



## GENERAL TERMS AND CONDITIONS OF SALES AND SERVICES ALBERT HERZ GMBH

### § 1

#### Scope and Amendment of these Terms and Conditions

- (1) These General Terms and Conditions shall apply to all our business relations with our customers („Contractual Partners“) within the scope of our sales and service business. These General Terms and Conditions shall only apply if the Contractual Partner is an entrepreneur according to § 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law. The invalidity of individual terms does not affect the validity of the remaining terms. The same applies if individual terms do not become part of the contract.
- (2) These General Terms and Conditions apply to contracts for the sale and delivery of movable goods („Goods“), irrespective of whether we manufacture the Goods for the Contractual Partner ourselves or purchase them from suppliers. Unless otherwise agreed, these General Terms and Conditions as amended at the time of the contractual partner's order or as most recently communicated to him in text form, shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.
- (3) Our General Terms and Conditions shall apply exclusively. Any deviating, conflicting or supplementary General Terms and Conditions of the Contractual Partner shall become part of the contract only if and to the extent that we have explicitly agreed to their validity. This consent requirement shall apply in any case, for example, even if we carry out the delivery to the Contractual Partner without reservation in the knowledge of the Contractual Partner's terms and conditions.
- (4) Individual agreements made in individual cases with the Contractual Partner, including collateral agreements, supplements and amendments, shall in any case take precedence over these General Terms and Conditions. Subject to proof to the contrary, a written contract or our written confirmation shall be deemed relevant for the content of such agreements.

### § 2

#### Conclusion of Contract

- (1) Our offers are subject to change and non-binding. In case of contracts that are subject to confirmation in writing or by telex, the content of our letter of confirmation shall be relevant, unless the recipient objects immediately.
- (2) The order placed by the Contractual Partner, insofar as it is to be qualified as an offer, shall be deemed binding and can be accepted by us within 10 days of receipt. The acceptance can be declared either in writing, e.g. by order confirmation or by delivery of the Goods to the Contractual Partner.
- (3) We reserve the title and copyright to all documents made available to the Contractual Partner. The Contractual Partner may not, without our express consent, make them accessible to third parties, disclose them, use them himself or via third parties or reproduce them. At our request, he must return these objects to us in full and destroy any copies that may have been made if he no longer needs them in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Excluded from this is the mandatory retention arising from tax and commercial law regulations and the storage of electronically provided data for the purpose of normal data backup.

### § 3

#### Prices, Terms of Payment and Billing Control

- (1) Unless otherwise agreed in individual cases, our prices valid at the time of the conclusion of the contract shall apply ex works, plus statutory VAT, packaging, any customs duties, fees, taxes and other public levies. Additional or special services will be charged separately.
- (2) In the case of sales by delivery to a place other than the place of performance, the Contractual Partner shall bear the transport costs ex works and the costs of any transport insurance requested by the Contractual Partner.
- (3) Unless otherwise agreed, payment for our deliveries and services must be made without any deductions immediately after receipt of the invoice. In the case of

delivery or service on credit, the credit period is determined after the date of delivery or service.

- (4) Payment by bill of exchange or cheque is only permitted by explicit agreement. Even then the bill of exchange is only valid on account of performance. Discount charges and collection charges shall be borne by the Contractual Partner; they are due immediately. In case of payment by cheque, the receipt of the cheque does not count as payment; only its final encashment.
- (5) Upon expiry of the payment period, the Contractual Partner will be in default. During the period of default, the purchase price shall bear interest at the statutory default interest rate applicable at the time. We reserve the right to claim further damages caused by the default and the right to withdraw from the contract.
- (6) The purchase price shall become due immediately if the Contractual Partner finally refuses to pay the purchase price. The same legal consequence shall apply if the Contractual Partner is in arrears with the agreed instalments with an amount exceeding one instalment and if the amount in arrears amounts to at least 10% of the total purchase price. In the event of a final refusal to pay the purchase price, we may refuse to fulfil the sales agreement even without setting a grace period and demand reimbursement of all costs, expenses and compensation for depreciation.
- (7) We have the right to execute or render outstanding deliveries or services only against advance payment or by way of security if, after conclusion of the contract, we become aware of circumstances which are liable to substantially reduce the creditworthiness of the Contractual Partner and as a result of which the payment of our outstanding claims by the Contractual Partner from the respective contractual relationship, including from other individual orders to which the same framework agreement applies, is at risk. In all other respects § 321 BGB shall apply.
- (8) The Contractual Partner shall be entitled to offset rights only if his counterclaims have been legally established, are undisputed or have been acknowledged by us. Furthermore, he is authorized to exercise the right of retention if his counterclaim is based on the same contractual relationship.
- (9) The invoices prepared by us are to be immediately checked by the contractual partner for their correctness, in particular with regard to the stated VAT rate. Complaints or the identification of an incorrect VAT rate must be reported to us in text form within 14 days of receipt of the invoice. If we do not receive any notification from the Contractual Partner within the 14-day period, the VAT rate stated by us will be applicable. In the event of a breach of the duty of notification, the Contractual Partner will be obligated to compensate us for damages in accordance with the statutory provisions.

### § 4

#### Delivery Period, Default of Delivery and Force Majeure

- (1) The delivery period shall be agreed on individually or specified by us when the order is accepted. A reasonable delivery period shall apply if we do not agree on or specify a delivery period.
- (2) A default in delivery will be determined in accordance with the statutory provisions. However, a reminder from the Contractual Partner will be required in any case.
- (3) If the delivery becomes impossible or excessively difficult due to force majeure, official measures, a plant shutdown, strike, extreme weather conditions, war, epidemics and pandemics or similar circumstances - including those affecting our suppliers - we shall be released from our obligation to deliver for the duration of the disruption and its after-effects. This also entitles us to withdraw from the contract if the adherence to the contract is no longer reasonable for us. In the event of non-delivery or insufficient delivery to us on the part of our sub-suppliers, in particular our suppliers of raw materials, packaging materials and energy, we shall be fully or partially released from our delivery obligations to the Contractual Partner. This shall only apply if we have taken the necessary precautions to procure the goods to be supplied by us and have carefully selected our sub-suppliers. Unless excluded by law or contract, we will in this case, upon request, assign our claims against the supplier to the Contractual Partner. The Contractual Partner shall then remain obligated to provide consideration in accordance with § 326 Para. 3 BGB (German Civil Code). We will immediately inform the Contractual Partner of the above-mentioned events and the non-availability and, in the event of a withdrawal, immediately refund the Contractual Partner's consideration.



## § 5

### Delivery, Transfer of Risk, Default of Acceptance

- (1) Delivery will be ex works, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the Contractual Partner, the Goods will be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we have the right to determine the type of shipment, in particular the transport company, shipping route and packaging.
- (2) We have the right to make partial deliveries if the partial delivery is suitable for the Contractual Partner and for the contractual purpose.
- (3) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Contractual Partner no later than the time of delivery. In the case of a sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall already upon delivery pass to the forwarding agent, the carrier or any other person or institution charged with carrying out the shipment. This also applies to drop shipments.
- (4) If the Contractual Partner is in default of acceptance, we may store the Goods at the expense and risk of the Contractual Partner on our premises or on the premises of a third party or use the Goods in a suitable manner at the expense of the Contractual Partner, without the need to give notice thereof. If the Contractual Partner is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Contractual Partner is responsible, we shall have the right to demand compensation for the resulting damage including any additional expenses. In case we store the Goods, we will charge a flat-rate compensation of 0.5% of the net price (delivery value) per calendar day, beginning with the delivery period or - in the absence of a delivery period - with the notification of readiness for dispatch of the Goods, up to a maximum of 0.25% of the net price (delivery value) per week. The proof of higher damages and our statutory rights shall remain unaffected; however, the lump sum shall be set off against further monetary claims. The Contractual Partner is free to prove that we have not incurred any damage at all or that the damage incurred by us is considerably lower than the above lump sum.

## § 6

### Quality of the Goods and packaging

- (1) Our information provided about the object of the delivery, e.g. product descriptions, ingredients, recipes, weights, dimensions, tolerances and technical data, as well as our presentations, e.g. in specifications and illustrations, shall be regarded as an agreement on the quality of the Goods. These are not guaranteed quality characteristics but descriptions or characterisations of the Goods.
- (2) Customary and product-specific deviations that are due, in particular, to legal regulations or represent technical improvements as well as the replacement of raw materials or ingredients by equivalent substances are permissible, provided they do not adversely affect the usability for the contractually intended purpose. We have the right to purchase from third party suppliers who at minimum guarantee industry standard quality standards for their products and their production process.
- (3) We have the right to change the specifications at any time at our own discretion, provided that the change does not constitute a substantial modification of the Goods. If the quality specifications are provided in electronic systems for inspection by the Contractual Partner, the Contractual Partner will be obliged to inform himself about the respective current status of the specification. In case of significant modifications, we will inform the Contractual Partner within a reasonable time period before the planned implementation. The modification is deemed to be approved by the Contractual Partner if he does not object to it within 10 working days after receipt of the notification or the modification in the system.
- (4) If the Contractual Partner provides us with information about the quality, food labelling and presentation of the Goods to be manufactured, if he provides ingredients or semi-finished products, he shall guarantee that these comply in every respect with the relevant statutory provisions, guidelines and prevailing public perception as well as the intended use. This also applies to the packaging. If the Contractual Partner intends to sell the Goods in a particular country of sale, he shall be responsible for ensuring that the Goods manufactured according to his specifications are marketable there.

- (5) If the Contractual Partner intends to carry out analyses or tests of the Goods or samples, this shall be at its own expense.
- (6) The Goods shall be packed in the customary manner at the expense of the Contractual Partner. Loaned packaging must be emptied immediately by the Contractual Partner and returned in perfect condition - carriage paid by the Contractual Partner. They may not be filled with other Goods or used in any other way.
- (7) Packaging that is not subject to system requirements pursuant to Section 15 of the German Packaging Act (VerpackG) shall be collected separately from household waste and recycled properly. Unless we have made an individual agreement with the contractual partner to this effect, the contractual partner may return this packaging to us free of charge in accordance with the provisions of the Packaging Act.
- (8) Unless otherwise agreed, the Federal Republic of Germany shall be the country of sale.

## § 7

### Claims for Defects by the Contractual Partner

- (1) The statutory provisions apply to the rights of the Contractual Partner in the event of material defects and defects of title, unless otherwise specified below. In all cases, the statutory special provisions remain unaffected in the case of a final delivery of the Goods to a consumer (supplier recourse according to § 478 German Civil Code).
- (2) Our liability for defects is based on the provisions on the quality of the goods set out in § 6 of these General Terms and Conditions. Insofar as the quality has not been stipulated, it shall be assessed in accordance with the statutory provisions whether a defect exists or not.
- (3) The Contractual Partner's claims for defects presuppose that he has complied with his statutory obligations to examine and give notice of defects in accordance with §§ 377, 381 HGB (German Commercial Code). The Contractual Partner must inspect the Goods immediately upon receipt for material defects, e.g. quantity, type and quality, and is obliged to note obvious defects on the receipt or to give notice of defects immediately after delivery. In case of Goods intended for further processing, a further inspection is to be carried out in any case once again immediately before processing. If a defect is discovered during delivery, inspection or at a later time, we must be notified of this immediately in writing. In any case, obvious defects must be reported in writing within five working days of delivery and defects not detectable upon inspection within the same period from the time of discovery. If the Contractual Partner fails to carry out the proper inspection and/or fails to report defects, our liability for the defect not reported or not reported in time or not properly reported is excluded in accordance with the statutory provisions.
- (4) If the delivered item is defective, we may initially choose whether we provide subsequent performance by eliminating the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). If subsequent performance cannot be achieved within a reasonable period of time or is impossible due to the nature of the Goods, the Contractual Partner shall have the right to choose between a reduction of the purchase price or, in the case of significant defects, withdrawal.
- (5) We have the right to make the subsequent performance dependent on the Contractual Partner paying the outstanding purchase price. However, the Contractual Partner shall have the right to keep part of the purchase price that is reasonable in relation to the defect.
- (6) The Contractual Partner must give us the time and opportunity necessary for the subsequent performance, in particular to hand over the rejected Goods for inspection purposes. In the event of a replacement delivery, the Contractual Partner shall return the defective item to us in accordance with the statutory provisions. We shall bear or reimburse the expenses required for the purpose of inspection and subsequent performance, in particular, transport, travel, labour and material costs in accordance with the statutory provisions if a defect actually exists. Otherwise, we can demand reimbursement from the Contractual Partner for the costs incurred from the unjustified claim for the rectification of defects, in particular, inspection and transport costs.
- (7) The general limitation period for claims arising from material defects and defects of title is one year from delivery. This period shall not apply to claims for damages by the Contractual Partner arising from injury to life, limb or health or from



intentional or grossly negligent breaches of duty by us or our performing agents or under the Product Liability Act, which shall be time-barred in accordance with the statutory provisions.

- (8) Other claims by the Contractual Partner for the compensation for damages or reimbursement of wasted expenditures due to defects can be made only in accordance with the next paragraphs of „§ 8 Liability“ of these Terms and Conditions and are otherwise excluded.

## § 8 Liability

- (1) Claims for damages by the Contractual Partner, regardless of the legal basis, in particular due to a breach of duties arising from the contractual obligation and from an unlawful act, are excluded.
- (2) Claims for damages due to a negligent violation of essential contractual obligations are limited to the foreseeable damage typical for the contract. Essential contractual obligations are obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the Contractual Partner regularly relies and should be able to rely. The foreseeable damage typical for the contract is damage which we foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which we should have foreseen if we had exercised due care. In addition, indirect damage and consequential damage resulting from defects of the delivery item shall only be eligible for compensation if such damage is typically to be expected when the Goods are used for their intended purpose.
- (3) The above paragraphs (1) and (2) shall not apply if liability is mandatory by law, in particular in cases of
- malice, intent and gross negligence,
  - injury to life, body or health,
  - an assumption of a guarantee, e.g. for the existence of a characteristic,
  - a liability according to the Product Liability Act or
  - a violation of essential contractual obligations.
- (4) Insofar as liability is excluded or limited, this shall also apply to the personal liability of our employees, staff, representatives and performing agents.
- (5) A change in the burden of proof to the disadvantage of the Contractual Partner is not linked to the above provisions.

## § 9 Reservation of Title

- (1) The delivered Goods shall remain our property until the purchase price has been paid in full. This shall also apply towards the Contractual Partner for all claims which we have or will have in the future against the Contractual Partner from the business relationship with him. We have the right to withdraw from the contract after unsuccessful setting a reasonable deadline in the event of a breach of contract by the other party, in particular if the other party is in default of payment.
- (2) If the reserved goods are inseparably mixed, blended or combined with other Goods which are the property of the Contractual Partner or a third party, we shall acquire co-ownership of the resulting item at a share which corresponds to the value of our reserved goods in relation to the value of the goods mixed, blended or combined with them at the time of mixing, blending or combining.
- (3) By machining or processing the reserved goods, we shall acquire ownership of the new item at a share corresponding to the value of our reserved goods; the Contractual Partner shall keep these for us.
- (4) At our request, the Contractual Partner must insure our Goods against the usual risks to a reasonable extent at his own expense and shall assign the insurance claims to us. We also have the right to pay the insurance premiums at the expense of the Contractual Partner.
- (5) The contractual partner shall only be entitled to resell the Goods, including the Goods produced by mixing, blending, combining, processing or machining, within the scope of his normal business operations. He is not authorized to dispose of these Goods in any other way, in particular to pledge them or assign them as security.
- (6) The Contractual Partner hereby assigns to us already all claims arising from the resale of the reserved goods or the Goods produced from them through machining or processing. The same applies to any other claims that take the place of the reserved goods or otherwise arise with regard to the reserved goods. Of the claims from the sale of Goods in which we have acquired co-ownership through

mixing, blending or combining, the Contractual Partner hereby assigns to us a first-priority partial amount that corresponds to our co-ownership share in the sold Goods. If the Contractual Partner sells Goods that are our property or co-owned together with other Goods not belonging to us at a total price, the Contractual Partner hereby assigns to us a first-priority partial amount of this total claim appropriate to the share of the Goods.

- (7) The Contractual Partner is authorized to collect the assigned claims from the resale. We can revoke this direct debit authorization at any time if the Contractual Partner does not meet his payment obligations, if there is a default in payment, if an application for insolvency has been filed or if there is a suspension of payments or enforcement measures of third parties. Upon request, he shall name the debtors of the assigned claims, notify them of the assignment or provide us with the assignment notices. As long as the Contractual Partner meets his payment obligations, we shall not disclose the assignment. If the realizable value of the collateral existing for us exceeds the secured claims by a total of more than 10%, we shall be obliged to release the collateral of our choice at the request of the Contractual Partner.

## § 10 Crisis Management

- (1) The Contractual Partner must maintain a functioning crisis management. In the event of a crisis, the Contractual Partner can also be reached and act outside business hours. He shall inform us immediately before he takes back or recalls Goods of a batch that concerns Goods delivered by us and shall provide us with all documents and information relating thereto.
- (2) Insofar as the Contractual Partner is responsible for the recipe, presentation and labelling, he shall be obligated to indemnify us in this respect from claims for damages by third parties on first request if we are held liable by a third party.

## § 11 Code of Conduct – Compensation

The contractual partner respects the principle of ethical business practices. He does not participate in corruption, extortion, bribery or embezzlement. The Contractual Partner guarantees that agreed prices and conditions have not been the subject of agreements that constitute an inadmissible restriction of competition. If a court or the antitrust authority has determined that the Contractual Partner was involved in such a restriction of competition during the period of delivery of the Goods, the Contractual Partner shall be obligated to pay us lump-sum damages in the amount of 5% of all net invoice amounts (without discounts and value added tax) of the affected products plus statutory interest per year. The Contractual Partner has the right to prove that we have not incurred any damage or that the damage incurred is less than 5%. The payment obligation also applies if the contract is terminated or has already been fulfilled. Further contractual or legal claims for damages from us due to the violation of competition law remain unaffected. The Contractual Partner will provide us with all the information necessary for checking the validity of our claims.

## § 12 Confidentiality

The Contractual Partner shall treat our business and trade secrets and all confidential information received in the course of our business relationship as confidential and shall not make them available to third parties without our express consent. Press releases and other publications in connection with the business relationship require our prior consent. The above provisions shall not apply if the Contractual Partner is obligated to disclose information due to statutory provisions or an enforceable order of a court or an authority. However, even in such a case, the Contractual Partner shall – to the extent permitted by law and to the extent possible under the circumstances – inform us in advance and coordinate the content of the declaration with us.

## § 13 Choice of Law and Place of Jurisdiction

- (1) These General Terms and Conditions and the contractual relationship between us and the Contractual Partner shall be governed by the law of the Federal Republic



of Germany to the exclusion of the international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

- (2) If the Contractual Partner is a merchant as defined by the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Kempten/Germany. However, in all cases we also have the right to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions or a prior individual agreement or at the general place of jurisdiction of the Contractual Partner. Legal priority provisions, in particular in regard to exclusive responsibilities, remain unaffected.

07/2022 – Albert Herz GmbH, Kimratshofen