General Terms and Conditions of Purchase

1. Scope of application

1.1 Our General Terms and Conditions of Purchase apply exclusively to all business relations with our suppliers; we do not accept any terms and conditions of the supplier that conflict with, or deviate from our Terms and Conditions of Purchase unless we have explicitly consented to their application in writing. Our Terms and Conditions of Purchase also apply in the case that we, while being aware of the supplier’s conflicting or deviating terms and conditions, accept delivery from the supplier without reservation.

1.2 Our Terms and Conditions of Purchase only apply to entrepreneurs ("Unternehmer" in terms of § 1 UGB – Austrian Commercial Code), legal entities under public law and public law special funds ("öffentlich-rechtliche Sondervermögen").

2. Enquiries, offers, orders

2.1 The present Terms and Conditions of Purchase also apply to our enquiries. Our enquiries are non-binding.

2.2 The supplier when submitting his offer is obliged to adhere to our enquiry and explicitly point out deviations, if any, from the specifications in our enquiry. Offers are prepared and submitted at no expense to us and do not create any commitment on our part. We will not pay remuneration for visits, the drafting of plans, drawings and the like without an appropriate written agreement.

2.3 Our orders are only binding when issued or confirmed in writing.

2.4 Unless we have explicitly waived order confirmation, the supplier is obliged to confirm to us each order in writing within a period of one week, thereby stating the binding delivery time. Late acceptance of our order or acceptance subject to changes is deemed to constitute a new offer for contract conclusion and requires binding acceptance by us.

3. Prices and terms of payment

3.1 The prices stated in the order are binding. All prices are inclusive of the statutory value-added tax unless the latter is stated separately.

3.2 Unless agreed otherwise from time to time, the price is deemed to include any and all performance and services and additional ancillary services provided by the supplier (e.g. installation and assembly) as well as all ancillary costs (e.g. appropriate packaging and transport costs including, where applicable, transport and liability insurance). The supplier is obliged to accept return of packaging material upon our request.

3.3 If and to the extent that packaging was agreed to be paid for separately, we are to be credited for such costs when returning the packaging freight paid, unless we have already invoiced the supplier for such costs.

3.4 The invoice is to be issued after dispatch of the goods for each single order separately, stating our order number as well as the item description and item number. If the supplier should fail to comply with any or several of these requirements, so causing a delay in our processing of the invoice in the ordinary course of business, the periods for payment stated in No. 3 subs. 5 will be extended accordingly.

3.5 Payment is made by us either within 14 days less 3% discount or within 30 days without deduction, unless otherwise agreed from time to time. The periods for payment run from receipt of a proper invoice or, if the goods arrive after receipt of the invoice, from arrival of the goods. Our payments are deemed in time if our remittance order is received by our bank before the expiry of the payment period.

3.6 In no case are we liable to pay interest from the due date ("Fälligkeitszinsen"). If we are in default of payment, the default interest will be 5 percentage points per year above the base interest rate. Default on our part is deemed to occur according to the statutory provisions whereby, in any case, a reminder by the supplier is required.

4. Set-off, right of retention, assignment

4.1 We are entitled to rights of set-off and retention as is provided for by law. The supplier is only entitled to invoke a right of set-off or retention if and to the extent that the claim asserted by him is undisputed or has been acknowledged by us or has been established by a final non-appealable court decision (res judicata).

4.2 Any assignment of claims which may be asserted against us requires our explicit written consent.

5. Delivery time

5.1 The delivery time indicated in our order is binding. If no delivery time has been stated in the order and has not been otherwise agreed upon either, it is deemed to be one week from contract conclusion. The supplier is obliged to inform us in writing without undue delay ("unverzüglich") in the event that he will presumably be unable to comply with the agreed upon delivery time for any reason whatsoever.

5.2 If the supplier fails to perform or fails to perform within the agreed upon delivery time or if the supplier is in default, we will be entitled to the rights and claims provided for by law, including but not limited to the right to withdraw from the contract and the right to claim damages. The provisions in No. 5.3 remain unaffected.

5.3 If the supplier is in default of delivery, we are entitled to claim lump-sum damages for default in the amount of 1% of the net price for each full week of default, limited however to a maximum of 5% of the net price of the goods delivered late. We reserve any further or additional statutory claims whereby in this case the aforesaid lump-sum compensation will be set off against such claims. The supplier is entitled to demonstrate that, as a result of the default, we did not incur any damage at all or only less damage than the aforesaid lump sum. The lump-sum compensation will then be reduced accordingly.

6. Delivery, place of performance ("Erfüllungsort")

6.1 Unless otherwise agreed, the supplier is not entitled without our consent to engage third parties (e.g. sub-contractors) to provide the deliveries, work or services which the supplier is obliged to provide to us.

6.2 Delivery is to be made DDP (according to the Incoterms 2010 or the respective version thereof valid at the time), unless otherwise agreed.

6.3 The place of performance for the delivery obligation is the place/centre of receipt designated by us ("Bingschuld"). If no specific place of performance has been explicitly indicated, the place of performance is deemed to be the domicile of the works ordering the goods.

6.4 If no specific agreement has been made, the risk is deemed to pass to us upon delivery at the agreed place/centre of receipt. If and to the extent that formal approval of the goods ("Abnahme") has been agreed to take place, the risk will pass to us upon such formal approval.

6.5 All consignments need to be accompanied by a packing slip and a delivery note stating our order number as well as the item description and item number. In addition, a separate advice of dispatch is to be sent to us by post. If the supplier fails to comply with any or several of these requirements, any delay resulting therefrom is not imputable to us.

6.6 Default of acceptance ("Annahmeverzug") on our part is deemed to occur according to the statutory provisions. However, the supplier is obliged to explicitly offer performance even if a determined or determinable calendar time has been agreed upon for any act, cooperation or assistance to be undertaken or provided by us (e.g. provision of material). If we are in default of acceptance, the supplier is entitled to claim reimbursement of any additional expenses incurred by him as a result thereof, in accordance with the statutory provisions (§ 918 AGBB – Austrian Civil Code). If the contract is about non-fungible goods to be manufactured by the supplier (custom-made item), the supplier will only be entitled to claim further rights if we have undertaken to cooperate or assist and the failure to do so is imputable to us.

7. Inspection, notice of defect

As to our obligation as a merchant to inspect the goods delivered and give notice of defect, if any, § 377 UGB (Austrian Commercial Code) applies with the following conditions: We will inspect the delivery goods without undue delay ("unverzüglich") after delivery and pay as to the type, quantity and obvious damage such as in particular transport damage, and give notice of any detected defect or damage without undue delay ("unverzüglich"). Defects that are detected later are to be reported after detection without undue delay ("unverzüglich"). The notice of defect is deemed given without undue delay ("unverzüglich") and thus in due time if it is received by the supplier within 10 working days from receipt of the goods or, in the case of hidden defects, from detection of the defect.

8. Warranty and liability

8.1 Our rights in the case of a defect in quality or title of the goods (including wrong/ aliud delivery and short delivery as well as improper installation or insufficient instructions for installation, use or operation) and in the case of any other breach of duty by the supplier are governed by the statutory provisions unless stipulated otherwise hereinafter.

8.2 Pursuant to the statutory provisions, the supplier is in particular liable for compliance of the goods with the agreed quality at the time the risk passes to us and for conformity of the goods with current state-of-the-art standards. Unless otherwise agreed, those product specifications are deemed to constitute the agreed quality in the aforesaid sense which – in particular by appropriate specification or reference made in our order – have become part of the respective contract or have been included in the contract in the same way like the present Terms and Conditions of Purchase. In this context, it makes no difference whether the product specifications come from us or from the supplier or from the manufacturer.

8.3 The supplier warrants that the products and services delivered or provided by him comply with all applicable environmental law regulations, especially the ROHS Directive and the REACH Regulation, and with current state-of-the-art standards regarding energy efficiency.

8.4 The costs incurred by the supplier for inspection and subsequent remedy or improvement ("Nachbesserung") of the goods (including any costs of de-installation and re-installation resp. disassembly and reassembly) are borne by the supplier. This also applies if it is found that the goods actually are not defective. In the case that our request for defect remedy proves to be unjustified, we can only be held harmless.
liable for damages if we actually were aware or unaware by gross negligence that the goods were not defective.

8.5 If the supplier fails to fulfill his obligation to provide subsequent performance ("Nacherfüllung") within a reasonable grace period fixed by us, we shall be entitled to remedy the defect on our own and claim from the supplier reimbursement of the expenses incurred for such purpose resp. payment of an appropriate advance. If the supplier refuses to provide subsequent performance or if the contract was about a fixed date transaction ("Fixschuld") or if subsequent performance by the supplier has failed or is unreasonable for us (for instance because of the special urgency of the lack of delivery of the goods or if a reasonable delay in the occurrence of unreasonable damage), we need not grant a grace period; the supplier has to be informed to that effect without undue delay ("unverzüglich"), preferably beforehand.

8.6 If the supplier is himself liable to the third party.

9.2 Within his obligation to indemnify in terms of No. 9.1, the supplier is also liable under

9.1 If and to the extent that the supplier is responsible for a damage caused by the goods delivered, the supplier is obliged to indemnify us from any and all third-party claims for damages upon our first written request. Moreover, the supplier is obliged to indemnify us from any and all claims for damages and warranty claims of the customer if and to the extent that these claims are based on defects of the goods delivered. If the customer were caused by the supplier, the supplier is himself liable to the third party.

8.7 The supplier maintains an appropriate state-of-the-art quality assurance system suitable in kind and scope and provides appropriate evidence thereof upon our request.

8.8 The supplier further warrants that his deliveries comply with the work safety requirements and the statutory accident prevention regulations and in particular that the safety devices required thereunder are made available along with the goods, and that even if certain individual parts which are required for proper and faultless operation are not specifically listed in the order. In addition, the supplier undertakes to execute delivery in accordance with the applicable terms and conditions of the responsible occupation cooperative ("Berufsgenossenschaft").

9. Product liability, precautionary measures

9.1 If and to the extent that the supplier is responsible for a damage caused by the product liability regulations or laws and the defectiveness is due to a defect of the goods delivered, the supplier is obliged to indemnify us from any and all third-party claims for damages upon our first request to the extent that the cause for the damage lies within the supplier’s sphere of control and organizational responsibility.

9.2 Within his obligation to indemnify in terms of No. 9.1, the supplier is also liable under §§ 1036, 1037 ABGB (Austrian Civil Code) and §§ 891, 1302 ABGB (Austrian Civil Code) for reimbursement of any expenses incurred by us as a result of or in connection with the assertion of claims by third parties. Any other statutory claims remain unaffected.

9.3 The supplier is also obliged to bear the cost of precautionary measures to be taken and of any damage or loss incurred as a result thereof. They shall be borne by the supplier. Subject to the condition that the cause for the precautionary measure lies within the supplier’s sphere of control and organizational responsibility and the supplier is himself directly liable to the third party. If and to the extent possible and reasonable, prior to taking precautionary measures, we shall inform the supplier about the reason, kind and scope of the intended measure and give him the opportunity to comment thereon. Precautionary measures are deemed to refer to measures which do not pertain to certain individual defective products of ours but to a large number of our products, such as in particular recall and alteration or redesign measures.

9.4 The supplier undertakes to take out and maintain product liability insurance with a minimum lump-sum cover of € 10 million for each single case of personal injury/ damage to property. The supplier will provide us with a copy of the liability policy at any time upon our request.

10. Manufacturing documents and manufacturing equipment

10.1 The manufacturing documents provided to the supplier are entrusted to him as our property for no purposes other than the execution of our orders. They are to be returned after complete processing of the goods, the inspection of which causes no damage or loss, or otherwise destroyed. The supplier undertakes to indemnify us from any and all third-party claims for damages under the said insurance regarding the items provided by us; we hereby accept the assignment. The supplier is obliged to carry out in due time any possibly required servicing and maintenance of our items as well as all repair and upkeep work at our sole expense. He is obliged to report to us any disturbance, breakdown or failure immediately.

10.2 The preceding provision applies accordingly to any substances and material provided by us (e.g. software, semi-finished and finished products) as well as to tools, models, specimen, samples and other items or equipment provided by us to the supplier for manufacturing purposes. Such items are to be used for no purposes other than the manufacture of the goods ordered by us. For as long as the said items are not processed, they are to be kept and stored separately and adequately insured against destruction and loss. The supplier already now assigns to us any and all compensation claims under the said insurance regarding the items provided
General Terms and Conditions of Purchase

14.3 If and to the extent that we are entitled to recourse claims against the supplier based on the provisions governing the sale of consumer goods ("Verbrauchsgüterkauf") (§ 933b ABGB – Austrian Civil Code), the limitation of such recourse claims is subject to § 933b ABGB (Austrian Civil Code); however, the claims will not become time-barred before the expiry of the period stipulated in No. 14.2.

14.4 If the supplier fraudulently conceals a defect, if and to the extent that in this case we are also entitled to concurrent contractual and/or non-contractual claims for damages, these are subject to the regular statutory limitation period (§ 1489 ABGB – Austrian Civil Code); however, such claims will not become time-barred before the expiry of the period stipulated in No. 14.2. In any case, the statutory limitation periods under the “Produkthaftungsgesetz” (Austrian Product Liability Act) remain unaffected.

15 Processing of personal data

15.1 The processing of personal data takes place exclusively in accordance with all relevant data protection law. We process personal data transmitted to us by the supplier for the processing of our order and the respective offer of the supplier as well as for our future orders and future offers of the supplier. We store this data in our group-internal EDP system. This means that all companies of Aalberts surface treatment (https://www.aalberts-st.com/de/kontakt-standorte) have access to this personal data. This is necessary and in our legitimate interest, because the Aalberts surface treatment companies work together on a division of labour basis and order goods / services centrally. Personal data will only be used for other purposes if the person concerned has consented to such use or if there is legal permission for such use.

15.2 In the event that personal data is transmitted to us, the supplier is obliged to inform the persons concerned (data subjects) in due time about the data processing by us in accordance with Article 14 of the EU General Data Protection Regulation No. 2016/679; we refrain from providing any information to the data subject. On request, we will provide the customer with the information required to fulfil the information duties pursuant to the previous sentence.

16. Place of jurisdiction, applicable law, partial invalidity

16.1 If the supplier is a entrepreneur, legal person under public law or a special funds under public law ("öffentliche Sondervermögen") as defined by Austrian law, the place of jurisdiction for any and all disputes arising directly or indirectly from the contractual relationship shall be the competent court for Uttendorf. We are however entitled to also sue the supplier at the supplier’s private or business domicile.


16.3 If any provision of these Terms and Conditions of Purchase or any provision contained in any other agreement should be or become invalid, this will be without prejudice to the validity of the remaining provisions or agreements.

Company information:

Aalberts Surface Treatment Ges.m.b.H.
Gewerbestraße 21
A-5261 Helpfau-Uttendorf /ÖÖ
Competent Court: Landesgericht Ried im Innkreis HRB 217