

General Terms and Conditions of ALMECO-TiNOX GmbH, with registered offices in Munich

§ 1 Scope

(1) All our deliveries, services and offers to customers who are not consumers as defined in § 13 BGB [*Bürgerliches Gesetzbuch* – German Civil Code] are effected exclusively on the basis of these General Terms and Conditions, even if this is not expressly mentioned during negotiations.

(2) Other General Terms and Conditions of the customer which run contrary to or diverge from our Terms and Conditions will not become subject matter of the contract, even if they have been appended to requests for a quotation, orders, declarations of acceptance and the like and we have not expressly objected to them.

(3) Our General Terms and Conditions also apply to all future transactions and business dealings with the customer.

(4) Special agreements regarding deliveries and services and any subsidiary agreements must be made in writing to be binding. The assumption of guarantee for particular properties (characteristics and quality) must also be confirmed by us in writing to be binding.

§ 2 Offers and Conclusion of Contract

(1) All our offers are, unless otherwise stipulated in the order, subject to change without notice. Technical changes as well as changes in shape, colour and/or weight are permissible within reasonable limits as long as the quality and price remain the same.

(2) If an order has been qualified as an offer as defined in § 145 BGB [*Bürgerliches Gesetzbuch* – German Civil Code], then we can accept this offer within a period of four weeks after receiving the offer.

§ 3 Delivery Period and Time of Performance

(1) Our statements regarding the delivery period are non-binding and subject to change, unless we have expressly declared them to be binding in writing. Delivery periods which we have definitively agreed upon have been complied with if, by the time of the expiry of the agreed period, the contractual items have either left the works or the customer has been informed that the items are ready for shipping. We do not conclude agreements for delivery by a fixed date.

(2) Events of force majeure entitle us to defer delivery or the performance of services for a period corresponding to the duration of the hindrance. All circumstances for which we cannot be held responsible and which make it impossible or unreasonable for us to deliver the contractual items or provide the contractual services, including a legitimate strike or lockout, a war, a ban on imports or exports, shortages of energy or raw materials and official measures as well as not correctly and punctually supplying to ourselves for which we cannot be held responsible are equated with events of force majeure. If the delay lasts more than two months, then customer is entitled, after setting a reasonable grace period, to dissolve the contract if he can offer evidence that the complete or still partly extant fulfilment of the contract can be of no further interest for him due to the delay in fulfilment.

(3) The precondition for compliance with the delivery period and the fulfilment of contractual obligations on our part is the timely and correct compliance with all contractual obligations on the part of the customer.

(4) We are entitled to effect delivery or part delivery at any time. We are entitled to invoice the customer immediately for part delivery.

§ 4 Prices, Terms of Payment, Delay in Payment, Offsetting, Right of Retention

(1) Our prices are quoted ex works, excluding assembly and installation, but including the respective statutory value-added tax. Costs of packaging as well as the costs of taking back the packaging are charged separately. The same applies to forwarding charges if the customer requests shipment of the items.

(2) Payments become due two weeks after receipt of invoice without deductions. Timeliness of the payment is determined by the date on which the payment is credited to the account stated on the invoice. If the customer does not pay the amount due within the aforementioned period of time, he shall immediately be considered in delay of payment, even without receiving a reminder of payment, and shall be obliged to pay the default interest incurred daily amounting to 8% annually above the respective base rate. This does not affect our right to additional claims for compensation.

(3) If the customer falls behind with a payment, either in whole or in part, by more than 30 days or if a motion is filed to open insolvency proceedings against the customer's assets, then, without prejudice to any other rights and claims, we shall be entitled to demand immediate payment of all bills outstanding from the customer, to retain all deliveries and services and to exercise all rights arising from our right of retention as defined in § 6 below.

(4) The customer is only entitled to offset our claims if his counterclaim has been legally established, is undisputed or has been accepted by us.

(5) The customer is only entitled to assert a right of retention if his counterclaim has been legally established, is undisputed, or has been accepted by us.

(6) Only persons with a written authorisation from ALMECO-TiNOX are entitled to accept payment on our behalf.

§ 5 Transfer of Risk, Transport Insurance

(1) Deliveries are ex works. The risk passes to the customer when the contractual item(s) are consigned to the forwarder; this also applies if we ourselves are responsible for shipment.

(2) When the goods are ready for shipment, we will procure transport insurance for the customer at the customer's request and at his expense. We must be informed without delay and in writing of any damages occurring in transport; the carrier responsible for shipment must likewise be informed without delay and in writing.

§ 6 Right of Retention

(1) We shall retain ownership of any goods supplied (goods subject to retention of title) until we have received all payments arising from our business relationship with the customer. This also applies when payments for specific accounts receivable are effected. Our right of retention also extends to our account balance with the customer insofar as we enter our claims against the customer in the form of a rolling invoice.

Behaviour of the customer which runs contrary to contract, in particular delays in payment, will entitle us, after giving the customer a reasonable period of grace, to take back the goods subject to retention of title; the customer is obliged to surrender the goods. Our taking back of the goods subject to retention of title always constitutes a rescission of the

contract. The attachment or seizure of the goods subject to retention of title also always constitutes a rescission of the contract. The customer must inform us in writing and without delay of any attachments, seizures or other encroachments by a third party, so that we can file a suit pursuant to § 771 ZPO [*Zivilprozessordnung* – German Code of Civil Procedure]. Should the third party or parties not be in a position to reimburse us for the judicial and extrajudicial costs of a law suit under § 771 ZPO, then the customer shall be liable for the deficit incurred by us.

(2) All processing or transformation by the customer of the goods subject to retention of title is always undertaken for us. If the goods subject to retention of title are processed together with other items to which we do not hold title, then we shall become co-owners of the newly created goods in proportion to the value of the goods to which we retained title (final invoice amount including value-added tax) compared to the value of the other processed items at the time of their joint processing.

If the goods to which we retain title are mixed or combined with other articles which do not belong to us in such a manner that they cannot be separated, then we shall acquire co-ownership of the new item in proportion to the value of the goods to which we retained title (final invoice amount including value-added tax) compared to the value of the other articles with which our goods were combined or mixed at the time of combination or commingling. If the combination or commingling occurs in such a manner that the items belonging to the customer must be considered the main article, then the customer will transfer co-ownership to us proportionally. The customer is responsible for storing the goods owned wholly or in part by us.

All items created by processing, altering or combining the goods to which we retain title shall be treated in the same ways as goods subject to retention of title.

(3) The customer is entitled to sell the goods to which we retain title in the ordinary course of business. However, the customer shall already transfer to us all claims against his customers or against third parties amounting to the final invoice total (including value-added tax) which accrue to him from the sale of the goods to which we retain title, irrespective of whether the supplied items are resold without further processing or after they have been processed. If our customer has an open account with the third party, this shall apply correspondingly for the accredited balance of the open account.

The customer is entitled to collect payments outstanding for the transferred claims even after the claims have been transferred to us. This does not affect our own right to collect outstanding payments. However, we undertake not to collect the payments as long as the customer properly complies with his payment obligations to us and, in particular, as long as no application for insolvency proceedings against the customer's assets has been filed. In such a case we would be entitled to revoke the right of collect and to demand that the customer informs us of the assigned claims and of the name of the debtor, provides us with all the necessary information which will allow us to collect on the payments outstanding, surrenders all the associated documents and informs the debtor (the third party) of the transfer of claims.

(4) As surety for our claims against the customer, the customer shall also transfer any claims accruing to him against a third party through the combination of the goods we supplied with a piece of real estate.

(5) The customer is not permitted to either pawn or assign by way of surety the rights to the goods to which we retain title

and must inform us without delay of any distraint, seizure, insolvency or other intervention by a third party or parties.

(6) The customer must treat the goods to which we retain title with proper care and, in particular, may not stack goods with TiNOX coating; the customer must protect such goods against shocks, blows and mechanical stress and store them in closed rooms where they are kept dry and free of dust. Moreover the customer must sufficiently insure the goods at their replacement value and at his own expense against damage from fire, water and theft and must transfer all claims accruing to him in this regard against his insurance company as well as all other claims for compensation arising from the loss or destruction of the goods to us with immediate effect; we herewith accept the transfer of these claims. We are entitled to demand that the customer produces evidence of the existence of insurance coverage. The customer must ensure that all maintenance and inspection work is carried out in due time where necessary and at his own expense.

(7) Any application for the opening of insolvency proceedings against the customer's assets will entitle us to withdraw from the contract with immediate effect and to demand the immediate return of the goods supplied.

(8) We shall undertake to release the securities owing to us, on the customer's request, insofar as their value exceeds the value of the secured claims by more than 20%, insofar as these claims have not yet been settled.

§ 7 Rights of the Customer in the Event of Defects

(1) The customer is only entitled to assert claims for rectification of defects if he has previously complied with his own obligations under § 377 HGB [*Handelsgesetzbuch* – German Commercial Code] to inspect the goods and make a complaint in respect of any defects immediately and in writing.

(2) In the event that the goods supplied have not inconsiderable defects, then the customer is entitled to rectification of defects or to a replacement (rectification), at our own option. If one or both forms of rectification of defects prove to be impossible or unreasonable, then we are entitled to refuse. We have the right within the scope of our warranty obligations to repair defective goods twice or to exchange them. The customer will grant us the necessary time and opportunity to carry out the rectifications as required.

(3) All descriptions given in catalogues, brochures, circulars, advertisements, illustrations and comparable public advertising as well as on the internet regarding performance, size, weight, etc. are non-binding unless they are expressly included in the contract in writing.

(4) If the rectification of defects referred to in item 2 above is impossible or fails, the customer is entitled to choose whether he wishes to reduce the sales price accordingly (abatement) or to rescind from the contract in accordance with the statutory regulations (rescission); this applies in particular in the event of any culpable delay or refusal to rectify the defects, likewise when the rectification fails for the second time. However, the customer is not entitled to withdraw from the contract for immaterial infringements of the contract, in particular if the defects are insignificant.

(5) If the customer chooses to withdraw from the contract due to a material defect or defect of title after attempts at rectification have failed, the customer shall not be additionally entitled to demand compensation for damages.

(6) The customer is not entitled to claim any other compensation for damages (incl. for any consequential losses), notwithstanding the regulations given in the paragraphs below.

(7) All claims for rectification, compensation for damages and substitution become time-barred one year after delivery of the goods.

(8) The above regulations also apply when other goods are supplied or the goods are supplied in smaller amounts.

§ 8 Liability

(1) We are liable without limitation according to the statutory regulations on warranty of title and in the event of accepting a guarantee for the properties and conditions of the goods as well as for damages resulting from wilful intent or gross negligence, also on the part of our legal representative or senior executives.

(2) In the event of slight negligence we shall be liable without limitation for damages to life, limb and health.

In other respects we shall only be liable for slight negligence if this violates an obligation, the fulfilment of which is necessary for the correct implementation of the contract and the violation of which would jeopardise the ability to achieve the intent of the contract if the customer can routinely expect that the obligation is complied with (cardinal obligation). In the event of a violation of a cardinal obligation our liability shall be limited to foreseeable losses typical for this type of contract.

(3) The customer is not entitled to any claims for compensation for consequential damages unless this conflicts with compulsory legal regulations regarding liability for intent or gross negligence.

(4) If or insofar as any liability on our part as outlined in the above two paragraphs is excluded or limited, we shall also not be liable for our legal representatives and vicarious agents.

(5) The above-listed limitations of liability do not affect the customer's claims arising from product liability. The exclusion of liability does not apply when we have guaranteed the properties and condition of a product.

(6) Claims of the customer for compensation for useless expenditures pursuant to § 284 BGB [*Bürgerliches Gesetzbuch* – German Civil Code] are excluded.

(7) Claims arising from recourse against the manufacturer are not affected by this § 8.

§ 9 Final Clause

(1) Exclusive venue for all disputes arising from this business connection shall be – where legally permissible – the District Court München I, Munich.

(2) The law of the Federal Republic of Germany applies. The provisions of the UN Convention on Contracts for the International Sale of Goods are excluded.

(3) The customer is responsible for complying with the regulations on foreign trade.

(4) The customer is only permitted to assign the rights arising from his business connection with us after receiving our written permission.

(5) If one or more of the provisions in these General Terms and Conditions of Business or of the agreement should be or become invalid, this will not affect the validity of the remaining provisions. The invalid provision(s) will be replaced by a ruling which is as close as possible to the economic purpose of agreement and most nearly corresponds to the will of the contracting parties.