Sales Terms and Delivery Conditions of the Sommerhuber GmbH,
4400 Steyr, Resthofstraße 69, commercial register No. 183846 m at the regional court Steyr , VAT ID-No.: ATU47496302
hereinafter referred to as Sommerhuber

Steyr, in July 2013

1. Application

1.1. The present general sales terms and delivery conditions are the basis and integral part of all quotations and contracts in the business of Sommerhuber.
1.2. General terms and conditions of customers do not apply, unless they were, in individual cases, accepted by Sommerhuber in writing quoting specific conditions. By signing an order or transmitting a confirmation of order, the customer will confirm the acknowledgement of and approval for those sales terms and delivery conditions.

2. Initiation of Contract

2.1. The issuing of cost estimates is subject to charges unless otherwise agreed in writing. In case an assignment is made based on the cost estimate, the charges will not apply and/or already made payments will be credited to the customer.
2.2. All offers are subject to change without notice and are non-binding unless otherwise confirmed in writing therein and they will always be subject to correction of errors, printing, typing and computing errors.

3. Conclusion of Contract

3.1. Contracts and orders shall be placed in writing.
3.2. The contract will only be concluded upon transmission of an order confirmation by Sommerhuber. In case the order confirmation should differ from the placed order, the customer's approval shall be deemed given unless the customer will, within a period of 5 working days upon receipt of the order confirmation, however, not later than before Sommerhuber starts to provide the contractual services, declare that it does not agree with the changes. The customer will separately be informed about this consequence in the order confirmation.
3.3. Exclusively decisive for the execution of the order is the order confirmation.
3.4. Subsequent changes and subsidiary agreements require the written form and shall be signed and confirmed by Sommerhuber.
3.5. Returns of goods delivered according to the order may only be performed upon written approval by Sommerhuber and at the customer's expense.
3.6. The cancellation of an order by the customer is only possible upon written approval by Sommerhuber. In this case, Sommerhuber shall, apart from being entitled to the assertion of any other claims, be entitled to charge a cancellation fee in the amount of 20% of the order value as a flat-rate minimum damage. In case of goods to be picked up, Sommerhuber shall, in case of default in acceptance (the goods are not picked up), be entitled to, at the buyer's account, dispose of the goods at the best possible rate. This provision shall apply upon expiration of one month upon date of invoice without prejudice of the maturity.

4. Prices

Prices and price (units) are quoted subject to confirmation for packed goods and free domicile for Hafnerkeramik and Hafnertechnik in Austria and Germany, for other foreign countries, they are quoted ex works Steyr. The prices for cool heat® and enJOY® are quoted ex works Steyr for Austria and abroad. The charging of goods is always performed based on the prices valid at the date of receipt of order. Prices quoted by Sommerhuber are always net prices excluding VAT. In case of export articles, the buyer shall be obliged to adhere to all legal provisions on the export and import of goods and to pay all duties, taxes, customs duties and other fees.

5. Delivery, Delivery Dates

5.1. The scope of goods to be delivered is determined by the order confirmation. Design and format changes shall remain reserved unless otherwise agreed in writing. The data in the descriptions of performance, weight and dimensions shall be considered as approximate specifications. Services not indicated in the order confirmation are not ordered. If preliminary works should therefore be required, they have to be performed by the customer in time and at the customer's expense.
5.2. Packaging costs are not charged for deliveries in Austria. All deliveries by Sommerhuber are fully exempted from obligations under the license number 6185 from the Austrian recycling authority ARA**.** Under this number, the customer may, in Austria, free-of-charge dispose all packaging by Sommerhuber. 3% of the sales price excluding VAT are charged for express mail or express delivery by train. Unless otherwise agreed, Sommerhuber is entitled to choose the mode of transportation – without being obliged to examine the cheapest transportation option.
5.3. Delivery and dispatch are performed ex Sommerhuber at the customer's account and risk; the transfer of risk will take place upon delivery to the forwarder. In case of an agreed upon destination, the service shall be considered rendered upon dispatch ex Sommerhuber (fulfillment). Fixed-term transactions shall explicitly be agreed in writing. No claims for damages as well as claims for the carriage-free subsequent delivery of any backorder may be deduced from the non-compliance with an agreed upon delivery date. The seller shall reserve the right of partial deliveries. This shall also apply to all obstructions referred to by the term "Force Majeure" as well as disruptions of operation, lack of raw materials of any kind etc. In case of delivery without agreed upon destination, the service shall be considered rendered upon dispatch of the notification of readiness for dispatch (fulfillment). Goods prepared for collection will, if they are not picked up, in any case after one month, be charged and stored for the customer's account and at the customer's risk.
5.4. The customer shall carefully examine the goods immediately upon acceptance. Sommerhuber will not pay damages for any breakage. Those claims for damages shall – immediately upon receipt – be asserted against the forwarder. The customer shall, by registered letter, notify the seller of defects within 8 days upon acceptance of the goods giving a precise description of the defect and the order number. Otherwise the customer will forfeit all claims. This shall also apply in case of a divergence between order confirmation and delivery. The existence of a defect shall not entitle the customer to eliminate/rectify the defect or have the defect eliminated/rectified by any third party but the seller shall be given the opportunity to improve the goods within a reasonable period of time. The passing on/processing of defective goods is not permitted. The elimination of defects is performed ex works Steyr.
5.5. All risks, also those of accidental deterioration, are transferred to the customer at the time of fulfillment. The customer shall arrange for the required insurance cover at its own expense. Sommerhuber will only arrange for insurance cover if explicitly agreed in individual cases.
5.6. In case of default of acceptance, Sommerhuber shall be entitled to charge a customary (in the market) storage fee per started calendar day and to concurrently insist on the fulfillment of contract.

6. Payments

6.1.Payment must be received on the creditor's account by the date specified on the invoice. All payments to Sommerhuber shall be made free of charges and without discount. Checks and bills of exchange will only be accepted upon separate agreement and on account of payment. Collection fees and discount charges will be charged to the customer.
6.2. The delivery in case of opening transactions will only be performed against cash payments/cash in advance. In case of default of payment, Sommerhuber shall be entitled to charge default interest in the amount of 9.2 % over the standard bank lending rate. With respect to the company, it is optionally possible to assert the claim for interest claims according to § 1333 sec. 2 ABGB (*General Civil Code, Austria*). In case of default, the customer shall also be held liable for all dunning, collection and lawyer costs whereas costs of € 40.00 excl. VAT per dunning letter may be charged in case of own dunning letters.
6.3. The offset of receivables of the customer against receivables of Sommerhuber shall be excluded. This shall apply irrespective of the cause in law on which the customer's claim is based.
6.4. Cash discount deductions are only accepted upon written agreement. In case of agreed installments, the cash discount agreement shall lose its effectiveness for all payments, also for the past, if the cash discount period is not met.
6.5. Discounts granted by Sommerhuber will lose their validity in case of default of payment.
6.6. The customer will grant Sommerhuber the right and gives its explicit approval for Sommerhuber to obtain creditworthiness reports of third parties (banks etc.). Upon request of Sommerhuber, the customer shall notify any third party about this approval to obtain information.

7. Retention of Title

7.1. The goods shall remain property of Sommerhuber until full payment of all claims of Sommerhuber is effected. This shall also apply in case of processing/assembly. In the event that the (joint) ownership of Sommerhuber in respect of said goods shall become extinguished by means of this interlinkage, the signing of the contract shall be deemed to provide in advance that the customer's (joint) ownership in the entire item shall be proportionately (in terms of invoice value) transferred to Sommerhuber. The customer will store the (joint) ownership of the seller free of charge.
7.2. The customer is entitled to process, assemble and or dispose of the goods subject to retention of title in the proper course of business unless the customer is in arrears. The pledging or the passing of the title are not permitted. The purchaser already assigns the full amount of debts due as a result of the resale or on the basis of any other cause in law with regard to the goods subject to retention of title to Sommerhuber by way of security. Sommerhuber authorizes the customer, subject to revocation, to collect on the customer's account and in its name the claims assigned to Sommerhuber. This authorization for collection may only be revoked if the seller does not meet its payment obligations in the proper form.
7.3. In cases of breach of contract on the part of the customer, especially default of payment, Sommerhuber shall be entitled to reclaim and take back the goods subject to retention of title and/or to demand that the customer's right to these goods is transferred to a third party. A taking back of the goods by Sommerhuber does not imply any withdrawal from the contract.

8. Quality

8.1 Deliveries shall be performed in professional average quality.
8.2. Deviations in color or execution are unavoidable; this shall particularly apply for replacement and supplementary deliveries as well as for custom-made designs. Such deviations shall be accepted by the customer. The form and condition of sample items will always represent the average of the delivery. According to ÖNORM 8304 (*Austrian standard*), color deviations of the enamel as well as blisters and grains in the enamel may exist to an extent so that the overall impression is not disturbed. Fissures in the enamel, slight concavities and enamel beads are, according to the standard, no reason for complaint.
8.3. In case of hidden defects, Sommerhuber will provide replacement for the material. Any additional claims for compensation are excluded.

9. Compensation and Warranty

9.1. Claims for damages of the customer due to nonfulfillment or poor fulfillment (of the contract) or due to default are excluded unless those circumstances are intentionally or in gross negligence caused by Sommerhuber. Entrepreneurs will have to bear the burden of proof. A liability for slight negligence shall, however, exist in case of personal injuries or damages resulting from the product liability law. Agreed upon as limitation period with companies is the period of ten years starting with the rendering of services.
9.2. The warranty period for entrepreneurs is limited to 6 months. The customer shall notify the seller of apparent or visible defects immediately upon acceptance/receipt, at the latest within 8 days. This notification has to be performed in writing and by registered letter. Otherwise all warranty claims and claims for compensation are excluded.
9.3. Compensation for consequential damages will not be paid; this shall also apply for consequential harm caused by any defect and loss of profit.
9.4. Parts subject to regular wear, normal wear and tear as well as damages attributable to negligence or improper treatment shall be excluded from the warranty.
9.5. Sommerhuber will exclusively provide warranty in form of the exchange of the defective goods.
9.6. The warranty expires if the delivered goods are processed, repaired or modified by the customer or any third party as well as in case parts of foreign origin are installed. The costs of a rectification of defects within the warrant period by the customer or any third party will only be reimbursed by Sommerhuber if Sommerhuber has explicitly agreed to it in writing or if Sommerhuber has failed to fulfill its own obligations to improve (the goods).

10. Product Liability

This contract is subject to the mandatory regulation of the Austrian Product Liability Act (PHG). Recourse claims, if any, asserted against Sommerhuber by contracting partners or third parties under the title of product liability within the meaning of the Product Liability Act shall be excluded, unless the party entitled to assert recourse claims proves that the mistake was within Sommerhuber's control and caused by at least gross negligence.
Any kinds of restrictions of obligations for the customer resulting from the PGH as well as any kinds of restrictions of claims for compensation to which Sommerhuber is entitled according to this act or other regulations will not be accepted.

11. Privacy/Data Protection

The customer agrees that its personal data and all pieces of information resulting from the order, may be included in Sommerhuber's customer file and may be processed computer-aided for the purpose of customer service. A written revocation of this agreement is permitted at any time.

12. General Provisions

12.1. If individual or several provisions of those general terms and conditions or contracts concluded based on those general terms and conditions should be or become ineffective or invalid, this will not affect the validity of the remaining provisions. The parties to the contract undertake to immediately replace any ineffective or invalid provision by a relevant and effective provision to the benefit of the economic purpose of the parties.
12.2. Sommerhuber®, cool heat® and enJOY® are registered trademarks of Sommerhuber.
12.3. Furthermore, all design features, construction drawings, construction documents, photos, C-descriptions are protected by copyright by Sommerhuber.
12.4. Unless otherwise agreed in individual items of those sales terms and delivery conditions a communication in text form, such as e-mail or fax, shall suffice for the preservation of written form.
12.5. Place of performance/fulfillment for all contractual obligations, particularly for the delivery and payment for all parts of the contract, is Steyr. Place of jurisdiction for legal disputes for all present and future claims resulting from the business relationship is, for both parties, the competent court in Steyr, Austria. This shall also apply for third party proceedings and third-party notices. Sommerhuber's right to sue at the place of business of the customer shall remain unaffected.
12.6. The legal relationship of seller and customer shall at any case be subject to Austrian legislation. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.