

# **General Terms and Conditions of ALMEX GmbH, Hanover (Germany)** **(hereinafter "ALMEX")**

## **1 Conclusion of contract**

1.1 The contract is solely subject to these General Terms and Conditions as well as additionally the legal requirements.

The customer's General Terms and Conditions only apply insofar as they comply with the above-mentioned provisions or when they have been expressly agreed to by ALMEX in writing.

Offers by ALMEX are non-binding.

1.2 Specifications in price lists and other general printed materials are only binding when explicitly included in the contract.

1.3 All copyrights in any documentation prepared during performance of the contract or made available to the customer are reserved to ALMEX. Such documents may not be published or made available to third parties or used for any other purpose without the permission of ALMEX.

## **2 Prices**

All prices are calculated in accordance with the net price lists in effect on the day of delivery plus value-added tax at the applicable rate, unless agreed otherwise.

## **3 Shipment and passing of risk**

3.1 The costs of shipment (packing, freight and postage) are borne by the customer. Any instructions regarding shipment are to be given by the customer when placing the order. Otherwise the choice of a suitable means and/or route of carriage will be made by ALMEX at its discretion without any entitlement to the cheapest shipment.

3.2 ALMEX insures the goods against damages in transit at the customer's costs, unless the customer explicitly demands shipment without transit insurance when placing the order.

3.3 The risk of accidental loss and/or accidental deterioration of the goods passes to the customer at the time the goods leave the factory respectively the goods are handed over to the person performing the transport.

3.4 If shipment or handover of the goods is delayed at the request of or through the fault of the customer, the risk passes to the customer at the time the goods are ready for shipment.

## **4 Period of delivery**

4.1 Delivery periods named in the offer or in the customer's order begin with the date of the written order confirmation by ALMEX. Delivery periods are only binding when they are explicitly agreed to be binding.

4.2 A period of delivery is extended to an appropriate extent by all acts of God, strikes, lock-outs, insufficient supplies of materials or energy, deficiencies of transportation possibilities and other like events, regardless of whether

such circumstances occur to ALMEX or to one of its suppliers. The same applies if the quantity and/or specification of the goods to be supplied are changed subsequent to conclusion of the contract.

4.3 If ALMEX is responsible for exceeding the agreed delivery period, the customer is required to grant a reasonable extension period.

4.4 Partial deliveries are permitted to the extent reasonable for the customer.

## **5 Payment**

5.1 The date stated in the invoice determines the period allowed for payment.

5.2 Cash discounts are only permitted, when explicitly allowed in the invoice. Unauthorized cash discounts will not be accepted.

5.3 ALMEX is permitted at its discretion to require cash on delivery for orders valued up to 250.00 €.

5.4 The customer may only offset counterclaims against the purchase price or assert retention rights arising from such counterclaims if such counterclaims are either undisputed or legally binding.

5.5 In the event of delay in payment, ALMEX is entitled to cause all unpaid debts - including those for which bills of exchange have been executed - to become immediately due and payable and to render future performance only against prepayment or sufficient collaterals.

## **6 Retention of title**

6.1 Goods delivered remain the property of ALMEX

- in case of a customer who uses the goods itself until the purchase price has been paid in full,  
- in case of a customer who proposes to resell the goods until complete discharge of all liabilities arising from the contractual relationship. The customer is not permitted to pledge or assign as security the goods subject to retention of title.

The customer must notify ALMEX without delay in the event of distress or confiscation of the goods or of other measures taken by third parties.

The following clauses apply to the last named customers:

6.2 The customer is permitted to sell or process the goods only in the proper course of business.

6.3 In the event of delay in payment, ALMEX reserves the right to repossess the goods until payment is received.

6.4 Receivables arising from the resale of goods subject to retention of title are hereby assigned to ALMEX. This also applies in cases where the goods subject to retention of title have been processed or commingled with other goods, in accordance with the share of the goods subject to retention of title in the total value.

In the event of the sale of the goods subject to retention of title after processing or commingling with other goods, the receivables are deemed to be assigned up to the amount invoiced for the goods subject to retention of title.

The customer is authorized to collect the assigned receivables only as long as he meets his payment commitments to ALMEX in a proper manner.

6.5 Where the customer has provided collaterals to ALMEX to secure ALMEX's receivables, ALMEX is, at the request of the customer, obliged to release such collaterals insofar as the value of the collaterals given exceeds the receivables by more than 20 per cent. The choice of collaterals is at the discretion of ALMEX.

## **7 Provisions relating to correction of defects (liability for defects)**

7.1 On request by ALMEX, the customer will return the defective goods at ALMEX's expense.

7.2 ALMEX will eliminate the defects at its option by repair or substitute delivery (subsequent performance).

7.3 The entitlement to subsequent performance does not extend to defects arising from normal wear, misuse or unusual environmental influences.

In the event of improper repairs or modifications by the customer or any third party the entitlement to subsequent performance is excluded for such repairs or modifications and the consequences thereof.

7.4 Replaced parts become the property of ALMEX.

## **8 Liability of ALMEX**

8.1 The correction of defects (subsequent performance) is covered by clause 7. Claims based on recognizable defects expire if the customer fails to complain in writing within two weeks of delivery.

8.2 Claims for compensation for damages - irrespective of cause in law - against ALMEX (including its vicarious agents) which are caused by ordinary negligence only arise when a material contractual obligation has been infringed.

These claims are limited to the foreseeable damage typical for the contract at the time of conclusion of the contract. At the time of conclusion of the contract, the customer may request more extensive liability against payment of a risk surcharge.

Claims for damages resulting from injury to life, body or health, fraud, failure to comply with a guarantee provided as well as claims for damage to property under product liability law remain unaffected.

8.3 If the customer is entitled to withdraw from the contract and/or to require compensation for damages in lieu of performance, ALMEX is permitted to fix an appropriate time limit for the customer to state whether he still requires performance/subsequent performance. Once this declaration time limit has expired without being availed of, the

customer's right to performance/subsequent performance is excluded.

8.4 The limitation period for claims for defects („warranty period“) is twelve month.

This shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 and Sec. 634a para. 1 No. 2 German Civil Code (BGB).

The statutory limitation period shall apply in case of intent, fraudulent concealment of defects or provision of a guarantee.

The statutory limitation period shall also apply in case of claims for damages resulting from gross negligence, injury to life, body or health as well as claims for damage to property under product liability law.

## **9 Software**

9.1 All programmes, documentation and other materials supplied to the customer may only be used for the purpose agreed to.

9.2 The customer undertakes to keep all confidential programmes, documentation and other materials received within the framework of this business relation secret, to keep them in a safe place and to protect them by means of appropriate measures against access by third parties.

9.3 ALMEX grants to the customer an irrevocable, non-exclusive right to use the contractual software. If goods are sold to the customer with software, the customer is permitted to assign the right to use the software with the goods it was delivered with to third parties. Third party software is licensed to the customer in accordance with the third party's standard license terms and conditions.

## **10 Final provisions**

10.1 If the customer is a merchant, legal entity under public law or holder of special funds under public law, the place of jurisdiction for all claims shall be the registered seat of ALMEX (Hanover). However, ALMEX shall be entitled to file an action against the customer at the customer's registered seat.

10.2 German law applies to the legal relationship between the customer and ALMEX. The Vienna UN Convention on the International Sale of Goods (CISG) shall not apply.

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