

General Terms and Conditions of Sale**1. Scope**

These general terms and conditions of business shall govern all offers and contracts for the supply of goods by ALMO ERZEUGNISSE Erwin Busch GmbH and shall apply exclusively. General terms and conditions of purchase of the buyer and other terms and conditions that conflict with these general terms and conditions shall only be binding if recognised by the seller in writing. In the absence of any express contradiction by the buyer, the buyer shall be deemed to have waived his own terms and conditions of business. Should any of the provisions or any part of any of the provisions of these general terms and conditions of sale be or become legally ineffective, the other provisions and these general terms and conditions as a whole shall nevertheless remain in full force and effect. In place of the wholly or partially ineffective provision, a provision shall apply which is legally effective and most nearly corresponds in economic effect to that intended by the ineffective provision. The same shall also apply if individual provisions should not be made part of a contract.

2. Offers

1. The seller reserves all rights of title and copyright to cost quotations, drawings and other documents provided by the seller to the buyer, including also in machine-readable form. They may be made accessible to third parties only with the prior written consent of the seller.
2. Documents provided as part of an offer process such as illustrations, drawings etc. that contain indications of weights and measures as well as quality and property descriptions shall only be deemed approximate and not as constituting any warranty of quality. Any reference to DIN standards shall only be deemed as constituting a more detailed definition of goods.
3. Information on possibilities of use and application of the seller's goods as well as technical advice and other information – also in respect of any proprietary rights of third parties – is provided to the best of the seller's knowledge but without any engagement on the seller and shall not release the buyer from the duty to examine the goods for suitability for the intended purposes.
4. The period for acceptance of an order of the buyer which can be seen as an offer within the meaning of Art. 145 BGB [German Civil Code] shall be 3 weeks.
5. Should two letters of confirmation which contain conflicting provisions cross, our letter of confirmation shall apply.

3. Prices

1. Unless expressly agreed otherwise, prices are without engagement. They are quoted net, ex works, and without duties or taxes.
2. In the case of any increase in personnel costs or the prices for materials and supplies or of the introduction of increased levies by official authorities etc., the seller reserves the right to charge prices valid at the time of delivery of the goods which make due allowance for such increases.
3. Value added tax will be charged to the buyer as a separate item at the statutory rate in force at the time of delivery.

4. Delivery

1. Unless expressly agreed otherwise, the goods will be shipped for the risk and cost of the buyer. This shall also apply if, in exceptional cases, delivery carriage paid is agreed. Unless specified otherwise, the mode and route of transport shall be at the seller's discretion.
2. If goods cannot be dispatched for reasons for which the buyer is responsible, the seller shall have the right to store the goods for the buyer's risk and cost. In all such cases, the date of placing in storage shall be deemed as the day of delivery and the warehouse warrant shall take the place of the shipping documents.
3. Also in the interests of the buyer, the seller reserves the right to make part-deliveries. Each part-delivery shall be viewed as the execution of a discrete order within the meaning of these general terms and conditions.

4. Delivery dates are quoted without engagement and are valid ex seller's works. They shall be deemed to have been met if the goods are placed ready for dispatch by the agreed date. Compliance with delivery dates shall be subject to timely receipt of all documents, necessary permits and approvals to be provided by the buyer as well as the timely clarification and approval of plans and compliance with the agreed terms of payment and all other obligations. If these preconditions are not fulfilled in good time, the delivery date shall be extended accordingly. In the case of goods which first have to be procured from abroad, we may not be held responsible for delays which occur through no fault of our own.
5. Should the seller fall into arrears with delivery for reasons for which he is responsible, the additional time allowed to him by the buyer before the assertion of any further rights (e.g. Art. 323 BGB) by the buyer must be at least 3 weeks.
6. Should the seller partially fall into arrears with delivery for reasons for which he is responsible, the right of the buyer to claim compensation for non-performance or to repudiate the contract shall be limited to the non-fulfilled part of the delivery unless the buyer is able to show that partial fulfilment of the delivery obligations is of no interest to him.
7. In the case of any delay in acceptance of delivery by the buyer, we shall have the right, without prejudice to our statutory claims, to refuse delivery of the part-quantities not accepted in a timely manner, whereby this shall have no effect on the validity of the contract as a whole.
8. We reserve the right to deliver up to 10% more or less than the ordered quantity. Should the buyer not take the full quantity ordered, we shall have the right to make a reduced quantity surcharge.
9. We do not assume any liability for the quality of the packing or for any loss or damage arising from the use of packing materials of customary commercial quality.

5. Warranty for defects

1. The buyer shall have a duty to inspect the goods immediately after receipt.
2. If notice of defects is not made in writing within 3 days from receipt of the goods or invoice, delivery shall be deemed to have been effected in accordance with contract. Acceptance of the goods without complaint by carriers or forwarders shall be deemed evidence of perfect packing and cause all claims against the seller for damage or weight loss en route to be barred. For purposes of invoicing, the dimensions, volumes, weights and quantities established in the seller's work shall be definitive.
3. Minor deviations in quality, colour, dimensions and weight shall give no cause for complaint.
4. The seller shall have the right to inspect, test and conduct trials on goods which are the subject of complaint. The buyer shall have a duty to hold goods which are the subject of complaint at the seller's disposal.
5. In the case of notice of defects which are justified and made in a timely manner, the seller shall first have the right of remedy. Should an attempt at remedy fail, the buyer shall have the right to claim a reduction in price or to repudiate the contract. Other claims of the buyer are barred. Claims for defects in the goods shall lapse after 12 months.
6. The buyer shall allow the seller reasonable time and opportunity to effect any modifications as may appear necessary and to supply replacement goods or parts. Should the buyer refuse to do so, the seller shall be released from his liability for defects.
7. In the case of a notice of defect which is recognised by him, the seller shall have a duty, at his option, to either repair or replace free of charge all parts which, within 12 months from the date of delivery, become unserviceable or whose serviceability is substantially impaired on account of material defects, faulty design, poor materials or defective manufacture. The buyer shall have a duty to allow the seller reasonable time and opportunity to effect repairs or to supply replacement items or parts. Should the buyer refuse to do so, the seller shall be released from his liability for defects.
8. Except in cases of breach of material duties under a contract, the liability of the seller shall be limited to acts of wilful intent or grossly negligent commission. In all other respects, liability for pecuniary loss or damage shall be limited to the foreseeable loss or damage.

6. Reservation of title

1. The goods shall remain the property of the seller until settlement in full of all claims of the seller under a contract. The reservation of title shall also remain in force for all claims which the seller may subsequently acquire against the buyer in connection with an item of sale and purchase, e.g. on grounds of repairs or delivery of spare parts or other performance.
2. In the case of payment by bill of exchange or cheque, the reservation of title shall remain in force until the bill or cheque has been honoured.
3. In the case of any delay in payment by the buyer, the buyer shall, after being duly reminded, have a duty to release goods which are subject to the seller's reservation of title ["reserved goods"] to the seller. This shall be without prejudice to our claims, in particular to compensation for non-performance. The costs incurred by us through recovery of the goods shall be borne by the buyer. We shall have a duty, if so requested, to release securities insofar as the value of such securities exceeds the value of the claims secured by them by more than 20%.
4. The assertion of our reservation of title and attachment of an item of delivery by us shall not be construed as repudiation of the contract on our part except in cases where the German Hire Purchase Act applies.
5. The buyer shall have the right to market the reserved goods in the ordinary course of business subject to the proviso that the claims arising from resale actually pass to us in the amount of the value of the reserved goods. The seller shall have no other right of disposal: in particular, he may neither pledge the reserved goods nor transfer them by way of security. Any execution measures levied on the reserved goods by third parties must be notified to us immediately, whereby the relevant documents must be furnished to us; at the same time, the buyer shall have a duty to inform the third party in writing of our title. The buyer shall have a duty, in the case of resale of the reserved goods, to agree an ordinary or extended reservation of title with his customer with the purpose of protecting our title.
6. If reserved goods are processed by the buyer to create a new movable item, such processing shall be deemed done on our behalf without giving rise to any obligations for us and the new item shall become our property. In the case of processing together with other goods not belonging to us, we shall have co-title to the new item so created in the same proportion as that between the value of the reserved goods and the value of the other goods at the time of processing. If reserved goods are combined or mixed with other goods not belonging to us within the meaning of Art. 947 and/or Art. 948 BGB, we shall have co-title in accordance with the statutory provisions. Should the buyer acquire sole title through combination or mixing, he already hereby assigns to us co-title in the same proportion as that between the value of the reserved goods and the value of the other goods at the time of combination or mixing. In all such cases, the buyer shall preserve the item to which we have title or co-title – whereby any goods to which we have co-title shall also be deemed reserved goods – for us free of charge.
7. The buyer hereby assigns to us his claims, together with all ancillary rights and securities, arising from the resale of reserved goods, and we hereby accept such assignment. If the reserved goods are resold together with other goods, this advance assignment of claims shall only apply in the amount of the invoice value of our reserved goods plus a security margin of 10%, though the latter shall be waived in the case of conflict with rights of third parties. Should a third party acquire sole title to the new item, the buyer hereby already assigns his claims against such third party in the amount of the value of the reserved title in relation to the new item. The buyer shall forward the corresponding proceeds to us without delay.
8. The buyer shall have the right to collect the assigned claims for as long as he fulfils his obligations towards us or does not suffer any deterioration in his financial situation or the value of his assets. The buyer shall, however, have a duty on our request to provide us with individual declarations of assignment, to inform us of the names of third-party debtors and to notify such debtors of the assignment.
9. The ordinary and extended reservation of title shall, if necessary, remain in force until such time as the buyer proves to us in each individual case that the goods have been paid for in full. In any case in which any third party should avail themselves of goods which are subject to the seller's reservation of title, e.g. through attachment, or in which any third party should assert claims on claims which have been assigned to the seller, the buyer shall have a duty to notify the seller thereof without delay and to inform the third party of the reservation of title or of the assignment. We shall have the right to inform the third party of the assignment should the buyer fail to do so.
10. For as long as we have any claim arising from the business relationship with the buyer, he shall have a duty to inform us without delay of what goods supplied by us subject to our reservation of title are still in his possession, where they are currently located and to which customers he has sold the other reserved goods.

7. Moulds

1. Press, injection or other moulds which are made by ourselves or a third party to our order are, in view of our design work, our property but will be used solely for orders of the buyer. Any other use will be made only by express agreement between ourselves and the buyer. The costs for production of the moulds shall be borne by the buyer. They will be refunded to him in the case of each delivery by credit note for 5% of the value of the goods in each current invoice, though at most until repayment in full of the total amount.
2. We shall carefully preserve and maintain the moulds for further orders, but may nevertheless not be held responsible for any damage which may occur to them despite being handled in the proper manner. We shall only bear those costs of maintenance arising from normal mould wear. Our duty to preserve a mould shall lapse if no further orders are received from the buyer within two years from

the last delivery.

3. We shall have no duty to accept follow-up orders and shall not be bound by prices which were agreed for the first order or for any subsequent order.
4. In the event that the buyer should fail to pay for goods delivered to him or to do so promptly, we may use the moulds intended for his orders for any other purpose.
5. The foregoing terms and conditions relating to moulds shall not apply in the case of moulds belonging to us and used for manufacturing customary and utilisable articles.

8. Proprietary rights

1. Insofar as we supply items made to drawings, models or samples furnished to us by the buyer, the buyer shall warrant to us that no proprietary rights of third parties are infringed by the manufacture and delivery of the items.
2. Should any third party prohibit us from manufacturing or delivering items made to drawings, models or samples furnished to us by the supplier on grounds that such manufacture or delivery infringes proprietary rights of the said third party, we shall have the right, without having any duty to review the legal situation and to the exclusion of all claims for compensation of the buyer, to cease manufacture and delivery and to claim compensation for our costs incurred.
3. The buyer shall have a duty to indemnify and hold us harmless without delay from all claims to compensation or damages of third parties. For all direct and indirect loss or damage incurred by us through infringement and assertion of any proprietary rights, the buyer shall, on our request, pay us a reasonable advance on our expenses.
4. Samples or drawings sent to us will only be returned on request. Should no order come about, we shall have the right to destroy samples and drawings 3 months after submitting our offer.

9. Payment

1. The purchase price is due on delivery. Unless agreed otherwise, invoices are generally due within 30 calendar days from date of invoice without any deduction and are payable free seller's account or payment office. Cash discount may only be taken if and as stated on the invoice. Payment shall be deemed made on the day the money is received by the seller or credited to one of the seller's bank accounts. If payment is not made on time, the seller shall have the right to charge interest on arrears at the statutory rate as specified in Art. 288 BGB.
2. Should any facts become known which cast justified doubt on the buyer's creditworthiness or should the buyer refuse to fulfil the contract by effecting punctual payment in return for delivery or by the provision of security, the seller shall have the right to repudiate the contract.
3. The seller reserves the right to make delivery to the seller dependent on payment in advance.
4. Payments will be applied first to covering costs and interest and then to settlement of the oldest due items.
5. Bills of exchange and cheques will be accepted only on account of payment. Bills of exchange will only be accepted in payment by special agreement and may have a term of 3 months at most. All bank, discounting and collection fees and charges shall be borne by the buyer. The seller assumes no guarantee for timely presentation or protest. Should a bill be protested due to lack of payment, all current invoices as well as the amount for which the bill has been issued shall become due and payable immediately.
6. The buyer may exercise a right of offset against the seller's claims or a right to withhold payment only if the seller has recognised the buyer's counterclaim or if it has been finally and absolutely established at law.
7. The contractual currency shall be as stipulated in the contractual agreements between the buyer and seller; in the absence of any such agreement, that currency shall be deemed binding which is used in the price list on which an order is based, or in the absence of any such, the EURO.

10. Force majeure

1. In the event of force majeure or other unforeseeable impediments such as mobilisation, war, civil unrest, fire, labour disputes, strikes, lockouts, disruption to business due to shortage of materials or energy, orders of a public authority or other such like causes as well as disruptions to transport which have their origins outside of the seller's business sphere, the seller shall not be deemed to be in arrears with delivery. Any event of the aforesaid kind shall entitle the seller to delay delivery by the duration of the impediment plus a reasonable starting-up time after the restoration of normal production capabilities or to repudiate the contract in respect of all or part of any as yet unfulfilled part of a contract. The same shall also apply if any of the seller's suppliers is affected by any circumstances of the aforesaid kind.
2. In the case of any delay in delivery due to reasons of the kind as set forth in the foregoing paragraph 1, the seller shall have no duty to pay a contractual penalty or compensation.

11. Return of goods

1. The seller will take goods back only in exceptional, specifically justified cases and only with his express written consent. Without such consent, no credit note will be issued for returned goods. The value which will be credited for returned goods is without engagement and will depend on age, quality and resaleability of the goods. If cash discount was taken on the invoice for the original delivery of the goods, a corresponding cash discount will be deducted from the amount credited.
2. Goods which were expressly ordered in a special finish or get-up or do not fall within the standard range of products of the seller are fundamentally excluded from return.
3. Returns of goods which the seller has agreed to take back shall be transported for the risk and cost of the consignor.

12. Compensation

All claims to compensation which the buyer may have against the seller under the present contractual relationship shall be limited to cases of wilful intent or gross negligence, except in the case of breach of any material contractual duty. Liability for pecuniary loss shall be limited to the foreseeable loss or damage.

13. General provisions

1. Unless agreed otherwise, the place of performance for deliveries shall be Bad Arolsen. The place of performance for payments shall be Bad Arolsen.
2. The contractual relationship between the parties shall be governed by the law of the Federal Republic of Germany, whereby application of the UN Convention on Contracts for the International Sale of Goods shall be barred.
3. The legal venue for all disputes arising from and in connection with this contractual relationship shall be the general place of jurisdiction of the seller. The seller shall also have the right to bring legal action against the supplier at the courts having jurisdiction for the buyer's place of business under the law valid at that place.
4. The buyer is hereby informed that personal data is stored for purposes of the business relationship established between the parties hereto and may be used or transferred to the extent permitted by law.
5. By placing an order, the buyer recognises these terms and conditions of delivery and payment as having exclusive validity. In the case of subsequent orders, our reference to these terms and conditions shall be sufficient to make them exclusively valid for subsequent orders.
6. Any agreements which deviate from these general terms and conditions of sale shall only be valid and binding if agreed in writing. The same shall also apply to any amendment of this clause. No additional terms and conditions of sale made by word of mouth exist.