

## 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 § 14 BGB – German Civil 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 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 one 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" in terms of German commercial law). In the case of default of payment, the statutory provisions apply. However, default of payment is only deemed to occur after the supplier has issued a reminder.

### 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 ("Bringschuld" in terms of German law). 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" in terms of German law) 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 one or several of these requirements, any delay resulting therefrom is not imputable to us.
- 6.6 Default of acceptance ("Annahmeverzug" in terms of German law) 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 (§ 304 BGB – German 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 HGB (German Commercial Code) applies with the following conditions: We will inspect the delivered goods without undue delay ("unverzüglich") after receipt 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

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undue delay (“unverzüglich”). The notice of defect is in any case 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 subsequent performance (“Nacherfüllung” in terms of German law) (including any cost of de-installation/disassembly and re-installation/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 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 fulfil his obligation to provide subsequent performance (“Nacherfüllung” in terms of German law) within a reasonable grace period fixed by us, we will be entitled to remedy the defect on our own and claim from the supplier reimbursement of the expenses required 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” in terms of German law) or if subsequent performance by the supplier has failed or is unreasonable for us (for instance because of the special urgency of the case, endangerment of the operational safety or threatening 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 we are held liable for breach of official or regulatory safety regulations or for defectiveness of our products based on German or foreign product liability regulations or laws and the defectiveness is due to a defect of the goods delivered by the supplier, 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 and services provided by the supplier or were caused by intentional or negligent conduct of the supplier or any of his vicarious agents or other persons engaged by the supplier in the fulfilment of his obligations (“Erfüllungsgehilfen” in terms of German law); this also applies to any consequential damage and consequential costs incurred.
- 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. Recourse to the supplier

- 9.1 We are entitled to assert without restrictions the recourse claims within the supply chain to which we are entitled by law (recourse to supplier according to §§ 445a, 445b, 478 BGB - German Civil Code) in addition to our rights and claims for defects. In particular, we are entitled to claim from the supplier exactly that type of subsequent performance (subsequent remedy or substitute delivery) which we are obliged to provide to our customer. Our right stipulated by law to choose the type of subsequent performance to be provided (§ 439 subs. 1 BGB) remains unaffected.
- 9.2 We may also assert our recourse claims against the supplier in the case that the goods, before they were sold, had been processed by us or by any of our customers, e.g. by integrating them into another product.

### 10. Product liability, precautionary measures

- 10.1 If and to the extent that the supplier is responsible for a damage caused by the product 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 and the supplier is himself liable to the third party.
- 10.2 Within his obligation to indemnify in terms of No. 10.1, the supplier is also liable under §§ 683, 670 BGB (German Civil Code) and §§ 830, 840, 426 BGB (German 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.
- 10.3 The supplier is also obliged to bear the cost of precautionary measures to be taken and compensate for any damage or loss incurred as a result thereof provided that the cause for the precautionary measure lies within the supplier's sphere of control and/or his 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 will 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.
- 10.4 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.

### 11. Manufacturing documents and manufacturing equipment

- 11.1 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 completion of the order, including any copies made thereof. They must not be used, copied, reproduced or made available to third parties for any other purposes unless this is required from time to time for proper performance of the contract.
- 11.2 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 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 his sole expense. He is obliged to report to us any disturbance, breakdown or failure immediately.

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11.3 The supplier is obliged to treat all technical and commercial documents made available by us strictly confidentially and accordingly commit his employees and sub-suppliers to secrecy. The obligation of secrecy does not apply if the information is already generally known or was demonstrably known to the supplier before it was disclosed by us. The same applies if the information, after disclosure by us, becomes generally known with no contributory breach of contract or is disclosed to the supplier by a third party without such third party thereby violating an obligation of secrecy incumbent on it or the content of the information is developed by the supplier independently of the information disclosed by us or the information is publicly disclosed by us resp. is required to be disclosed by virtue of statutory provisions. Any violation of this obligation of secrecy gives rise to a claim for damages.

### 12. Reservation of title, provisions

12.1 If we provide the supplier with parts, we reserve title to them. Any processing or transformation by the supplier is deemed made for us and on our behalf. If the goods which are subject to our reservation of title are processed together with other items not belonging to us, we will acquire co-ownership of, and thus share title to the new item so generated, in the proportion of the value of our item (purchase price plus VAT) to the value of the other processed items at the time of processing.

12.2 If the item provided by us is inseparably mixed with other items not belonging to us, we will acquire co-ownership of, and thus share title to the new item so generated, in the proportion of the value of the item provided subject to reservation of title (purchase price plus VAT) to the value of the other mixed items at the time when they were mixed. If the items are mixed in the way that the supplier's item must be considered as the main item, the parties are deemed to have agreed that the supplier transfers proportionate co-ownership to us; the supplier is deemed to retain for us the item held by us in sole ownership or co-ownership.

12.3 Ownership of the goods must be transferred to us unconditionally and regardless of the payment of the purchase price. If we accept, in exceptional cases, the supplier's offer for transfer of ownership subject to the condition of purchase price payment, the supplier's reservation of title only applies to the extent that it pertains to our payment obligation for the respective products title to which is reserved by the supplier. In this case, we are entitled to resell the goods in the ordinary course of business already before the purchase price is paid, subject to assignment of the claim arising from such resale to the supplier. Expanded or transferred reservation of title as well as any reservation of title extending to the reprocessing of the goods ("erweiterter/ weitergeleiteter/ verlängerter Eigentumsvorbehalt" in terms of German law) is excluded.

### 13. Documents under foreign trading law, export restrictions

13.1 The supplier will provide any documents under foreign trading law requested by us, such as in particular certificates of origin and supplier's declarations, with all necessary information and duly signed.

13.2 The supplier will inform us if any item to be delivered is, in whole or in part, subject to export restrictions under German or any other (e.g. US American) foreign trading law.

### 14. Industrial property rights

The supplier is liable for ensuring that patents or other industrial property rights of third parties are not infringed by the goods delivered by the supplier or by the intended proper use of the goods delivered and/or of the work created by him. The supplier undertakes to indemnify us from any and all third-party claims based on an infringement of the said rights and also hold us harmless in any other respect whatsoever. This does not apply where the specific infringement of the industrial property right is not imputable to the supplier. The supplier's obligation to indemnify pertains to all expenses incurred by us as a result of or in connection with the assertion of claims by a third party.

### 15. Limitation

15.1 Limitation of the mutual claims of the contracting parties governed by the statutory provisions unless stipulated otherwise hereinafter.

15.2 In derogation of §§ 438 subs. 1 No. 3, 634 a subs. 1 No. 1 BGB (German Civil Code), the general limitation period for claims for defects in quality or title is three (3) years from passing of the risk. If and to the extent that formal approval of the goods ("Abnahme" in terms of German law) has been agreed to take place, the limitation period runs from the time of such formal approval. If, for claims for defects, longer limitation periods are prescribed by law, these remain unaffected. This applies in particular to claims for defects consisting in a third-party right in rem which gives the right to claim surrender of the goods purchased or in any other right which was entered in the land register ("Grundbuch") (§ 438 subs. 1 No. 1 BGB - German Civil Code) as well as to claims for defects of a construction ("Bauwerk") or defects of products which, according to their regular use, were used for a construction and have caused the defectiveness of the construction or in the case of defects of a work the result of which consists in planning or supervising services relating to a construction (§§ 438 subs. 1 No. 2, 634 a subs. 1 No. 2 BGB - German Civil Code).

15.3 If and to the extent that we are entitled to recourse claims against the supplier based on the provisions governing recourse to the supplier (§§ 445a, 478 BGB - German Civil Code), the limitation of such recourse claims is subject to § 445b BGB (German Civil Code); however, the claims will not become time-barred before the expiry of the period stipulated in No. 15.2.

15.4 If the supplier fraudulently conceals a defect (§§ 438 subs. 3, 634 a subs. 3 BGB - German Civil Code), 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 (§§ 195, 199 BGB - German Civil Code); however, such claims will not become time-barred before the expiry of the period stipulated in No. 15.2. In any case, the statutory limitation periods under the "Produkthaftungsgesetz" (German Product Liability Act) remain unaffected.

### 16. Place of jurisdiction, applicable law, partial invalidity

16.1 If the supplier is a merchant, legal person under public law or a special funds under public law ("*öffentlich-rechtliches Sondervermögen*") as defined by German law, the place of jurisdiction for any and all disputes arising directly or indirectly from the contractual relationship shall be Remscheid. We are however entitled to also sue the supplier at the supplier's private or business domicile.

16.2 The law of the Federal Republic of Germany shall apply. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

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.

### Information on the company:

**Aalberts Surface Technologies GmbH**  
**Walter-Freitag-Straße 25, 42899 Remscheid, Germany**  
**with a branch in Werther**  
**Managing Director: Edzard von Plate**  
**Registration Court Wuppertal: HRB 11925**

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