in default of acceptance.

#### **5. Measures, weights and quantities**

DIN standards apply for the observance of measures. Moll Betonwerke states measures and weights to the best of its knowledge in its quotations and confirmations of orders.

## **6. Warranty**

6.1 The customer shall inspect the goods and give immediate notification in writing of any faults, at the latest however, within 5 working days after receipt at the destination. For the observance of notice periods, the sending the notification in due time is sufficient. Hidden defects shall be notified immediately these have been discovered.

6.2 Moll Betonwerke shall be given the opportunity to inspect the declared faults on site. The inspection shall take place without delay insofar as the customer declares his interest in immediate execution. If, without the consent of Moll Betonwerke, the customer makes changes to the goods complained about, he loses the entitlement to subsequent fulfilment. Moll Betonwerke however, remains entitled to subsequent fulfilment.

6.3 Should the customer not give Moll Betonwerke the immediate opportunity to examine the fault for itself and if he does not make the goods subject of complaint or samples of these immediately available, especially on request and also after setting a reasonable period of notice then all warranty entitlements are invalid.

6.4 In the case of defects, especially faults in material or execution, Moll Betonwerke has the option to remedy the defects at no charge or to undertake a substitute free of charge against return of the goods and processing waste or to credit the corresponding invoice value. Should the subsequent performance or substitute delivery not be successful, the customer has the option of withdrawing from the agreement or demanding a reduction in price.

6.5 If after unsuccessful subsequent performance the customer chooses to withdraw from the agreement, he is not entitled to any compensation for damages on the grounds of the defect.

6.6 If after unsuccessful subsequent performance the customer chooses compensation, the goods remain at his premises, if this is reasonable for him and nothing has otherwise been expressly agreed. Compensation in this case is limited to the difference between the purchase price and value of the defective goods. This does not apply if the breach of contract was caused by intent and in the case of other mandatory legal reasons.

6.7 Claims for compensation for damages which are not incurred to the goods themselves (consequential damages) are excluded as set forth in Item 7.

6.8 Moll Betonwerke is liable for the functionality and suitability of the product only if expressly assured under the condition that the customer has provided the information necessary to render the performance accordingly.

6.9 The period of notice is one year insofar as no other, longer expiry periods are mandatory in law.

6.10 The customer does not receive guarantees in the legal sense insofar as these have not been expressly agreed as such in writing.

## **7. General liability limitations**

7.1 Insofar as not otherwise stipulated in these conditions, Moll Betonwerke is liable for compensation of damage on the grounds of contractual or extra-contractual obligations only in the case of intent or gross negligence.

7.2 Insofar as there is liability for careless neglect of duty, liability of Moll Betonwerke is limited to the extent of average damages typical for contracts and foreseeable according to the type of goods. This also applies for careless neglect of duty on the part of the legitimate representatives or auxiliary agents in performance. Moll Betonwerke does not accept liability for careless neglect of insignificant contractual obligations.

7.3 Liability on the part of Moll Betonwerke – except in the case of intent – also does not extend to damages which cannot typically be expected in the specific business transaction or against which the customer is insured or could normally be insured. Moll Betonwerke also does not accept liability for loss of profits or other damage to customer assets.

7.4 Claims for compensation on the part of the customer on the grounds of a deficit expire at the end of one year from the delivery of the goods insofar as no legally mandatory expiry periods are valid.

7.5 Unaffected by the above limitations of liability is the product liability irrespective of culpability. Further, the limitations of liability do not apply in the case of attributable physical or health damage or loss of life.

7.6 Insofar as liability is excluded or limited, this also applies to personal liability of staff, employees, co-workers, representatives and auxiliary agents in performance.

7.7 Liability is excluded in the case of Act of God.

## **8. Terms of payment**

8.1 Invoices from Moll Betonwerke are due for payment immediately on receipt.

8.2 Moll is entitled to request reasonable advance payments in accordance with the status of work already performed.

8.3 The customer is not entitled to retain payments on the grounds of counterclaims if these are not deemed to be undisputed or established as final. The right of retention on the basis of counterclaims however, exists according to law insofar as Moll Betonwerke is culpable of gross violations of contract or in the case of clear-cut gross deficiency in the object of purchase.

8.4 Should the customer be in default with at least 10% of the due payment demands of Moll Betonwerke, Moll Betonwerke is entitled to make the performance of further finalized contracts of purchase dependent on prepayment or provision of security. The same applies if the customer can no longer be goods credit insured or if this insurance protection is no longer valid for circumstances not attributable to Moll Betonwerke or in the case of substantiated doubt (e.g. on the grounds of negative credit reform information) that at the present time the customer is not sufficiently creditworthy. The onus of proof of his liquidity lies with the customer.

## **9. Retention of title**

9.1 Moll Betonwerke reserves title to the objects it has delivered until such time that all outstanding claims against the customer from the business relationship have been settled in full, insofar as at the time of delivery the amount of securities of Moll Betonwerke does not already exceed the sum of claims by Moll Betonwerke against the customer by more than 10%.

9.2 Insofar as this leads to subsequent over-collateralization, the customer has a claim against Moll Betonwerke for the release of those securities which exceed the claim sum of

Moll Betonwerke by more than 10%. Moll Betonwerke has the right to select which securities to release.

9.3 Work with or processing of an object of purchase for which the retention of title lies with Moll Betonwerke is carried out for Moll Betonwerke. In the case that an object, to which Moll Betonwerke has retention of title, is combined with another object or several other objects, Moll Betonwerke acquires co-ownership in the ratio of the goods value of all the combined objects. The new object is deemed to be goods under reservation in the sense of these provisions. The expectant right of the customer remains unaffected by reworking or processing or combining.

9.4 The customer is entitled to resell the goods subject to retention in the normal course of business. He is not permitted other forms of disposition.

9.5 The customer assigns all claims arising from the disposition of the conditional goods in advance to Moll Betonwerke. If the conditional goods are sold together with other objects for which Moll Betonwerke has no pledged property entitlement or if the conditional goods are used as materials in the execution of works contracts, the assignment includes solely the share of revenue corresponding to the share of ownership by Moll Betonwerke. There is no assignment if, at the time the claim arises, the sum of securities from Moll Betonwerke exceeds the sum of securities of Moll Betonwerke against the customer by more than 10%.

9.6 The customer shall notify Moll Betonwerke immediately of any access by third parties to the conditional goods or the assigned claims. The costs of any intervention necessary to prevent access are borne by the customer.

9.7 In the case of default in payment by the customer to at least the amount of the respective conditional goods or the respective assigned claim his empowerment to dispose of the respective conditional goods or recovery of the assigned claim according to the choice of Moll Betonwerke becomes invalid. In this case Moll Betonwerke has the right to take possession of the conditional goods or to recover the assigned claim. The costs involved in this are at the expense of the customer. The customer undertakes to place all information and documentation necessary for taking possession of the conditional goods or the recovery of the assigned claims at the disposal of Moll Betonwerke. Repossession of the goods is not withdrawal from the contract unless expressly declared by Moll Betonwerke.

9.8 In the event of seizure measures against the customer, these shall take all necessary steps to ensure that the goods subject to reservation are not included or that the seizure does not apply to these goods. Further, the customer shall notify Moll Betonwerke immediately about this and provide all the information which Moll Betonwerke requires for the assertion of its retention of property rights.

## **10. Component-related models and production tools**

Should deliveries be made according to drawings or other information from the customer and if hereby the protected rights of third parties are violated, the customer releases Moll Betonwerke from all claims in this respect. The drawings and documents handed over to the customer by Moll Betonwerke together with proposals from Moll Betonwerke for expedient design and production may not be passed on to third parties and must be returned to Moll Betonwerke immediately on request. In respect of claims arising from copyright or commercial protected rights on models and production tools submitted or made or acquired on behalf of the customer, the customer can then only assert claims against Moll Betonwerke if he has informed Moll Betonwerke of the existence of such rights.

## **11. Confidentiality**

11.1 Both contractual parties mutually undertake to maintain confidentiality in respect of all knowledge and information about the business or operational procedures and/or circumstances of the other party which they have acquired in the course of execution of the contract and especially the know-how of the other party, his customers and suppliers. Further, the contractual parties undertake to place this obligation also accordingly on employees or other agents involved under the terms of the contract. This obligation continues after the duration of the respective work or other contractual relationship.

11.2 The obligation of confidentiality as set forth in Item 1 above applies in respect of third parties. In the sense of this Agreement, a third parties are non-associated companies under the terms of section 15 of the AktG (*Companies Act*). In the case that information is passed on to such companies, however, these shall also be under the obligation as set forth in Item 1, sentence 2.

11.3 The obligation pursuant to Item 1 above does not apply in the case of knowledge and information for which the one contractual party can prove to the other contractual party that

- a) this was already known prior to the date of receipt or
- b) already public knowledge or generally accessible prior to the date of receipt or
- c) became known to the public or generally accessible after the date of receipt without any responsibility for this on the part of the other contractual party or
- d) made accessible to him at any time from a third party entitled to do so without obligation of confidentiality.

The obligation pursuant to Item 1 above does not apply after five years have passed since the end of the contract.

## **12. Place of jurisdiction / place of performance**

12.1 Place of performance for all contractual obligations is the registered office of Moll Betonwerke in Munich, Germany.

12.2 Exclusive place of jurisdiction for all disputes between Moll Betonwerke and the customer is the court responsible at the registered office of Moll Betonwerke. Moll Betonwerke however, has the right to bring legal action against the customer at the customer's general place of jurisdiction.

12.3 The law of the Federal Republic of Germany applies exclusively for all legal relationships between the customer and Moll Betonwerke. The Uniform Law on the International Sale of Goods according to the Hague Convention is not applicable.

## **13. Requirement for written form**

All amendments or supplements to these conditions of sale must be made in writing in order to be valid. This also applies to the change of the requirement for the written form itself. Additional verbal agreements to these terms and conditions of sale shall not be made.

## **14. Subcontractors**

Moll Betonwerke has the right to have services performed in part or completely by subcontracted companies. Moll Betonwerke shall vouch for proper rendering of performance by subcontractors as for its own default.

## **15. Invalidity of individual provisions**

15.1 Should one of the provisions of these terms and conditions of sale be or become invalid, then also in the case of negotiation of a single provision, the validity of the remaining

provisions shall not be affected. In such a case the invalid provision shall be replaced by a valid provision which is as close as possible to the commercial intent of both contractual parties.

15.2 These regulations replace all previous agreements which were previously entered into either verbally or in writing by the parties to these business segments. Insofar as these terms and conditions of sale are not regulated for, then statutory provisions apply.

Status: 9-2003 Moll Betonwerke GmbH & Co. KG