4.7 Claims of the Purchaser for compensation for non-conformity of the goods or any other con-
tractual liability exceeding the above, in particular for compensation for direct or indirect losses
arising disproportionately high damage, which shall be reported to FAULHABER immediately, or
particular it shall make damaged goods and the packaging available to FAULHABER for inspec-
tion. Any costs incurred by the Purchaser shall be borne by the Purchaser itself. Necessary
reasons for deduction or defect interest, the Purchaser shall compensate FAULHABER for any
result of the failure of the Purchaser to accept the delivery.
3.1 FAULHABER reserves title in all goods supplied until full payment of the purchase price for
such goods. The Purchaser shall not be entitled to sell any goods supplied until payment of the full
purchase price has been made. The title over the goods shall not pass to the Purchaser until such
manner or by any means. It shall notify FAULHABER without undue delay of any violation of
copyright or any other intellectual property rights the Purchaser notices, including performance
of payment obligations towards FAULHABER or if the Purchaser infringes the above obligations
by applying for the goods. The Purchaser shall cease in any way any claims to the goods and shall
be returned and prepared by the Purchaser, at the Purchaser's own cost, for collection by FAUL-
HABER. The Purchaser's right to claim for compensation for damages shall remain unaffected.
3.2 The Purchaser is permitted to process or transform the reserved goods and combine these with
other items. Processing or transformation shall be carried out on behalf of FAULHABER. FAUL-
HABER will become the direct owner of the item produced as a result of such processing or
transformation. The title to the reserved goods processed or transformed or combined with other
merchandise which is not FAULHABER's property, FAULHABER shall have joint ownership in the
resultant new product in the proportion of the values of the reserved goods transformed or
combined with other merchandise. The portion of the title claimed by FAULHABER shall have
reservation of title is claimed, or if FAULHABER takes back or pledges the goods supplied, this
shall not constitute withdrawal from the contract. If the goods are taken back, FAULHABER
shall reserve the price, interest and other additional expenses of the time to the setting of a reasonable
time. The proceeds from such realisation shall be offset against the claims of FAULHABER, in
case of any remaining balance, the Purchaser shall immediately pay the balance to FAULHABER.
4. Liability for Defects
4.1 The Purchaser shall inspect the goods received without undue delay on arrival for defects and,
conformity or non-conformity of the goods, or by faulty or negligent treatment, be notified to
FAULHABER immediately, but no later than 7 days after receipt, latent defects shall be
inspected within a reasonable period of time. If the Purchaser fails to do so, FAULHABER shall be
relieved from liability for the defect. In urgent cases only, i.e. where operational safety is at risk and to
avert disproportionately high damage, which shall be reported to FAULHABER immediately, or
the goods have left FAULHABER's premises or the goods are ready for despatch and the Purchaser
has been notified accordingly. The right of FAULHABER to claim for compensation for higher
delayed amount per day of delay. The right of FAULHABER to claim for compensation for higher
have notified the Purchaser accordingly. If the invoice for a due part of the purchase price has
not been paid within 10 days of receipt of the invoice, the Purchaser is in default with payment and
shall bear the consequences of such delay. If the goods are finally held to constitute infringement by a
non-appealable court decision or by any other facts or circumstances, the Purchaser is required by
FAULHABER and undertake all reasonable measures requested by FAULHABER. The Purchaser
shall be entitled to terminate the contract forthwith.
7. Confidentiality
7.1 The Purchaser undertakes that it and the Purchaser's personnel, agents and subcontractors
will fully respect the confidentiality of FAULHABER's technical and commercial information, know-
how and technology, business management, know-how, production information, marketing information.
The Purchaser hereby undertakes to treat as confidential all information obtained
from FAULHABER or communicated to the Purchaser in connection with the contractual
relationship and will not disclose it to any third party, (with knowledge that the information
and then only to employees who need to know the same) and will use such information solely in connection
in accordance with the contract and for its own benefit or for the benefit of any third
party, provided that this obligation shall not refer to information: (1) which the Purchaser is already
Known to the Purchaser prior to the commencement of the nego-
tiations resulting in the contract; or (2) which is already public knowledge or becomes so at a
frequency higher than that of a normal business operation in the industry. The above obligations shall
close the Purchaser to a party lawfully in possession thereof and entitled to disclose it. If
the disclosure of the confidential information as defined above is requested by the competent
authorities, the Purchaser shall notify FAULHABER and a copy of such disclosure shall
be given to FAULHABER before any disclosing is made.
3.3 In case of bankruptcy, the Purchaser shall not survive any expiration or termination of the
contractual relationship between the Parties.
8. Force Majeure
8.1 If a Party cannot perform any obligations stipulated in the contract due to reasons which are
directly and exclusively attributable to force majeure, it shall notify the other Party in writing within
30 days of the commencement of the event of force majeure. The Party claiming force majeure shall
be entitled to terminate the contract forthwith.
9. Applicable Law and Dispute Resolution
9.1 These General Terms and the contractual relationship between FAULHABER and the Purchaser
are subject to the law of the People's Republic of China. If any dispute arising out of or in connection with these
General Terms and the contract, including their existence, validity or termination, shall be settled by friendly consultations. If no result
be reached within a reasonable period of time, the dispute shall be settled by arbitration at the request of the
parties, in which case the arbitration tribunal shall be appointed by the Chairman of the CIETAC.
9.2 Force majeure shall mean any of the following events: earthquake, storm, flood, fire or other
acts of nature, SARS and other epidemics, war, riot, public disturbance, strike or lock outs also if
occurring after the due time of the purchase price has been paid. The control of the Parties over their occurrence is reasonably
unpreventable and unavoidable. If an event of force majeure occurs, No Party shall be responsible for any damages,
imposed and further obligations on the other Party or the result of the con-
tinued performance of the contract. The Parties shall settle the dispute by arbitration. The place of arbitration shall be Shanghai. The language to be used in the arbitration shall be
English.
9.3 The arbitration tribunal shall consist of 3 arbitrators. Each Party shall appoint 1 arbitrator. The third
arbitrator, who shall act as chairman of the arbitration tribunal shall be jointly appointed by
both Parties, who shall be a person, not connected with the Parties, who has not previously been
mentioned as an arbitrator. The arbitration tribunal shall be consulted by the Chinese International Economic and Trade Arbitration Commission ("CIETAC"). Beijing headquarter of CIETAC is located in Beijing.
9.4 The arbitration fee shall be borne by the losing Party as otherwise awarded by the arbitration tribunal. Petition
for enforcement can be filed with any court having jurisdiction thereof. During the arbitration proceedings, the Parties shall continue to perform these General Terms and contract except for
the stipulations which are in dispute.
10. General
10.1 If any provision of these General Terms is or will become invalid for whatever reason, this
shall not affect the validity of the other provisions. The Parties shall replace the invalid provision with a valid one which shall be as close as possible to the economic purpose of the original provision.
10.2 These General Terms are written in both Chinese and English languages. Both language versions
shall have the same meaning. In case of any differences between both language versions,
the English language version shall prevail.