

**General Terms and Conditions of Delivery and Payment  
Alö Deutschland Vertriebs-GmbH**

**I. General**

1. All our deliveries and services are governed by these General Terms and Conditions of Delivery and Payment (hereinafter “Terms and Conditions”), subject to individual agreements. We do not accept any deviating terms and conditions of purchase of the customer, unless we have explicitly agreed to such deviating terms and conditions of purchase. These Terms and Conditions shall also apply if we provide the deliveries or services to the customer without reservations despite being aware of conflicting or deviating terms and conditions of purchase of the customer.
2. These Terms and Conditions only apply to contracts with entrepreneurs (*Unternehmer*) as defined by section 14(1) of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*), with legal entities under public law and special funds under public law within the meaning of section 310 of the German Civil Code.
3. These Terms and Conditions also apply to all future transactions in an ongoing business relationship.

**II. Conclusion of contract, written form, offer documents**

1. All our offers are non-binding and subject to change, unless otherwise stated in our offers or explicitly declared by us in writing.
2. A customer’s order is accepted only by our written order confirmation or our delivery.
3. All agreements made between us and the customer for the execution of this contract have to be set out in writing. Any changes or amendments to this agreement must be made in written form and signed.
4. We reserve title and copyright to any samples, cost estimates, drawings and similar information, whether tangible or intangible; they may not be disclosed to any third party without our explicit prior consent. The customer shall return such documents and destroy any copies if not needed anymore in the ordinary course of business whenever so requested by us.

**III. Prices and terms of payment**

1. Our prices apply to the scope of delivery stated in the order confirmation. Any additional or special services shall be remunerated separately. All prices are in euros and in the absence of special agreement “Delivered at Place [DAP]” (Incoterms® 2010), including packaging but excluding VAT, which is charged separately to the value prescribed by law.
2. In the absence of special agreement, payment shall be made by credit to our account within 14 days with a 2% discount or within 30 days net.
3. The customer is entitled to retain payment or to offset against counterclaims only to the extent that such counterclaims are undisputed or have been established with final effect.

**IV. Delivery period, delay in delivery and risk**

1. Deliveries are made “Delivered at Place” (DAP – Incoterms® 2010).
2. Delivery periods are non-binding save where explicitly agreed otherwise. Our observance of those periods requires that all commercial and technical questions have been clarified between the parties and that the customer has performed all of its obligations such as obtaining the required certificates and permits from authorities or making the agreed advance payment. If that is not the case, the delivery period is extended by the period of time for which the customer fails to perform its contractual obligations and a reasonable lead time.
3. Our observance of the delivery period is subject to our timely receipt of accurate deliveries from our suppliers.
4. An agreed delivery period is observed if, in the event of a “delivery at place” clause, the item delivered is made available to the customer ready for discharge at the designated destination.

Where an acceptance is required for legal reasons or due to explicit agreement, the date of acceptance is decisive. Default of acceptance by the customer is equivalent to acceptance.

5. The risk of accidental loss or deterioration of the goods passes to the customer at the point in time when we make delivery in accordance with section IV. 1 and 4. If the shipment or the delivery is delayed as a result of any circumstance the cause of which is attributable to the customer, the risk passes on the day on which the item is ready for shipment and we have informed the customer accordingly.
6. If the customer is in default of acceptance, we are entitled to charge the customer the costs arising as a result of such default, in particular the costs of storing the item delivered, to the value of 5% of the net value of the goods per month. The customer may show that the loss sustained was significantly lower. Further rights are not affected thereby.
7. If the failure to meet the period of delivery is due to force majeure or other unpredictable circumstances for which we are not responsible such as storm, war, terrorist attack or industrial action, the period of delivery is extended by the duration of such obstruction plus reasonable lead time. We will inform the customer as soon as possible of the beginning and the end of such circumstances. If the interruption takes longer than two months, each of the parties is entitled to rescind the contract after expiry of a reasonable grace period. In this event damage claims are excluded.
8. We are entitled to make delivery or provide services by instalments, provided that this does not conflict with any obvious interest of the customer.
9. If it is impossible for us to make delivery or to perform during the customer's default of acceptance, or if the customer is solely or largely responsible for such impossibility or our inability to make delivery or to perform, the customer remains obliged to pay consideration.
10. All claims of the customer for damages resulting from our default in delivery are governed solely by section VIII. of these Terms and Conditions.
11. We will insure the shipment against insurable risk only if explicitly so requested by the customer at the customer's expense.

## **V. Place of performance**

Unless otherwise determined (e.g. delivery DAP), the place of performance for any and all obligations under this contractual relationship is the place of our company's registered office.

## **VI. Retention of title**

1. We reserve title to the item delivered until we have received all payments due under the business relationship with the customer. In the event of a breach of contract by the customer, in particular default of payment despite a reminder, we are entitled to rescind the contract and to demand that the goods delivered be returned. After the item delivered has been returned, we are entitled to resell it; the proceeds of such resale – less reasonable costs thereof – will be deducted from the liabilities of the customer. The assertion of the retention of title and potential attachment of the item by us constitutes a rescission of the contract only if a reasonable period which we fixed for performance has expired and we explicitly declare such rescission of the contract. Any conflicting provisions in the German Insolvency Code (*Insolvenzordnung – InsO*) shall not be affected hereby.
2. In the event of attachment or any other third party intervention, the customer will inform the third party of our title without undue delay and notify us without undue delay. The customer will be liable to us for costs incurred in court and out of court in connection with an action in accordance with section 771 of the German Code of Civil Procedure (*Zivilprozessordnung – ZPO*).
3. A petition for the opening of insolvency proceedings over the assets of the customer entitles us to rescind the contract with immediate effect and to demand the prompt return of the item delivered.
4. The customer is entitled to resell the item delivered in the ordinary course of business. However, the customer hereby assigns to us any and all claims which the customer may have against the buyer or any third party as a result of such resale. The customer is still authorised to collect the claim even after the assignment. However, we may collect the claim ourselves if the customer does not meet its payment obligations anymore from the proceeds collected or is in default of payment or if, following a proper review, significant doubts arise as to the customer's ability to pay, or if a petition for the opening of insolvency proceedings has been filed by or against the

customer or if the customer has suspended payments. In these cases we may demand that the customer discloses the claims assigned and the debtors, provides all information required for collection, makes available the relevant documents and informs the debtors (third parties) of the assignment. However, we cannot collect the claim if such collection would conflict with the German Insolvency Code.

5. If the item delivered is resold together with other goods not belonging to us, the customer will transfer to us a share of the claim against the buyer in accordance with the ratio between the value of the item delivered and that of the other goods.
6. Any processing or conversion by the customer of the item delivered is always made on our behalf. If the item delivered is processed together with other objects not belonging to us, we acquire joint property in the new object in accordance with the ratio between the value of the item delivered and that of the other objects processed as at the time of processing.
7. If the item delivered is combined with other movable objects to form one single item or inseparably mixed, and if the other item is to be considered the main item, the customer will transfer to us proportionate joint ownership, provided that the main item belongs to the customer.
8. The customer will store our property or joint property for us. The item created by processing, conversion, combination or mixing is governed by the same rules as the item delivered.
9. We agree to release any security to which we are entitled at the customer's request where the value of security exceeds the claims to be secured by more than 20%. The choice of security to be released is ours.
10. If the item delivered is located outside of Germany, the following applies:

If the item delivered was delivered prior to the customer's payment of all amounts due under the contract, the item delivered will remain our property until full payment has been made, provided that this is admissible pursuant to the law applicable at the place where the item delivered is located. If, pursuant to such law, retention of title is not admissible but we are allowed to retain other rights with regard to the item delivered, we can exercise all rights of that kind. The customer is obliged to cooperate in any measures which we may take to protect our title or any right in lieu of the same with regard to the item delivered.

## **VII. Warranty / rights in the event of defects**

1. Warranty rights of a customer who is a merchant (*Kaufmann*) require that the customer inspects the items delivered and the services provided without undue delay and properly and specifically notifies any defects without undue delay in accordance with section 377 of the German Commercial Code (*Handelsgesetzbuch – HGB*); this also applies in the event of a contract for work and services (*Werkvertrag*) or a contract for delivery of a work to be created (*Werkliefervertrag*) and assembly, installation and customer service; latent defects shall be notified without undue delay after discovery (section 377 of the German Commercial Code). All notifications have to be made in writing, specifically stating the defect. If these requirements are not observed, the merchant customer loses its warranty rights.
2. Any weights, dimensions, colours and technical information given in drawings, catalogues, illustrations and other documents are non-binding, unless explicitly otherwise agreed in writing, and in particular do not constitute any agreement on quality or guarantee. The information provided by us is to be understood as approximate values customary in the industry.
3. The customer cannot assert any rights based on defects if there are only insignificant deviations in quality or if the fitness for use is impaired only to an insignificant degree. This in particular applies to customary deviations in colour and in structure, unless explicitly agreed otherwise.
4. Where regular maintenance or inspection of the item delivered has been agreed, the customer can assert claims based on guarantees assumed by us, if any, only if such maintenance or inspection was carried out at the agreed time intervals. In the event of faulty operation of the item delivered contrary to the instruction manuals provided, we shall not be liable for any faults caused thereby.
5. If, on the passing of risk, a defect exists in the item delivered or in the service provided, we are entitled at our discretion to remedy the defect or to make a replacement delivery. Any costs incurred by us as a result of the customer's transporting the item delivered to a place other than the place of delivery shall be borne by the customer.

6. The customer first has to grant us an opportunity to provide cure within a reasonable period of time before being able to assert further claims or statutory rights (rescission, reduction, damages or reimbursement of futile expenses or, in the event of a contract for work and services, own repair), provided that we have not assumed any guarantee to the contrary. If the cure fails despite at least two attempts to cure, or if a cure is impossible or not reasonably acceptable to the customer, or if we refuse to cure, the customer can rescind the contract or reduce the remuneration. The assertion of claims for damages and reimbursement of futile expense is governed by section VIII of these Terms and Conditions.
7. The customer may remedy the defect, or have the defect remedied by a third party, and demand that we reimburse the required expenses only in urgent cases to prevent unreasonably high damage. We have to be informed in due time prior to such repair. The customer is not entitled to repair the item itself in cases where we would be entitled under the statutory provisions to refuse such a cure. The rights of the customer under section 637 of the German Civil Code are not affected hereby.
8. We especially do not assume any warranty in cases where a defect is due to the following causes or where a defect as defined by law did not exist on the passing of risk:  
  
Inappropriate or improper use, faulty assembly or commissioning by the customer or a third party, fair wear and tear, false or negligent handling, improper maintenance, inappropriate equipment, chemical, electrochemical or electric influences, unless we are responsible for these causes.
9. If the customer or a third party improperly performs subsequent improvement, we shall not be liable for the consequences thereof. The same applies to any alterations of the item delivered made without our prior consent. The customer shall in any event bear any additional costs resulting from such alteration for remedying a defect.
10. All rights of whatever nature which are based on defects already become statute-barred 12 months from the passing of risk. This also applies to any guarantees which we assumed and which are binding on us, unless stated otherwise therein. Where the limitation periods provided by law for rights based on defects are longer than two years (e.g. in the event of fraudulent concealment of a defect), such statutory periods apply. The limitation periods set out in the preceding sentences also apply to consequential damage (i.e. damage which cannot be removed by carrying out a cure free from defects); section VIII. 5 is not affected thereby. If a cure is required due to defective delivery, the running of the limitation period is only suspended between the notification of defects and the time of cure; it does not begin to run anew.
11. The following additional provisions apply to claims based on defects of title:
  - a) Save where explicitly agreed otherwise, we are only obliged to deliver goods free of third party rights in Germany. If we make delivery outside of Germany, the customer is required to enquire about any conflicting third party rights and to inform us of any such rights in due time prior to the conclusion of the contract.
  - b) In the event of an infringement of third party IP rights for which we are responsible, we can at our discretion either obtain a sufficient right of use for the agreed or presumed use at our expense and transfer such right of use to the customer or modify the goods delivered or make a new delivery in such a manner that the IP right is not infringed, provided that the agreed or presumed use of the goods delivered by us is not impaired thereby. If it is not possible for us to obtain such right of use or if we refuse to cure, the customer is entitled to the claims and rights provided by law. Claims for damages and reimbursement of futile expenses are governed by section VIII.
12. The customer's rights pursuant to subsection 11 above do not exist if
  - the defect in title is due to an instruction given by the customer or
  - the infringement of rights was caused by the customer making unauthorised changes to the item delivered or using it in a manner violating the contract.

## **VIII. Liability**

1. The assertion of claims for damages and reimbursement of futile expenses (hereinafter "damage claims") on account of defects of the item delivered is excluded where we are unable to provide cure for reasons for which we are not responsible. The assertion of damages for damage due to defects requires that we are at fault. We accept liability for consequential damage resulting from the delivery of defective goods (see section VII 10) only if the damage is due to our at least

negligent violation of material duties (duties on the performance of which the customer may reasonably rely). Subsection 5 is not affected hereby.

2. In all other respects, damage claims of the customer, irrespective of their legal grounds, in particular based on a violation of duties under or in connection with the contractual relationship or arising from fault during conclusion of the contract or from tort, are excluded. Subsection 5 is not affected hereby.
3. The above does not apply in the event of intent or gross negligence, assumption of a guarantee for a certain quality (quality guarantee) or in the event of our negligent violation of material duties (duties on the performance of which the customer may reasonably rely). In no event do we accept liability beyond the statutory claims. In the case of negligence, our liability is limited to foreseeable and typical damage. These provisions do not encompass any change regarding the burden of proof.
4. The limitation of damage claims is governed by section VII. 10. Subsection 5 is not affected hereby.
5. Our statutory liability under the Product Liability Act and in the event of injury to life, body or health is not affected hereby.
6. Where our liability is excluded or limited, such exclusion or limitation also applies to the personal liability of our employees, staff, representatives and agents.

## **IX. Use of software**

1. Where the scope of delivery encompasses software, the customer is granted a non-exclusive right to use the software supplied, including documentation. It is made available for use on the item delivered for that purpose. Using the software on more than one system is not permitted.
2. The customer may copy, revise or translate the software, or convert it from object code to source code only to the extent permitted by law (section 69a ff. of the German Copyright Act (*Urhebergesetz – UrhG*)). The customer undertakes to not remove or modify manufacturer information, in particular copyright information, without our express prior consent.
3. All other rights regarding the software and the documentation including copies are reserved to us or the software supplier. Sublicenses may not be granted.

## **X. Goods on commission**

1. Goods which we have delivered to the customer only for exhibition purposes remain our property, as a rule. Such goods may be sold or otherwise transferred to a third party only if we have given our explicit prior consent.
2. The customer is obliged to treat goods on commission with due care; the customer is in particular obliged to sufficiently insure them at its own expense against damage from fire, water or theft at replacement value. The customer hereby assigns to us any and all rights arising from such insurance to the value of the damage incurred by us. If maintenance and inspection work is required, the customer has to carry out such work in due time and at its own expense.
3. In the event of third party interventions, in particular attempted attachment, the third party has to be informed immediately that the goods on commission are our property. The customer shall inform us of such attempts and other interventions without undue delay.

## **XI. Data protection**

1. We advise the customer that we collect, store and process the personal data of the customer which is required to carry out orders and to perform our services. The personal data is treated in accordance with the German Federal Data Protection Act (*Bundesdatenschutzgesetz – BDSG*). All personal data of the data subject is treated as confidential and are not transmitted to any third party unless the data subject has consented in writing or we are obliged to do so by law, or where such transmission is required for us to perform the services ordered. The data subject can at any time demand information about the personal data stored and transmitted and the recipients of such data.

2. We also advise the customer that we collect and use probability values regarding future behaviour of the customer for the purpose of deciding on the conclusion, execution and termination of the contract and that we also use address data for calculating such probability values.

## **XII. Applicable law, jurisdiction, other provisions**

1. The legal relations between the parties are solely governed by the laws of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The place of jurisdiction for all disputes arising from or relating to the contract is the court having jurisdiction at the location of our registered office, provided that the customer is a merchant (*Kaufmann*). However, we may also sue the customer at the customer's principal place of business.
3. If any contractual provision is invalid or if there is any gap requiring regulation, the validity of the other provisions shall not be affected thereby; instead, the invalid provision or gap shall be replaced or filled by a valid provision which is as close as possible to the economic purpose of the transaction, taking into account the interests of both parties.

Dieburg, June 2017