GENERAL TERMS AND CONDITIONS OF BUSINESS

Gust. Alberts GmbH & Co. KG, Gewerbegebiet Grünenthal, 58849 Herscheid

GAH ALBERTS

1. Application of the terms and conditions

Our general terms and conditions of business (AGB) alone shall apply; we do not recognise any conflicting or deviating AGB, unless we expressly agree to their application in writing. Our AGB shall apply even if we provide our service without reservation in full knowledge of conflicting or deviating AGB on the part of the client. Our AGB shall apply only to companies in the sense of § 310 paragraph 1 of the German Civil Code (BGB).

2. Quotation and conclusion of contract

2.1

Our quotations are subject to change and are not binding. Orders/listings do not become binding until we have confirmed in writing. The same shall apply for additions, amendments and side agreements.

2.2

Any information, drawings, diagrams and descriptions (subject to technical amendments) included in catalogues, price lists, shelf space allocations or documents relating to the offer are approximations commonly used in the sector, unless expressly described as binding in the order confirmation.

2.3

The client is liable for the accuracy of all documents to be submitted by it, such as drawings, templates etc.

2.4

Each contract concluded shall be executed subject to the correct and timely delivery on the part of our suppliers. This shall apply only in cases in which we are not to be held responsible for non-delivery, particularly in the event of concluding a congruent covering transaction with our supplier. We expressly accept no procurement risk.

2.5

If an ongoing supply relationship is in place between us and the client, we are not obliged to accept individual orders. Under no circumstances do we accept any supply obligation. If, however, a supply obligation should expressly arise from a written individual agreement, we are also entitled in such cases to refuse to accept an order if there is the possibility of a considerable worsening of the client's financial circumstances or if this has already happened.

3. Pricing

3.1

Unless otherwise specified, we shall be bound by the prices stated in our quotations for 15 days from the date of the quotations. The prices listed in euros in the order confirmation plus the legal value-added tax valid at that time shall be decisive. Any additional deliveries and services will be invoiced separately. If no prices are stated, the prices valid at the time of the delivery shall apply.

3.2

Unless otherwise agreed, the prices are quoted „ex works", not including freight, postage, insurance and standard packaging for the sector. We use clearing accounts for pallets and mesh boxes used on an exchange basis. If required, any open balance will be notified to the client or carrier. If the balance has not been settled after a reasonable deadline, we reserve the right to invoice the corresponding equivalent amount. We also undertake to make payment to our client.

3.3

Should any significant change in wage, materials, logistics or energy costs occur, we are entitled to request an appropriate adjustment of the price, taking these factors into account.

4. Delivery

4.1

From receipt of the order until the goods have left the factory, delivery times agreed are approximate only. Even if a definite calendar delivery date has been agreed, it still does not constitute a fixed-date sale in the sense of § 376 paragraph 1 of the German commercial code (HGB). Additionally, delivery dates or lead times, which can be agreed bindingly or non-bindingly, must always be made in writing.

4.2

In the event that we are unable to honour a lead time agreed by us as binding, the client may, after the occurrence of the delay, a written reminder and having set an appropriate grace period of at least three weeks, enforce additional rights. A grace period is not required if the client reserved the right to withdraw in the event of non-compliance with the binding delivery date at the time of concluding the contract. In such cases, the client's right to claim compensation is excluded, unless we are accused of malicious intent or gross negligence on our part or that of a legal representative or agent with respect to the delay. This shall apply also to a breach of obligations during contract negotiations.

4.3

We shall not be held liable for delays in delivery or the provision of services due to force majeure or events which make it considerably more difficult or impossible for us to provide them – which include, in particular, industrial disputes, civil disturbances, official measures, non-delivery by our suppliers, etc – even if binding due dates and deadlines were agreed on. These entitle us to postpone the delivery or service provision for the duration of the hindrance plus an appropriate start-up period or to withdraw from the contract in whole or in part on the grounds of the part thereof not yet fulfilled, without the client being able to derive compensation claims, unless we are guilty of malicious intent or gross negligence. We will make every effort to notify the client immediately of the beginning and end of hindrances as described above. If the above-mentioned hindrances occur for the client, the same legal consequences shall also apply to its purchase obligation.

4.4

Part deliveries and performance are permissible to the extent that this is standard in the industry and shall be invoiced separately.

5. Excess or short delivery

Excess or short deliveries by up to 10% of goods manufactured to order are deemed to be agreed. Deliveries of stock items shall be made in the packaging units laid down in the sales documents. Quantities which differ from this can be rounded up or down.

6. Dispatch/assumption of risk

6.1

In the event that we send the goods at the request of the client, we reserve the right to choose the means of dispatch. In particular, we may, if necessary, instruct an external carrier, as long as the client does not legally issue a binding stipulation on this before expiry of the delivery deadline.

6.2

In the event that we send the object of the agreement at the request of the client, this shall be done at the client's risk. For all deliveries, the risk is transferred to the carrier, freight forwarder or any other person appointed to deliver the goods to the client once the goods have been made available (loaded stationary truck). This shall apply also to part-deliveries and agreed carriage-free deliveries. An agreed delivery presupposes that the delivery address is suitable for heavy goods vehicles.

6.3

If the dispatch or collection is postponed by request of the client, the client's acceptance delay shall begin upon its receipt of the written notification of readiness for the dispatch. In such cases and in the event that we store the goods in our own premises, we are also entitled to invoice the costs arising from storage at a rate of at least 1% of the invoice amount for each week or part week, starting one week after the submission of the written notification of readiness. In such cases, the risk of damage or destruction of the goods is transferred to the client at the time of the submission of the written notification of readiness. The same shall apply in the event of the client's acceptance delay. At the client's request and costs, we shall ensure the goods against destruction, loss and damage for the duration of its storage in our premises or those of third parties.

6.4

In the event that we bear the transport risk, the client must inspect the shipment for damage in transit immediately upon its arrival and immediately submit to us a notice of claim of the carrier and a written notification which must be signed by the client. The damaged delivery goods must be kept in the condition they were in the time the damage was noticed, for inspection by our employees.

6.5

In the event that the application of the International Commercial Terms (Incoterms) is agreed between us and the client in a special contract, the most recent version of the Incoterms shall apply at the time the special agreement was concluded.

7. Payment terms

7.1

Unless an agreement to the contrary has been made, all invoices become due for payment following delivery of the goods, within 30 days of the invoice date, without deductions.

The client is entitled to discounts only if this has been agreed expressly and in writing. Discount allowances on part invoices already paid shall become void upon submission of further part invoices or the overall invoice.

7.2

Notwithstanding any stipulation of the client, we alone are entitled to determine the claim against which any payments received shall be credited.

7.3

Even in the event that we have indisputably delivered faulty goods, our client is still obliged to make payment for the faultless proportion.

7.4

If the payment term is exceeded, we are entitled to invoice late-payment interest at the rate charged to us by the bank for current-account credits, but at least 10.5 percentage points above the base interest rate valid at the time.

7.5 All of our receivables become due for payment as soon as the payment term is exceeded or if, after the contract in question was concluded, we have reason to believe that the creditworthiness of the client has been reduced. In such cases, we are also entitled to refuse to perform any outstanding services until such time as the consideration has been paid or security has been provided for it. We may also prohibit the resale of the delivered goods subject to reservation of title and demand their return. Demanding the return of the goods does not constitute a withdrawal from the contract.

7.6

Bills of exchange are accepted only by express agreement and as conditional payment and subject to their eligibility for discount. Discount charges shall be charged from the day on which the invoice amount becomes due for payment. A guarantee for the correct presentation of the bill of exchange and for the lodging of a protest is excluded.

7.7

In the event that the client involves the central settlement organisation, the debt shall not be considered to be discharged until the payment has been credited to our account.

7.8

If, after conclusion of the contract, it transpires that our payment claim is jeopardised by a lack of solvency on the part of the client, we shall be entitled to refuse performance and to notify the client of an appropriate period of time during which it must pay contemporaneously against delivery or furnish security.

In the event of the client's refusal or if this period expires without action, we may withdraw from the contract and demand compensation in place of performance.

8. Reservation of title

8.1

All goods supplied shall remain our property (reservation of title) until all due payments have been settled, particularly also of any account balance claim to which we are entitled in the framework of the business relationship (balance reservation). This shall apply also to any receivables applying in the future or contingent claims, even if payment has been made on a specially designated claims. This balance reservation shall finally expire upon settlement of all outstanding claims covered by this balance reservation at the time of the payment. We are entitled to assign our outstanding payment claims against the client.

8.2

Any treatment or processing of our reserved goods shall be carried out for us as the manufacturer in the sense of § 950 BGB, without any obligation on our part. The treated or processed goods shall be considered reserved goods in the sense of no. 8.1. In the event of the processing, combination or co-mingling of the reserved goods with other goods by the client, we shall enjoy a proportionate co-ownership of the new item to the invoice value of the reserved goods in relation to the invoice value of the other goods used. In the event that our ownership expires due to a combination or co-mingling, the client assigns to us with immediate effect its ownership rights in the new item to the level of the invoice value of the reserved goods and shall hold them safe for us free of charge. Our co-ownership rights shall be deemed reserved goods in the sense of no. 8.1.

8.3

The client may sell the reserved goods only within its usual business activities under its normal terms and conditions of business and as long as it is not in default, provided that it reserves title and that the claim arising from the resale is transferred to us in line with no. 8.4. to 8.6. It is not entitled to dispose of the reserved goods in any other way. The use of the reserved goods to fulfil contracts for services shall also be deemed resale in the sense of this chapter 8.

8.4

Claims arising from the resale of the reserved goods are transferred to us with immediate effect, together with all securities acquired for the claim by the client. These shall be used for security to the same extent as the reserved goods. In the event that the reserved goods are sold by the client together with other goods not purchased from us, the claim arising from the resale shall be assigned to us to the proportion of the invoice value of the reserved goods to the invoice value of the other goods sold.

In the event of the sale of goods of which we are co-owners as per no. 8.2, a proportion corresponding to our co-ownership proportion shall be assigned to us

8.5

The client is entitled to collect receivables from the resale. This collection authorisation shall expire in the event of our revocation, but no later than in the event of payment delay, failure to honour a bill of exchange or application to open insolvency proceedings. We shall make use of our right of revocation only if it transpires after the contract was concluded that our payment claims arising from this or other contract with the client are jeopardised due to the client's lack of solvency. Upon request by us, the client must immediately inform its clients of the assignment to us and hand over to us the documents required for collection. Under no circumstances is the client authorised to assign the claim.

8.6

The client must immediately inform us of any distraint or other infringements of our title by third parties. The client shall bear all costs necessary for the cancellation of the attachment or return transport of the reserved goods, if these are not compensated for by third parties.

8.7

Should the client fall into payment arrears or fail to honour a bit of exchange, we are entitled to repossess the reserved goods and, if necessary, enter the client's premises for this purpose.

The same shall apply if it transpires after conclusion of the contract that our payment claims arising from this contract or other contract with the client are jeopardised due to the client's lack of solvency. Repossession does not constitute a withdrawal from the contract. The provisions of the insolvency code shall remain unaffected.

8.8

If the invoice value of securities exceeds the secured claims including ancillary claims (interest, costs and similar) by more than 10% in total, we are required to release securities of our choice at the client's request.

9. Acceptance

If an acceptance procedure has been agreed upon, this must be carried out in the factory by the client or its agent or a third party appointed by it. If the client waives the acceptance test in our factory, the goods shall be deemed to have been delivered according to contract, as soon as they have left the factory.

Material acceptance costs shall be borne by us, the staff costs of the acceptance test inspector shall be borne by the client. In the event that the client has to call off or accept within a specific period, we may choose to submit our invoice upon expiry of this period without further notice or to withdraw from the contract.

10. Withdrawal from the contract (impossibility, delay)

10.1

In the event that we fall into delay with the delivery of an item and are accused of gross negligence or malicious intent with regard to the delay, we shall compensate the client for all damages arising to it on this basis. In the event of simple negligence, claims of the client are excluded.

10.2

In the event of non-delivery by the supplier, both parties are entitled to withdraw from the contract.

10.3
We are entitled to withdraw from the contract on the following grounds:
10.3.1
If the client turns out not to be creditworthy, contrary to assumptions made on concluding the contract. Credit unworthiness can be reasonably assumed in the event of protest regarding a bill of exchange or a cheque, cessation of payment by the client or an unsuccessful enforcement action against the client. It is not necessary for such circumstances to relate to the relationship between us and the client.
10.3.2
If it turns out that the client has supplied incorrect information regarding its creditworthiness and this information was of considerable importance for the conclusion of the contract.
10.3.3
If goods subject to our reservation of title are sold otherwise than in the regular course of the client's business activities, particularly by way of transfer of security or pledging. Exceptions to this exist only if we have given our agreement to the sale in writing.
10.3.4
If, after conclusion of the contract, circumstances necessary for the fulfilment of the contract have developed without any scope for influence on our part, in such a way that performance becomes impossible or unreasonably difficult for us (e.g. non-delivery by upstream suppliers for which we cannot be held liable or supply becomes possible only under extremely difficult conditions).
10.3.5
If the client significantly breaches its contractual obligations, particularly if it commits a breach of duty of care regarding the handling of goods delivered under reservation of title.
10.3.6
Additionally, our right of withdrawal and that of the client are determined by the legal provisions in place.

11. Warranty/material defect
11.1
We warrant that the goods delivered by us will be free of defects. If no special agreements have been reached, all items for which standards exist shall be supplied in line with these standards and within tolerances which have been specified or which are standard for the market. If counting scales are used to determine quantities, a tolerance of ± 1% shall apply.
11.2
The client must inspect the delivered goods immediately upon delivery and notify us in writing immediately of any defects (by no later than the second business day following the delivery). Defects which are identified late, namely not in accordance with the above obligation, are excluded from the warranty. Defects which are not obvious and which can be identified only in the course of time shall be notified by the client in writing immediately after discovery. Notices of defects shall be recognised as such by us only if they have been notified in writing, even if they have been reported to sales representatives, carriers or third parties.
11.3
Any return to us of goods which may be necessary in the event of a defect may only be carried out with our prior written agreement. Returns made without our prior agreement shall not be accepted by us. In such cases, the client shall bear the costs of returns arising from our refusal to accept them.
11.4
In the event that subsequent rectification or improvement is carried out on the grounds of a justified notice of defects, the provisions regarding delivery time shall apply.
11.5
The warranty period shall be 12 months and shall start with the transfer of the risk to the client. Within this warranty period, we shall remedy defects notified to us by the client in comprehensible format free of charge. The remedy of the defect is subject to our choice and shall be carried out by removing or circumventing the error or supplying a replacement item (subsequent fulfilment). The client must compensate us for all benefits of use from the defective item up to the delivery of the replacement item by way of reasonable use payment. If we offer the client faultless but used goods in exchange, the client has the right to choose whether it wants new goods and to compensate us for all benefits of use or accepts used goods. In the latter case, it shall pay no compensation for the benefits of use. If subsequent performance is ineffective, the client may set us a final deadline of at least four weeks in writing, within which time we shall comply with our obligations. Following the unsuccessful expiry of this deadline, the client may request a price reduction, withdraw from the contract or carry out the necessary rectifying measures or instruct a third party to carry them out at our costs and risk. If the rectification is successfully carried out by the client or third party, all claims of the client shall be deemed to have been settled with the reimbursement of the demonstrable, appropriate costs arising to it. A reimbursement of costs is ruled out if expenses arose due to the goods having been delivered to another location after delivery by us, unless this corresponds to the normal use of the goods.
11.6
All further claims of the client against us are excluded, particularly claims for damage compensation not arising to the object of the contract itself. This shall not apply if there is liability in cases of malicious intent or gross negligence.
11.7
We assume no responsibility for material defects caused by the inappropriate or incorrect use or incorrect assembly by the client or third parties, normal wear or tear, incorrect or negligent handling, or for the consequences of improper changes made or those made without our agreement by the client or third parties. The same shall apply to defects which do not materially reduce the value or suitability of the goods. If, further to inspection, the defect notified by the client cannot be confirmed, the client shall bear the costs of the inspection.
11.8
In the event of the occurrence of defects, we may choose whether to repair the rejected object of the contract at our premises or those of the client. In the event of a defect which can only be repaired on the client's premises, we shall bear the costs arising for this only up to the place at which the item was to have been used upon conclusion of the contract. Unless otherwise agreed and unless evident from the circumstances, we are at most obliged to carry out repairs at the client's premises. Additional costs resulting from the fact that the client has moved the item to a location other than the installation site originally intended or its premises shall be borne by the client, unless moving the item to this location corresponds to normal use of the goods.
11.9
We are liable for damage arising from defects in the item only if this can be imputed to at least a grossly negligent breach of duty by us, our legal representative or agent. The client must provide evidence of the grounds for and amount of the damage incurred. The same shall apply to futile expenditure. The above limitation shall expressly not apply if a liability for damages arising to life, limb or the health of the client is justified by a negligent breach of duty by us, our legal representative or agent. If we accept the guarantee for a specific characteristic of the sold item for a fixed period of time, the above provisions on the inspection and complaints procedures and the number of rectification attempts shall not apply.
11.10
The burden of proof for the existence of a defect shall be borne by the client.
11.11
If claims arising from the breach of German trademark rights are asserted against the client on the basis of items supplied or licensed under these conditions, we shall reimburse the client for all legally imposed costs and damages if we are informed immediately in writing of such claims, receive all necessary information from the client, the client has fulfilled its general obligations of cooperation, we are in a position to make the final decision as to whether the claim is to be defended or settled and we are responsible for the breach of trademark. If a court determines that a further use of the object of the contract infringes the German trademark rights of third parties or, in our opinion, the danger of a trademark right action exists, we can, if our liability is not excluded, at our own costs and choice, either procure the right for the client to continue to use the contractual item or to exchange or amend this in such a way that there is no longer any infringement or to take back the item and reimburse the client for its value, minus a reasonable use payment for the use made of it up to that point. Reasonable use payment shall be calculated on the basis of an assumed amortisation period of three years, so that 1/36 of the price shall be paid for each month of use.
11.12Subsequent improvement or replacement delivery does not cause the limitation period to start again.

12. Liability
12.1
Notwithstanding the provisions on the warranty and other specific rules in these provisions, the following shall apply in the event of a breach of duty on our part:
12.2
The client must grant us an appropriate grace period to remedy the breach of duty, which may not be less than three weeks. Only upon the unsuccessful expiry of the grace period may the client withdraw from the contract and/or demand compensation. The client may enforce compensation against us only in the case of grossly negligent or intentional breach of duty by us. Compensation instead of performance (in the event of non-fulfilment, § 280 paragraph 3 in connection with § 281 BGB) and damages due to delay (§ 280 paragraph 2 in connection with § 286 BGB) shall be limited to negative interest. Compensation due to performance not rendered or not rendered as owed (§ 282 BGB) is limited to the level of the purchase price. Compensation instead of performance with exclusion of the performance obligation (impossibility) is excluded.
12.3
If the client is solely or mostly responsible for circumstances which would entitle it to withdraw or if the circumstance entitling it to withdraw occurred during the client's default of acceptance, the withdrawal shall be excluded.

13. Contract for services/special orders
13.1
The client's right of termination according to § 649 BGB is excluded in the framework of contracts for services. The right to extraordinary termination is unrestricted. If, depending on the type of order, an acceptance is necessary, the following shall apply:
13.2
We shall, at our choice, notify the client by telephone, by e-mail or in writing that the commissioned service is ready for acceptance. The client shall be deemed to have fallen behind on the acceptance if it fails to accept the service within one week of receipt of our notification or submission of an invoice by us.
13.3
Immediately upon notification of readiness for acceptance, the client shall carry out the acceptance test and verify compliance with the technical specifications. If the service complies with the technical specifications, the client shall declare its acceptance immediately in writing. If the client fails to declare acceptance for three weeks after notification of acceptance readiness and fails to report any major defects in the meantime, the service shall be deemed to have been accepted. The service shall also be deemed to have been accepted if the client uses the service without declaring that its use has been considerably reduced.

14. Sales aids
Sales and presentation aids made available to the client remain our property and may be reclaimed at any time. During the use of the sales and presentation aids by the client, all related risks shall transfer to it. It undertakes only to use our goods with the sales and presentation aids and to pay compensation in the event of any loss or damage for which it is responsible. The client undertakes to return the sales and presentation aids to our address free of charge by no later than in the event of any programme modifications or of the end of the business relationship, etc.

15. Offsetting/retention
Any offsetting right of the client is excluded other than in the case of an undisputed claim or one established by a court of law. In the event of a justified notification of defect, a right of retention is permissible only to an amount representing an appropriate and reasonable ratio between defect and purchase price. The client may retain payments only if the notification of defect has been recognised by us or established by a court of law.

16. Assignment prohibition
The rights of the client arising from contracts executed with us may not be assigned without our prior written agreement.

17. General
17.1
If one or more of the above provisions should prove to be invalid or become invalid or contain a loophole, the remaining provisions shall remain unaffected. The parties to the contract must in such cases replace the invalid provision with a valid provision which most closely resembles the economic purpose of the invalid provision. This shall also apply for the purposes of closing any unintentional loopholes to be filled.
17.2.
Any additional agreements or those which deviate from the above provisions shall be valid only in the form of a written supplementary agreement to the contract concluded by the parties, in which a reference is made to the amended provisions. An agreement to waive the written form requirement must also be made in writing.
17.3
The place of execution for all obligations arising from this contract shall be our headquarters.
17.4
The sole place of jurisdiction for all disputes arising from the contractual relationship and regarding its validity, even in the framework of a bill of exchange and/or cheque procedure, if the client is a registered trader, a legal entity under public law or a special fund under public law or its headquarters are abroad, shall be, at our option, our headquarters or the headquarters of the client.
17.5
The law of the Federal Republic of Germany alone shall apply to this contractual relationship. The application of the UN Convention on the international sale and purchase of goods is expressly excluded.

