

MOSDORFER RAIL STANDARD TERMS AND CONDITIONS

The Buyer's attention is in particular drawn to the provisions of condition 10.4.

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.
- Buyer:** the person, firm or company who purchases the Goods from MOSDORFER.
- Company:** MOSDORFER RAIL, whose registered offices are incorporated at the following locations:
- MOSDORFER UPRESA RAIL SAU**, C/Emporda 7, P.I. Congost, 08403 Granollers. SPAIN
- MOSDORFER RAIL LTD**, 2-4 Orgreave Place, Orgreave, Sheffield, S13 9LU. UK
- MOSDORFER RAIL s.r.l.**, Via J.W.Goethe 7, 39012 Merano (BZ), ITALY.
- Contract:** any contract between MOSDORFER and the Buyer for the sale and purchase of the Goods, incorporating these conditions.
- Delivery Point:** the place where delivery of the Goods is to take place under condition 4.
- Goods:** any goods agreed in the Contract to be supplied to the Buyer by MOSDORFER (including any part or parts of them).
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order,

specification or other document).

- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all MOSDORFER's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of MOSDORFER. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MOSDORFER which is not set out in the Contract. Nothing in this condition shall exclude or limit MOSDORFER's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from MOSDORFER shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by MOSDORFER until a written acknowledgement of order is issued by MOSDORFER or (if earlier) MOSDORFER delivers the Goods to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and that any applicable cable specifications are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until MOSDORFER dispatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days (unless agreed otherwise) only from its date, provided that MOSDORFER has not previously withdrawn it.
- 2.8 All verbal arrangements between the Buyer and Company must be confirmed in writing and shall not be binding on the parties until such time.
- 2.9 Cancellation, amendments or variations within 30 days of confirmed dispatch date will incur a charge.

3. DESCRIPTION

- 3.1 The quantity and description of the Goods shall be as set out in MOSDORFER's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by MOSDORFER and any descriptions or illustrations contained in MOSDORFER's catalogues or brochures are issued or published for the sole

purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing by MOSDORFER, delivery of the Goods shall take place at MOSDORFER's place of business.
- 4.2 The Buyer shall take delivery of the Goods within 7 days of MOSDORFER giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified by MOSDORFER for delivery of the Goods are intended to be an estimate and time for delivery
- 4.4 Subject to the other provisions of these conditions MOSDORFER shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by MOSDORFER's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds [180] days.
- 4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or MOSDORFER is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
 - (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by MOSDORFER's negligence);
 - (b) the Goods shall be deemed to have been delivered; and
 - (c) MOSDORFER may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 4.7 If MOSDORFER delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by MOSDORFER, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for

such goods at the pro rata Contract rate.

- 4.8 MOSDORFER may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract or instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by MOSDORFER on dispatch from MOSDORFER's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
MOSDORFER shall not be liable for any non-delivery of Goods (even if caused by MOSDORFER's negligence) unless the Buyer gives written notice to MOSDORFER of the non-delivery within 30 days of the date when the Goods would in the ordinary course of events have been received.
- 5.2 If, under statutory requirements, the CUSTOMER is entitled to compensation due to a delay for which MOSDORFER is (solely) responsible, the CUSTOMER is entitled, under the exclusion of any further claims, to demand compensation for delay as liquidated damages. For each full week of delay, the compensation for delay is 0.5%, in total, however, a maximum of 5% of the value of the part of the overall delivery that cannot be used in a timely manner or not in compliance with the contract due to the delay. However, MOSDORFER reserves the right to prove that the CUSTOMER suffered no loss at all or a significantly smaller loss. This Article does not apply in cases where MOSDORFER's liability cannot be excluded due to applicable mandatory (statutory) provisions. Apart from such claims and remedies that cannot be excluded by applicable mandatory statutory provisions, the liquidated damages defined in this Article "Delay" are the CUSTOMER's sole remedy in case of delay

6. RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery unless otherwise agreed 7 days after given notice that goods are ready
- 6.2 Ownership of the Goods shall not pass to the Buyer until MOSDORFER has received in full (in cash or cleared funds) all sums due to it in respect of:
 - (a) the Goods; and



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- (b) all other sums which are or which become due to MOSDORFER from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - (a) hold the Goods on a fiduciary basis as MOSDORFER's bailee;
 - (b) store the Goods (at no cost to MOSDORFER) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as MOSDORFER's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition and keep them insured on MOSDORFER's behalf for their full price against all risks to the reasonable satisfaction of MOSDORFER. On request the Buyer shall produce the policy of insurance to MOSDORFER.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
 - (a) any sale shall be effected in the ordinary course of the Buyer's business at market value; and
 - (b) any such sale shall be a sale of MOSDORFER's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
 - (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or

obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between MOSDORFER and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

- (c) the Buyer encumbers or in any way charges any of the Goods.

- 6.6 MOSDORFER shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from MOSDORFER.
- 6.7 The Buyer grants MOSDORFER, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.8 Where MOSDORFER is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by MOSDORFER to the Buyer in the order in which they were invoiced to the Buyer.
- 6.9 On termination of the Contract, howsoever caused, MOSDORFER's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

- 7.1 Unless otherwise agreed by MOSDORFER in writing, the price for the Goods shall be the price set out in MOSDORFER's price list published on the date of delivery or deemed delivery.
- 7.2 The price for the Goods shall be exclusive of any value added tax, duty and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

8. PAYMENT

- 8.1 The first 2 (two) orders placed by a new customer shall be subject to payment via Proforma Invoice. Should a third order be required, the Buyer should request a credit account. MOSDORFER reserve the right to refuse a credit account. The credit limit is set by MOSDORFER and is non-negotiable. Subject to condition 8.4, payment of the price for the Goods is due in pounds sterling or other mutually agreed currency at the time of quotation (subject to condition 8.7) at the end of the month that the MOSDORFER Invoice is dated plus 30 days relating to those goods (unless agreed in writing by MOSDORFER in which case the exchange rate of any Swiss bank shall be



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applied on the date of MOSDORFER's invoice).

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until MOSDORFER has received cleared funds.

8.4 All payments payable to MOSDORFER under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by MOSDORFER to the Buyer.

8.6 If the Buyer fails to pay MOSDORFER any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to MOSDORFER on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. MOSDORFER reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

8.7 Where delivery of the Goods is to be outside of the UK the Buyer shall pay via Proforma invoice unless otherwise agreed.

9. QUALITY

9.1 Where MOSDORFER is not the manufacturer of the Goods, MOSDORFER shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to MOSDORFER.

9.2 MOSDORFER warrants that (subject to the other provisions of these conditions) on delivery, and for a period of 12 months from the date of delivery, the Goods shall:

- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- (b) be reasonably fit for the manufacturer's intended purpose.

9.3 MOSDORFER shall not be liable for a breach of any of the warranties in condition 9.2 unless:

- (a) the Buyer gives written notice of the defect to MOSDORFER, and, if the defect is as a result of damage in transit to the carrier, within 30 days of the

time when the Buyer discovers or ought to have discovered the defect; and

- (b) MOSDORFER is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by MOSDORFER) returns such Goods to MOSDORFER's place of business at MOSDORFER's cost for the examination to take place there.

9.4 MOSDORFER shall not be liable for a breach of any of the warranties in condition 9.2 if:

- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow MOSDORFER's oral or written instructions as to the storage, installation, commissioning (especially, without limitation, the instruction that HV products need to be installed by a competence certified joiner), use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the Buyer alters or repairs such Goods without the written consent of MOSDORFER; or
- (d) the goods are subjected to improper use, faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation soil, non-reproducible software errors or modifications carried out by the Buyer or Third Parties.
- (e) defects resulting from chemical, electro-chemical, electrical or other external influences which are not assumed under the contract.
- (f) Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with any of the warranties in condition 9.2 MOSDORFER shall at its option repair or place such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if MOSDORFER so requests, the Buyer shall, at MOSDORFER's expense, return the Goods or the part of such Goods which is defective to MOSDORFER.

9.5 If MOSDORFER complies with condition 9.5 it shall have no further liability for a breach of any of the warranties in condition 9.2 in respect of such Goods.

9.6 Any Goods replaced shall belong to MOSDORFER and any repaired or replacement Goods shall be subject to the remainder of the original warranty period.

9.7 MOSDORFER does not guarantee any product values or product condition, unless such product



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characteristics have been expressly referred to as “guaranteed product values” or “guaranteed condition” in the order confirmation. Warranties for product values or product condition – if any – are valid until the expiry of the warranty period. If the guaranteed condition or the guaranteed product values are not achieved or only partially achieved, the CUSTOMER may only demand rectification (repair or replacement) of the affected goods by MOSDORFER, unless the rectification is proven impossible. The CUSTOMER is obliged to give MOSDORFER the necessary time and opportunity as well as unlimited access to the product to carry out any rectification works.

- 9.8 MOSDORFER makes no warranty of fitness for particular purpose or merchantability, and no other warranty, whether express or arising by operation of law, course of dealing, usage of trade or otherwise implied shall exist in connection with MOSDORFER's products or any sale or use thereof.

10. LIMITATION OF LIABILITY

- 10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of MOSDORFER (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these conditions;
 - (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of MOSDORFER:
- (a) for death or personal injury caused by MOSDORFER's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for MOSDORFER to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.

- 10.4 Subject to condition 10.2 and condition 10.3:

- (a) MOSDORFER's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 50% of the net price of an individual case which has given rise to a claim or 5% of the Contract price in the aggregate; and
- (b) MOSDORFER shall not be liable to the Buyer for:
 - (i) loss of profit;
 - (ii) loss of business;
 - (iii) third party claims; or
 - (iii) depletion of goodwill;

in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. ASSIGNMENT

- 11.1 MOSDORFER may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of MOSDORFER.

12. FORCE MAJEURE

- 12.1 MOSDORFER reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of MOSDORFER including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
- 12.2 If the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to MOSDORFER to terminate the Contract. In such a case the CUSTOMER shall pay MOSDORFER for the value of the goods and/or services already delivered but not yet paid for and for proven costs reasonably incurred by MOSDORFER on the goods and/or services not yet delivered.

13. GENERAL

- 13.1 Each right or remedy of MOSDORFER under the Contract is without prejudice to any other right or remedy of MOSDORFER whether under the Contractor not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by MOSDORFER in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by MOSDORFER of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14. COMMUNICATIONS

- 14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid post or sent by fax or by e-mail:
- (a) (in case of communications to MOSDORFER) to its registered office or such changed address as shall be notified to the Buyer by MOSDORFER; or
 - (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to MOSDORFER by the Buyer.
- 14.2 Where documents are sent or received by e-mail:
- (a) All attachments must be in an acceptable format

preferably Adobe Acrobat pdf format;

- (b) MOSDORFER shall not be liable for any unauthorised viewing, alteration and manipulation of e-mails or any liability flowing from the same.
- 14.3 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (b) if delivered by hand, on the day of delivery; or
 - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 14.4 Communications addressed to MOSDORFER shall be marked for the attention of the Managing Director.

15. DISPUTE

- 15.1 In case of conflicts, the provisions set forth in this Addendum prevail over any other commercial terms and conditions and agreements (including all annexes hereto) concluded between the Parties.
- 15.2 In the event of any dispute arising out of this Contract, the Parties shall try to settle the same amicably.
- 15.3 If an amicable settlement is not reached within 30 (Thirty) days, any dispute or difficulty shall be finally settled by arbitration.
- 15.4 The Arbitration shall be held in Sheffield, UK in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce by 3 (three) arbitrators and shall be conducted in the English Language.
- 15.5 The arbitral award shall be final and binding upon the parties.

16. INTELLECTUAL PROPERTY

- 16.1 MOSDORFER hereby grants the CUSTOMER, or undertakes to procure that the CUSTOMER is granted, a non-transferable, non-exclusive right to use the Intellectual Property Rights (IP Rights) in the goods, including embedded software, if any, within the purposes of the contract(s) between MOSDORFER and the CUSTOMER.
- (a) IP Rights in any Goods created by or licensed to MOSDORFER prior or outside a contract with the CUSTOMER (Pre-Existing IPR) will remain vested in MOSDORFER (or the third party owner). To the

extent that Pre-Existing IPR are embedded in any goods delivered to the CUSTOMER by

MOSDORFER or resulting from MOSDORFER's services, MOSDORFER grants, or undertakes to procure that the third party owner grants, CUSTOMER a non-transferable, non-exclusive right to use the Pre-Existing IPR as part of such goods for the purposes of the relevant contract with MOSDORFER.

16.7 The CUSTOMER's claims for damages (including indemnification/ hold harmless) are governed by the "LIMITATION OF LIABILITY" article in this Addendum.

- 16.2 In the event that the goods delivered by MOSDORFER infringe any third party IP Rights in the country of delivery, MOSDORFER shall, notwithstanding anything provided to the contrary or otherwise contained in this Addendum, an Order or a contract, at its cost (i) procure for the CUSTOMER the right to continue using the goods and/or services; (ii) modify the goods and/or services so they cease to be infringing; or (iii) replace the goods and/or services by non-infringing equivalents.
- 16.3 MOSDORFER shall not be liable to the CUSTOMER in case of IP Rights infringement if and to the extent the liability or damage was caused by the CUSTOMER's own pre-existing IP Rights contributed to, or implemented into the goods provided by MOSDORFER.
- 16.4 The obligations of MOSDORFER in case of IP Rights infringement shall apply only if the CUSTOMER
- (a) immediately notifies MOSDORFER in written form of any IP Rights claim asserted by a third party
 - (b) does not concede the existence of an infringement to the third party and
 - (c) leaves any protective measures and settlement negotiations to the MOSDORFER's discretion. If the CUSTOMER stops using the goods in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
- 16.5 The CUSTOMER's claims are excluded if it is responsible for the IP Right infringement.
- 16.6 The CUSTOMER's claims are also excluded if the IP Right infringement is caused by specifications made by the CUSTOMER, by a type of use not foreseeable by MOSDORFER or by the goods being modified by the CUSTOMER or being used together with products not provided by MOSDORFER.