General Terms of Business for Goods Delivered and Services Performed Europoles Suisse GmbH (Stand: May 2007)

1. General
1.1 The following terms and conditions shall be valid for all our consultations, tenders, sales, deliveries and services, and all present and future legal relationships between our Customer and us. Any purchasing terms and conditions of our Customer that contradict our terms and conditions or relevant legal stipulations, wholly or in part, are hereby expressly precluded from application. Neither will they become constituents of a contract if we perform the delivery or service in full knowledge of such contradictory terms and conditions. If our terms and conditions had not been received by our customer together with the tender, or had not been submitted to him on another occasion, they shall nevertheless apply if our customer knows or ought to have known them from a previous business connection. Conflicting General Terms of Business shall furthermore not result in annulment of a contract.
1.2 German law shall furthermore exclusively apply to all contractual relationships. Application of the UN Convention on Contracts for the International Sale of Goods is excluded. Insofar as no agreement is made to the contrary, Incoterms 2000 – including any additions to Incoterms 2000 that apply at the point in time of conclusion of contract – shall apply for interpretation of the conditions of delivery.
1.3 Oral side agreements shall not be valid. Agreements that deviate in individual cases from the present General Terms of Business for Goods Delivered and Services Performed, in particular those made by our agents, are binding only if they have been confirmed in writing by us.
1.4 Our tenders are always subject to confirmation. Contracts shall become effective only on condition of our written confirmation of order, and only upon receipt by our customer.

2. Prices
2.1 Our prices for our services shall apply – if we provide transport from our plant to the place of delivery – ex works and free on rail or free on truck, and shall not include value-added tax (VAT), packing, insurance, or any customs fees applied, which will be additionally invoiced. Our prices likewise do not include unloading, and do not include installation or assembly that is contracted and due for payment.
2.2 If the customer himself provides transport of the goods, our prices shall apply for our services ex works, not to include value-added tax (VAT) and packing, which must be added. Our prices likewise do not include installation or assembly that is contracted and due for payment.
2.3 Any required packing will be invoiced at cost and may be returned and accepted for disposal only by the respective plant, or by the respective dispatch warehouse, insofar as such return and disposal of packing is stipulated in the contract or by legal regulations. The customer shall bear the cost of transport of packing to the return and disposal point.
2.4 In the event of changes occurring to basic pricing factors after the conclusion of the contract – e.g., through higher wage and material costs, increase of VAT, or other circumstances, especially changes in calculation as a result of technological factors – we are entitled to increase the contract price in an amount appropriate to the changes having occurred in the basic pricing factors.
2.5 For deliveries to foreign countries, customs payments, consular fees, as well as any taxes, duties, fees, or any other costs in conjunction therewith that result from the regulations of a foreign country, are not included in the price, and must be additionally borne by our customer. If, in exceptional and individual cases, we bear customs fees or any other duties or such fees, the indicated price shall be based on the rates that apply at the time of our tender. The invoiced price shall be the actual costs. Any value-added tax (German: Umsatzsteuer or Mehrwertsteuer) shall be additionally invoiced.
2.6 We shall be obligated to observe foreign packing, packaging, weighing, and customs regulations only if the customer in due time provides us with exact information on such regulations. Any additional costs in conjunction therewith shall be borne by the customer.

3. Deliveries and delivery time schedules
3.1 Our company cannot be charged for delays if our customer does not, or does not promptly, meet his obligation to collaborate, especially if he is responsible for approvals from government authorities, project schedules, construction drawings, specifications for the object of the contract, clarification of all technical specifications, and advance payments.
3.2 Our delivery time schedules do not represent time bargains, futures deals, or short sales (German Fixgeschäfte), unless agreement to the contrary has been expressly agreed.
3.3 In the event that circumstances for which we are not responsible arise that impede, delay, or render impossible the execution of contracts that we have accepted, we shall be entitled to postpone the delivery of all or part of the goods or services for a period in accordance with the duration of such circumstances. In such events, the customer shall not be entitled to lodge claims for restitution of damages. Circumstances for which we are not responsible shall include the following: action taken by government authorities; production interruptions, shutdowns, or stoppages; labour unrest; lockouts; interruption of work as a result of political or economic conditions; lack of the required raw materials or factory and operating supplies; materials shortages; difficulties with power supply; transport delays owing to traffic problems; or other unavoidable events that may occur in our operations, in the operations of our sub-contractors, or in the operations of outside companies on which our own operations depend. This stipulation shall also apply if such events arise at a point in time at which our deliveries and supplies are already delayed. In the event of long-term impossibility of our executing a contract, for which we are not responsible, we shall be entitled to withdraw from the contract, without the customer being entitled to lodge claims for restitution of damages.
3.4 Our customer shall be entitled to set a new delivery date only after the originally agreed delivery date has lapsed by more than one (1) week. The newly agreed, postponed date must be reasonable and must be at least three (3) weeks later. If the newly agreed, postponed date lapses without successful delivery, the customer is entitled to withdraw from the contract. No claims may be lodged against us for restitution of damages owing to failure to carry out agreed commitments, unless our behaviour has been grossly negligent at least, or if damage to persons has occurred, or if important contractual commitments have not been fulfilled.
3.5 If we provide transport of products to the delivery destination (cf. Section 2.1 above), our customer shall be obligated to provide suitable access paths or roads for the transport, insofar as such access ways are not already available. In such cases, we shall provide unloading of the products only if such unloading has been agreed by individual contract.
If our customer provides the transport himself (cf. Section 2.2 above), we shall perform unloading at the delivery site only if both unloading as well as erection/assembly have been agreed by individual contract.
3.6 If agreement has been reached by individual contract that erection/assembly will be performed by us, our services – apart from arrangements made for transport – shall include provision of erection/assembly staff, hoisting equipment, connecting elements for the prefabricated components, as well as engineering in accordance with the specifications of works and services. Our customer shall provide to us, in due time and at no cost, electric power and water, as well as sufficient space at the construction site for erection/assembly, storage, and such equipment as cranes and the like. Our customer shall provide us with binding information on any existing underground pipe lines, channels, and the like, to include exact data on their depth and axes. The customer shall also protect such pipe lines, channels, and the like from being damaged by moving vehicles.
3.7 If the customer himself provides transport of the products to the delivery destination (construction site), our services shall also include loading of the respective means of transport at the factory, likewise to include our services as set forth in Section 3.5 above. In such cases, our services do not include, in addition to transport, unloading of the products at the delivery destination.
3.8 If, after conclusion of a contract, evidence appears that the liquidity of our customer is endangered – e.g., information on delay or termination of payment, petition for opening of insolvency proceedings, assignment of current assets as security, or unfavourable information from banking or credit institutes or from credit underwriters – we shall be entitled to refuse to perform our services. After unmet requests directed to the customer for the provision of security in the form of directly enforceable bank guarantees or advance payment, we shall be entitled to withdraw from the contract and/or to lodge claims for restitution of damages. If a danger to the liquidity of our customer becomes apparent, we may take the above-stated measures without the setting of deadlines or waiting for deadlines to lapse.

4. Assumption of risk and transport
4.1 If we do not provide transport for the products, assignment of risk to the customer takes place upon loading of the product onto the means of transport at the plant (turnover to the freight forwarder). This stipulation shall also apply in case of partial deliveries.
4.2 If the customer provides transport for the products, and if the products are not picked up at our plant or transported from our plant within seven (7) days after we have provided notice of completion of production, or notice of readiness for forwarding, we shall arrange for transport of the goods, with forwarding to take place by a means of forwarding deemed by us to be favourable, with costs to be invoiced to our customer. Upon lapse of the period stated above (seven days), we shall consider that our customer has unreasonably delayed acceptance of the goods, with the result that, beginning at this point in time, assignment of risk to the customer shall take place. Storage of the objects of the contract shall then take place in the name of the customer, and at his cost.
4.3 If we provide transport, assignment of risk to the customer shall take place upon acceptance of our services in accordance with Section 9 herein.

5. Retention of title until payment in full
5.1 The object of a contract shall remain our property until full payment of all claims held by us against our customer, including future claims. This stipulation shall also apply to payments of especially designated claims until any open-item-account balance has been settled. Pledging or transfer of ownership of goods subject to retention of title as security is not allowed.
5.2 In the event – within the context of proper and permissible business operations – of further sale or rental/lease of goods subject to retention of title, the customer immediately thereby assigns to us – without the necessity of later, special declarations – all his claims against his customers as security, until satisfaction of all our claims. Such assignment of claims shall also apply to account claims that arise within the context of existing open-item-account situations, or that arise upon settlement of such situations of the ordering party with his customers. In the event that goods subject to retention of title are further sold or rented/leased together with other objects, without agreement having been reached on a unit price for the goods subject to retention of title, then the ordering party thereby assigns to the delivering party, with priority above the remaining claims, that share of the total price claim or of the total leasing fee which corresponds to the value invoiced by us for the goods subject to retention of title. Until cancellation, the customer shall be entitled to collect the assigned claims from the further sale or lease; he is, however, not entitled to further utilization of such claims: e.g., by transfer or assignment. If so requested by us, the customer shall inform his customer of said assignment, and shall submit to us the documents required for assertion of his rights against his customer – e.g., invoices – and shall provide us with the required information. The customer shall bear all costs involved in such collection and in any required intervention action. In the event that the customer obtain a bill of exchange on the basis of the authorization granted to him to collect the assigned claims from the further sale of goods, then ownership of these documents shall pass to us as security with the certificated rights. The requirement for submission of said bill of exchange may be replaced by an agreement that the customer would hold such bills of exchange for us in safekeeping, and would then endorse them and deliver them without delay to us. In the event that our customer receives funds in the value of the claims assigned to us, in the form of cheques or deposits received at one of his financial institutions, he shall be obligated to immediately report such receipt of funds, and shall be obligated to transfer them to us. Ownership of the cheques shall pass to us, with certificated rights, immediately upon their receipt by our customer. The requirement for submission of these papers may be replaced by an agreement that the ordering party will receive them on our behalf, then have them endorsed and assigned to us immediately.
5.3 If our customer processes or alters the goods subject to retention of title, or connects them to other objects, then the customer shall be considered to have processed, altered, or connected them on our behalf. We thereby immediately become owners of the objects manufactured by such processing, alteration, or connection. In the event that such ownership not be possible on legal grounds, then the customer and we hereby agree that we become owners of the new objects at the point in time of their processing, alteration, or connection. The customer must safeguard the new objects for us with the due diligence of a sound businessman. The new objects created by processing, alteration, or connection shall be considered to be goods subject to retention of title. In the event that these objects are processed, altered, or connected to other objects that do not belong to us, we shall have joint ownership of the new objects in accordance with the proportion formed by the ratio of the value of the processed, altered, or connected goods subject to retention of title, to the total value of the new objects. In the event that the new objects are sold or leased/rented, and without the requirement for later, specific declarations, our customer thereby assigns to us as security his claim arising from the sale or leasing/rental to a new customer, whereby this assignation shall include all ancillary rights. This assignment, however, shall apply only in the amount that equals the value invoiced by us for the processed, altered, or connected goods subject to retention of title. The share of claims assigned to us has priority over the remaining claims.
5.4 In the event that the goods subject to retention of title are connected by the customer to real estate or to movables, the customer also assigns to us as security – without the necessity of further, special declarations – the claims that arise to him as remuneration for such connection work, in addition to all ancillary rights. If our customer is the owner of the real estate, or if he has claims on other legal grounds to rent or lease from this property, then our customer shall also assign this rent or lease to us. Section 5.3 above shall apply as relevant for the amount of the claims assigned.
5.5 If the value of the security exceeds our claims against the ordering party from the current business connection, in a total amount of more than twenty percent (20%), we shall be obligated, upon request by the customer, to release a selection of those securities, chosen by us, to which we are entitled.

6. Payment
6.1 Insofar as nothing to the contrary has been agreed, invoices shall be due for payment , without deductions of any kind, within thirty (30) days, beginning with the date of the invoice. Discounts for early payment shall be granted only after special agreement, and shall be calculated on the basis of the invoiced value ex delivery works.
6.2 Payment shall be considered to be effective only once we can irrevocably dispose of the funds. We can accept payment by bill of exchange or cheque only for the sake of fulfilment, until funds are irrevocably transferred, and only after special agreement. Discount charges and fees for bills of exchange must be paid by our customer. If payment by bill of exchange has been agreed, the term of the bill of exchange must not exceed ninety (90) days from the date of the invoice.
6.3 If delivery is delayed on grounds for which we are not responsible, payment must be rendered as though the delays had not taken place.
6.4 Payments received will be credited against the oldest payables, or those payables that are least secured, with selection of priority to be made by us.
6.5 Partial deliveries will be immediately invoiced, and shall be individually due for payment, regardless of the final completion of the total delivery. Unless agreement to the contrary has been made, advance payment upon conclusion of contract shall be credited against the oldest partial delivery in each case.
6.6 If our customer partially or entirely falls into arrears with payment, he shall pay, as reckoned from this point in time, interest on arrears in the annual amount of five percent (5%) above the currently prevailing base rate set by the European Central Bank, insofar as we cannot in an individual case evidence greater losses.
6.7 Offset against counterclaims shall be accepted only in cases of legally confirmed counterclaims, or counterclaims recognized by us. The same shall also apply for the assertion of rights of retention to the amounts stated in our invoices.
6.8 In any of the following events, our total claims shall immediately become due for payment: if the customer terminates payment, if overindebtedness arises, if he petitions for opening of insolvency or settlement proceedings, or if he falls into arrears with payment of a cheque or bill of exchange. The same shall apply for any other significant worsening of the economic circumstances of the ordering party. In such cases we shall be entitled to demand sufficient security.

7. Withdrawal from contract and restitution for damages in case the customer falls into arrears
If our customer delays the acceptance of our deliveries or services, or if he falls into arrears in payments, we shall establish an appropriate period of grace for acceptance or payment. If the customer fails to perform within the grace period, we shall be entitled to withdraw partially or completely from the contract, and/or to demand payment for restitution of damages in the amount of twenty percent (20%) of the agreed price, subject to provision of evidence of more specific greater damages, especially the costs of the return of goods or services, insofar as the customer has not provided evidence of lesser damages. No period of grace will be required if, after conclusion of the contract, grounds exist for assumption of endangerment of the liquidity of our customer within the sense of Section 6.8 above.

8. Guarantee
The characteristics of the object of the contract that we are obligated to deliver are based exclusively on the contractual agreements with our customer, and not from any other advertising statements, brochures, consultations, or the like. The provision of a guarantee for particular characteristics or durability properties is not associated therewith; the legal consequences in case of non-performance are exclusively based on the following stipulations.
Normally commercially prevalent deviations in dimensions and material, and/or deviations based on manufacturing-technology factors, do not entitle the customer to declare the object of the contract as acceptable. The usual industrial standards, as well as our factory standards, insofar as they exist, shall apply to tolerances.
8.2 We shall provide advice and consulting services to the best of our knowledge, on the basis of our experience, but to the exclusion of any liability. Statements made and information supplied on the suitability, application, and/or use of the object of the contract are provided on a non-binding basis, insofar as they do not expressly involve an agreed product characteristic in the sense of Section 8.1 herein. Such information does not exempt the customer from the requirement of performing his own examinations.
8.3 In case of shortcomings in the products delivered by us, we shall be liable as follows, under exclusion of further claims:
a. Our customer shall be obligated, after receipt of the object of the contract, to immediately and thoroughly examine it without delay, insofar as such is possible during the normal course of business, as well as to conduct spot checks and to take samples as necessary. Apparent shortcomings must be reported in writing, in specific detail, without delay after arrival of the product, and before putting the object of the contract into use. If the customer fails to submit such report of shortcomings, it shall be assumed that the customer has approved the product, unless shortcomings are involved that were not apparent upon examination. The generally valid stipulations of commercial law shall furthermore apply. Even in cases of complaint, the customer is obligated to accept the object of the contract. He must then properly store it and return it only upon our express request.
b. Our customer must provide our agent the possibility of inspecting the rejected object of contract, and to examine it.
c. Beginning with delivery, we offer a guarantee of one (1) year for satisfactory material and technically correct manufacture, insofar as no longer, compulsory legal guarantee period applies, or unless some other stipulation has been agreed by individual contract. The guarantee claims of our customers concerning construction services and shortcomings in constructed structures lapse five (5) years after acceptance, unless legal stipulations provide a shorter term, or unless some other stipulation has been agreed by individual contract.
d. We provide no guarantee for natural wear and tear. Guarantee claims furthermore lapse upon damage or destruction of the object of contract by improper handling or storage after transfer of risk; excessively operational demands; unsuitable foundations; or chemical, electro-chemical, or electrical influences that are not stipulated in the contract. No claims for shortcomings shall likewise apply in case of improperly performed modification work, repairs, or maintenance work – e.g., as provided by our customer or by third parties.
e. We shall rectify shortcomings either by reworking or by replacement, as we so decide. Our customer must allow us a reasonable period of time and opportunity for rectification of shortcomings. In the event that such rectification fails after several attempts, our customer may withdraw from the contract, or can demand a price reduction. Further-reaching claims – especially those involving consequential damages caused by shortcomings – lodged against us or our agents, regardless of the legal grounds, shall be excluded, unless our behaviour has been grossly negligent at least, or unless damage to persons has occurred. Liability is also not excluded if important contractual commitments have not been fulfilled.
f. No guarantee shall exist for items especially manufactured on the basis of information, calculations, or engineering documents provided by our customer, insofar as shortcomings are the result thereof.

9. Acceptance
We shall notify our customer in writing of the completion of our services, or their readiness for acceptance. Thereafter, our services shall be considered as accepted upon lapse of fourteen (14) working days after written notification of completion of the services. If our customer places our services, or a part thereof, into use, acceptance shall be considered to have taken place as a result thereof. The customer shall be responsible for bearing any costs associated with acceptance.

10. Liability
10.1 In addition to our liability as set forth in Section 8 herein, we and our legal representatives or vicarious agents shall be liable only for claims for restitution of damages of our customers resulting from positive breach of contract, delay, negligence during contractual negotiations, and impermissible actions involving matters such as the following, and restricted as described below:
a. Liability for personal damages, which shall be based on legal stipulations
b. Liability for slight negligence, resulting in property damage, shall be excluded.
c. Liability for financial loss shall be excluded.
10.2 Restriction of liability under b. and exclusion of liability under c. shall not apply insofar as – in case of damages to privately used objects in accordance with Product Liability Rights (German: Produkthaftungsrecht), or in cases of intentional action or gross negligence, or as a result of breach of important contractual obligations – legislation stipulates mandatory liability for damages that are predictable in a typical contractual context. For the latter case – i.e., liability for slight negligence upon breach of important contractual obligations – liability shall be restricted for property damages to a total of CHF 10,000,000 (ten million Swiss francs) per case of damage.
10.3 Liability shall be restricted, especially for consequential damages, to damages that are predictable in a typical contractual context.

11. Termination
11.1 The customer can terminate a contract only on important grounds.
11.2 If our customer terminates a contract before completion of the services to be performed by us, without our being responsible for the termination, we shall receive the agreed remuneration for the services already performed, in addition to five percent (5%) of the agreed remuneration for the services not yet performed at the point in time that the contract was terminated, unless the customer can evidence of the following: that we were saved greater expense owing to termination of the contract, or that we have earned more from other customers by employment of our human resources, or that we have wilfully and maliciously failed to earn more. The lump-sum payment of five percent (5%) shall not inversely apply if can evidence that we have saved less in expenses, or if we have earned less through our human resources from other customers.

12. Proprietary rights
12.1 Drawings, tools, and special equipment that we manufacture remain our property.
12.2 If we are required to perform delivery or services in accordance with information, drawings, models, or samples provided by our customer, or on the basis of employment of parts provided by our customer, then our customer shall be responsible to ensure that the proprietary rights of third parties are not thereby infringed upon. If applicable, we shall call our customer's attention to the rights of third parties of which we are aware. Our customer shall grant us indemnity from any and all liability with respect to infringement against rights held by third parties, and shall compensate for any damages incurred in this respect. Our customer shall be responsible for any costs incurred by us until that point in time. In the event that a third party prevents us from manufacturing or delivering on the basis of proprietary rights belonging to him, we shall be entitled to cease work without an examination of the legal circumstances. Our customer shall bear any costs for any litigation.
12.3 If so requested by our customer, we shall return to our customer, at his expense, any drawings and samples that have not led to a contract. Otherwise, we shall be entitled to destroy these materials three (3) months after submission of our tender.
12.4 We shall own the copyrights and, if applicable, commercial proprietary rights, pertaining to the models; moulds, fixtures, and jigs; designs; and drawings created by us or by third parties on our behalf, even though our customer had paid the costs for these materials.

13. Concluding stipulations
13.1 We shall be entitled to process any data received from our customer on the basis of our business dealings with him, in accordance with the stipulations of the pertinent data-privacy laws, also to especially include provision of the required data to credit insurers for the purpose of credit insurance.
13.2 All agreements, regardless of whether they were made during or after conclusion of a contract, must be made in writing. This stipulation shall also apply to rescission or modification of this section pertaining to written form.
13.3 The assignment of claims that are held by our customer against us, and that arise from business between us, is excluded, insofar as these do not involve money claims.
13.4 In the event that one of the above-stated stipulations proves to be legally invalid, this shall not affect the legal validity of the remaining stipulations or of the agreement as a whole. If a stipulation proves to be partially or completely invalid, the partners to the present agreement shall without delay attempt to achieve the intended business results in another, legally permissible manner. Insofar as stipulations have not become constituent parts of the present agreement, the content of this agreement shall be in accordance with legal regulations.
13.5 Place of performance for all contractual and legal claims shall be our respective delivery plant.
13.6 Swiss law shall exclusively apply to this business relationship. If our customer is a trader (Kaufmann) according to German law, legal venue shall in all cases be Glarus, Switzerland, also for procedures involving cheques and bills of exchange. This stipulation shall also apply even though, at the point in time of initiation of legal proceedings, our customer does not have his general legal venue in Switzerland.