

# General Terms and Conditions of Business

## of Alteco Technik GmbH

(hereinafter "ALTECO")

### 1. General

1.1 The following General Terms and Conditions of Business (hereinafter: "GTC") shall apply to all business transactions between Alteco Technik GmbH (hereinafter: "ALTECO") and companies (pursuant to § 14 of the German Commercial Code (*Bürgerliches Gesetzbuch*) (BGB)), legal persons governed by public law or special funds under public law (hereinafter: "Customer") even if these terms and conditions are not once again separately mentioned in later agreements.

1.2 We hereby object to divergent, conflicting or supplementary General Terms and Conditions of the Customer. These GTC shall apply even if ALTECO carries out an order without knowledge of terms and conditions in conflict with or that diverge from these GTC. The Customer's own General Terms and Conditions shall apply only if ALTECO has expressly consented thereto in writing.

### 2. Offer, contract formation, fitness

2.1 Offers from ALTECO are non-binding.

2.2 Agreements with the Customer shall only be formed by and in accordance with a written order confirmation or shall be implied from ALTECO's performance of the service ordered.

2.3 The legal relationship between the Customer and ALTECO shall be solely governed by written agreement, including these GTC. Additions and amendments to the agreement which has been formed, as well as to these GTC, shall require written form to be effective. The same shall also be true in order to eliminate this written form clause. The written form requirement may also be satisfied by telecommunications, in particular by e-mail.

2.4 The scope of performance shall only include services and goods expressly agreed to by the Parties. In the event that the Parties do not agree on whether specific services are part of the scope of performance ordered or whether an addendum needs to be concluded, ALTECO shall be authorized to refuse service.

2.5 Except as ALTECO may expressly designate them as binding, information given in brochures and technical data sheets on the goods to be delivered shall only be relevant as an approximation. ALTECO reserves the right to make changes to the technical structure and chemical composition of the products as well as minor color variations.

2.6 Samples shall be provided by ALTECO only to help orient the Customer. A sample's properties are not deemed to have been agreed to even if the sample was tested by ALTECO for the special intended purpose and was approved for the same.

2.7 It shall be solely the Customer's responsibility to check the fitness of products and services for its purposes (including those of its purchasers). Liability for the fitness of ALTECO products and services for the Customer's purposes shall presuppose that ALTECO has confirmed or guaranteed their fitness in writing.

### 3. Prices, payment, offsets, rights of withholding

3.1 Except as otherwise expressly agreed, prices are understood to be ex works (EXW Incoterms 2010) located at Raiffeisenstraße 16, 27239 Twistringen, excluding freight, customs, import charges and packing, plus statutory value added tax applicable at the time of delivery.

3.2 Except as otherwise expressly agreed, prices shall be determined in accordance with the ALTECO price list in effect at the time the agreement is concluded.

3.3 Unless the order confirmation indicates to the contrary, purchase prices are due when billed.

3.4 A Customer shall be in default on its payment obligation if it fails to make payment within 14 days of maturity and receipt of an invoice or equivalent

payment schedule. Whether payment was timely shall be determined by the receipt by ALTECO of the amount owed.

3.5 Bills of exchange and checks are accepted as payment only with all collection and discount expenses taken into account.

3.6 If an amount due to ALTECO is not settled even following a payment reminder and after a two-week period has elapsed, all ALTECO claims under the business relationship with the Customer shall immediately come due. ALTECO may then make additional deliveries only against prepayment or the posting of adequate security.

3.7 A Customer may offset its own claims against those of ALTECO only if its claims are undisputed or have been legally established and are not subject to appeal or if involving a claim by the Customer under the same contractual relationship. A Customer may only assert a right of withholding on the basis of its claims under the same contractual relationship.

For purposes of offsetting and the assertion of rights of withholding, each individual order is to be viewed as a separate contractual relationship, even if the business relationship is ongoing.

### 4. Price changes

Prices may be changed if there are more than four months intervening between the conclusion of an agreement and the agreed delivery date. Accordingly, if wages, costs of materials or market purchase prices increase up till the delivery is complete, ALTECO may then appropriately increase the price in line with the rise in costs. The customer may only cancel if the price increase exceeds the rise in the general cost of living between order and delivery by more than a merely insignificant amount.

### 5. Cancellation costs

If a Customer without justification cancels an order given, ALTECO, without prejudice to its ability to seek specific performance or claim higher actual damages, may demand up to 10% of the net sales price for the costs incurred in processing the order and for the loss of profit. The Customer may prove that ALTECO incurred no damages, or only lower damages, as a result of the cancellation.

### 6. Delivery

6.1 Deliveries are made ex works (EXW Incoterms 2010) located at Raiffeisenstraße 16, 27239 Twistringen, and at the Customer's risk.

6.2 Except as otherwise agreed, ALTECO shall choose the shipment method and the place of shipment. Here, appropriate account shall be taken of the Customer's interests.

6.3 Only the time of delivery indicated in ALTECO's written order confirmation shall be controlling.

6.4 Except as otherwise agreed, the time for delivery shall begin when the order confirmation is dispatched but not before any documents, approvals or clearances to be procured by the Customer have been furnished or before payment terms agreed to herein and in other orders and other Customer obligations have been complied with.

6.5 The time of delivery shall have been adhered to if, before such time has elapsed, notice of tender for shipment has been given or the goods to be delivered have left ALTECO's works.

6.6 If there are changes to the goods to be delivered, the delivery time originally indicated shall cease to be valid.

6.7 The time for delivery shall be extended if there are impediments, not attributable, to ALTECO, to its own and/or its suppliers' business operations, in particular as a result of strikes, lawful lock-outs, official directives and all other

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BANK OF AMERIKA N.A., Frankfurt

-IBAN DE28 5001 0900 0018 8930 14

-Swift Code: BOFADEFX

Volksbank e.G. Twistringen

- IBAN DE 15 2806 4179 0814 6179 00

- Swift Code: GENODEF1VEC

events of *force majeure*. The time for delivery shall be extended by the duration of the impediment plus a reasonable lead time. The same is true of business interruptions, lack of raw materials or resources, lack of means of transport and in the event of untimely, incorrect or insufficient supplying by suppliers if ALTECO is not responsible for such circumstances and insofar as they demonstrably have a significant effect on the delivery of the goods ordered. ALTECO shall not be responsible for the above-mentioned circumstances even if they arise during a delay that previously existed. ALTECO shall notify the Customer as soon as possible of the start and anticipated end of such impediments. The above limitations shall not apply to firm transactions (*Fixgeschäfte*).

**6.8** ALTECO shall promptly apprise the Customer of impending or actual failures to adhere to due dates, deadlines, schedules or milestones.

**6.9** If ALTECO defaults in delivering, the Customer, before being able to get out of the agreement, must provide it with a written grace period of at least 4 weeks.

**6.10** ALTECO may make partial deliveries if this is reasonable for the Customer and this does not result in any disadvantage for the Customer in using them.

**6.11** ALTECO is authorized to make normal commercial deviations in order quantities if to do so is reasonable for the Customer. For specially manufactured items, ALTECO may exceed or fall short of agreed delivery quantities by 10 % if such is reasonable for the Customer.

## **7. Transportation and sales packaging, disposal**

**7.1** Packaging shall become the property of the Customer.

**7.2** After delivery, the Customer shall properly dispose of transportation packaging under its own responsibility and at its own expense, in accordance with legal requirements

**7.3** The Customer releases ALTECO from obligations under § 4 of the German Regulation on Packaging (*Verpackungsverordnung*) (duty to take transportation packaging back) and from all associated third-party claims of whatever kind.

**7.4** ALTECO's claim for assumption/release in accordance with the foregoing provisions shall not be time-barred before the end of two years following delivery.

**7.5** Upon request, the Customer shall demonstrate to ALTECO that it has taken organizational measures to properly dispose of transportation packaging as well as the individual form these take. If it has undertaken disposal obligations towards its buyers or other third parties, it shall so inform ALTECO upon request.

**7.6** The provisions of subsections 7.2-7.5, *supra*, shall apply *mutatis mutandis* to sales packaging. This shall not apply, however, if the Customer (within the meaning of § 3 (11) of the Regulation on Packaging) does not re-sell the delivered goods in the form delivered to it. In that event, ALTECO shall continue to be obligated to take back sales packaging and the other provisions of the Regulation on Packaging shall continue to apply.

**7.7** The provisions of subsections 7.1-7.6, *supra*, shall not apply to multi-use containers. Multi-use containers are returnable packaging and are designated as such by ALTECO. Labels may not be removed. They are intended only for transporting the goods delivered and, following receipt of the goods, are to be returned to ALTECO by the Customer at its expense and without undue delay.

If the Customer has not returned a multi-use container to ALTECO by the end of six weeks from receipt of the goods, it shall pay a weekly fee, the specific amount of which is to be agreed by the Parties, for each week begun until it is returned.

Loss of or damage to returnable packaging shall be chargeable to the Customer for as long as the packaging has not arrived back at ALTECO, provided that it is not just typical contractual wear and tear which is present. Returnable packaging may not be used for other purposes or to hold other products. If returnable packaging is contaminated by improper use, the Customer shall bear the costs of cleaning.

## **8. Acceptance and passage of risk**

**8.1** The Customer is obligated to accept the goods delivered within 14 days of the notice of tender. If it has not been expressly agreed that ALTECO shall deliver the goods to their destination, handover shall occur at the site of ALTECO's Twistringen works.

**8.2** The Customer shall without undue delay inspect the goods for existing errors or incorrect deliveries, no later than within 10 days of receipt of the goods or performance of the services.

It shall give ALTECO written notice, without undue delay, of ascertainable defects, indicating the invoice and shipment number, the product description and the lot number. Reference is made to the consequences under § 377 (2) of the German Commercial Code (*Handelsgesetzbuch*) (HGB).

**8.3** If the Customer delays in accepting the goods delivered, ALTECO, after setting a 14-day grace period, may rescind the agreement or seek damages for breach. This is without prejudice to the statutory rules indicating that the setting of a grace period may be dispensed with.

**8.4** Risk of loss passes to the Customer upon pick-up of the goods delivered or the handover of the latter for shipment. If the Customer states that it shall not accept the goods being delivered, the risk of loss from accidental destruction or accidental impairment of the goods being delivered passes to the Customer at the time of refusal.

**8.5** If acceptance of the goods delivered is delayed by the Customer's request or due to a circumstance for which the Customer is responsible, ALTECO, after one month of tendering for shipment, may bill storage charges of 0.5% of the net sales price of the delivered goods for each month begun, up to a total maximum of 5 %. Both Parties reserve the right to show that higher or lower storage costs were in fact incurred.

## **9. Reservation of title**

**9.1** ALTECO reserves title to all delivered goods until satisfaction in full of all of ALTECO's claims against the Customer under the business relationship between the Parties. If the Customer breaches the agreement, in particular in the event of a default in payment, ALTECO may take the delivered goods back following the setting of a grace period and the rescission of the agreement. This is without prejudice to the statutory rules indicating that the setting of a grace period may be dispensed with. Following rescission of the agreement, the Customer shall be obligated to surrender the goods.

**9.2** The Customer may re-sell the delivered goods in the ordinary course of business. However, it hereby assigns ALTECO all claims in the amount of the purchase price (including VAT) agreed to by the Parties, together with all ancillary rights accruing to the Customer from the re-sale. This is so regardless of whether the goods delivered are re-sold with or without processing. The Customer is authorized to collect these claims after their assignment. This is without prejudice to ALTECO's authorization to collect the claims on its own. But ALTECO agrees not to collect the claims as long as the Customer properly meets its payment obligations, is not in default on payments, no petition has been filed for insolvency, composition or bankruptcy or it has not completely suspended its payments. If, however, such is the case the Customer shall be obligated to disclose the claims assigned and the debtors thereon, provide all details required for collection, turn over the associated documents and notify the debtors (third parties) of the assignment.

**9.3** For sales on account, ALTECO's extended reservation of title shall relate to the account receivable or, after netting out, to the claim for the balance.

**9.4** Processing or transformation of the goods by the Customer is always done on ALTECO's behalf. If goods delivered are processed with other items not belonging to ALTECO, ALTECO shall acquire co-ownership of the new goods in the ratio of the value of the delivered goods to the other processed items at the time of the processing. For new goods arising from the processing, the same rules shall apply as to goods delivered subject to a reservation of title.

**9.5** If goods delivered are inseparably commingled with other items not belonging to ALTECO, ALTECO shall acquire co-ownership of the new goods in the ratio of the value of the goods delivered to the other commingled items at the time of commingling. The Customer shall safely store the co-owned property for ALTECO at no charge.

**9.6** The Customer may neither pledge nor transfer the goods delivered by way of security. The Customer shall inform ALTECO without undue delay of attachments and seizures or other acts of disposition by third parties and provide it with all information and documents required to protect its rights. Enforcement authorities and/or third parties are to be advised of ALTECO's title.

**9.7** At the Customer's request, ALTECO agrees to release the collateral to which it is entitled insofar as it exceeds the value of the claims it is securing (insofar as they have not yet been settled) by more than 20%.

**9.8** The Customer shall safely hold goods subject to a reservation of title at no charge, and shall insure them at its expense against loss and damage, in particular from fire, water, burglary, and theft. The Customer hereby assigns its insurance claims to ALTECO in advance. ALTECO accepts the assignment. ALTECO declares that it is re-assigning to the Customer provided that the re-

assignment becomes effective if and as soon as the reservation of title is extinguished by payment in full of all claims of ALTECO.

## 10. Warranty

**10.1** In the case of a defect whose cause was already present when the risk of loss passed, the Customer is entitled to repair or replacement at ALTECO's option.

Costs incurred in the repair or replacement (transportation, travel, labor and materials costs) as well as the cost for examining the defect shall be borne by the Customer.

If ALTECO is unable to eliminate errors subject to its warranty obligations, or if it is unreasonable for the Customer to allow further attempts at repair, the Customer, in lieu of repair, may seek a reduction of the price or rescind the agreement. Statutory rules shall in other respects be applicable.

**10.2** The Customer shall give ALTECO written notice of any defects without undue delay.

**10.3** When notice of defects is given, the Customer, if asked to do so, shall send ALTECO at least a 1 kg sample of the defective article.

**10.4** No warranty obligation shall exist if

- a) the Customer has not used the product as intended, or
- b) changes were made to the product by the Customer without ALTECO's written consent.

**10.5** The Customer's right to damages shall be based on the prerequisites of sections 11 and 12. This is without prejudice to BGB § 444.

**10.6** Beyond the statutory rules, the Customer may only rescind and seek damages in lieu of performance, pursuant to BGB § 241 (2), for breach of obligations unrelated to performance if it has given ALTECO advance written warning hereof and the breach was nevertheless not corrected by ALTECO.

**10.7** Reference to certifications, DIN or CE standards or other descriptions of the goods contain merely a description of the goods. A warranty of quality within the meaning of BGB § 443 must be expressly agreed to or labeled as such.

## 11. Liability for damages

**11.1** Claims by the Customer for expense reimbursement or damages, on whatever legal basis, are limited to damages that were brought about by ALTECO or one of its agents or contractors

- a) willfully,
- b) with gross negligence, or
- c) in the case of obligations of the essence of the contract, with ordinary negligence.

Obligations of the essence of the contract in this sense are such obligations of ALTECO as are intended to fulfill the Customer's rights in accordance with the content and purpose of its agreement with ALTECO and obligations the fulfillment of which makes proper performance of the agreement with ALTECO at all possible and on compliance with which the Customer regularly relies and has relied.

**11.2** The amount of liability is limited to damages that, upon the conclusion of the agreement or, at the latest, upon the commission of the breach, were foreseeable as typical damages in transactions of this type unless ALTECO is liable for willful misconduct or gross negligence by its legal representatives or senior management.

**11.3** Damages are limited, by grounds and amount, to ALTECO's liability insurance coverage amount unless ALTECO is liable for willful misconduct or gross negligence by its legal representatives or senior management.

**11.4** The limitations of liability in subsections 11.1-11.3 do not apply in cases of an injury to life, body or health, in cases of liability under the German Product Liability Act (*Produkthaftungsgesetz*) (ProdHaftG), or in cases of more extensive mandatory statutory liability.

## 12. Industrial property rights, document rights

**12.1** Except as otherwise expressly agreed, ALTECO warrants that the goods delivered are free of third-party industrial property rights and copyrights (hereinafter: "proprietary rights") within Germany.

**12.2** ALTECO shall not be liable if and insofar as the Customer is responsible for infringements of proprietary rights. This is true, in particular, if ALTECO manufactures goods on behalf of the Customer and in accordance with its plans and specifications and the infringement of proprietary rights is based on the Customer's plans and specifications, and also if the Customer uses or alters the goods inappropriately and otherwise than as intended or employs them in conjunction with products not delivered by ALTECO and the infringement of proprietary rights comes about therefrom. For such cases, the Customer shall indemnify ALTECO *inter sese* against all third-party claims.

**12.3** If a proprietary-rights infringement is present for which ALTECO is liable, ALTECO at its election may either

- a) acquire a license at its own expense so that the goods may continue to be sold, or
- b) alter the goods in such a way that they are no longer infringing.

If ALTECO is unable to do so on reasonable terms, the Customer shall have its statutory rights of rescission and price reduction.

**12.4** The Customer shall inform ALTECO without undue delay of claims put forward by a third party. It shall relinquish to ALTECO the right to decide on all defensive measures and shall to the best of its ability support ALTECO in defending against the claims. It may not acknowledge the infringement without coordinating this with ALTECO in advance. If the Customer ceases to sell the goods for mitigation of damages purposes or for other reasons, it shall advise the third party that this is not connected with an acknowledgment of any infringement of proprietary rights.

## 13. Limitations period

**13.1** Rights to claim damages for defects and claims by the Customer under section 12 are time-barred within 12 months of when the risk of loss passes.

**13.2** Insofar as not connected with any defect, damages claims are time-barred within one year of the close of the year in which the claim arose and the Customer knew, or in the absence of gross negligence ought to have known, of the circumstances underlying the claim.

**13.3** The provisions of the preceding subsections 13.1 and 13.2 shall not apply if the claims are based on a willful or grossly negligent breach of obligation by ALTECO, an injury to life, body or health is present, in case of liability under the Product Liability Act or in case of other mandatory statutory liability that is more extensive. BGB § 444 is otherwise unaffected.

## 14. Place of performance, place of jurisdiction, applicable law

**14.1** The place of performance for all deliveries and payments is ALTECO's place of business.

**14.2** For all disputes arising under the contractual relationship, the Customer shall bring suit before the court that has jurisdiction over ALTECO's place of business. ALTECO may also bring suit where the Customer is based. This shall also apply to procedures based solely on written documentation, summary procedures for checks and bills of exchange, and injunctive and attachment proceedings.

**14.3** German substantive law shall alone be applicable, excluding the provisions concerning the international sale of goods (CISG) and those provisions of German International Private Law that would lead to the application of foreign law.

**14.4** These GTC are executed in two language versions. Only the German language version is legally binding. This also applies for all amendments and additions to these GTC, if a German language version hereof exists.

## 15. Miscellaneous

**15.1** Transfers of the Customer's rights and obligations under its agreement with ALTECO shall require ALTECO's written consent to be effective.

**15.2** Should one of the foregoing provisions be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. In the event a provision is invalid, a provision which most closely approximates the meaning, purpose and economic significance of the invalid provision shall be deemed to have been agreed to. The same shall apply in the event of a gap in the agreement.

Version date: 12/2016