

## General Terms and Conditions of ALBILEX GmbH & CO. KG

### 1. Scope of Application

- 1.1 The following Terms and Conditions (hereinafter "ALBILEX Terms and Conditions") are expressly limited to the deliveries and services of ALBILEX GmbH & Co. KG (hereinafter "ALBILEX") to businesses and legal entities (hereinafter "Purchaser") unless expressly agreed upon otherwise by the Parties in writing. The acceptance of ALBILEX's deliveries and services shall be deemed as an acknowledgement of the ALBILEX Terms and Conditions, regardless any prior objections of the Purchaser.
- 1.2 Any Terms and Conditions or purchase policies of the Purchaser shall be deemed inapplicable. This is also the case if the Purchaser refers to such Terms and Conditions or purchase policies in a letter of confirmation. Any performance of deliveries and services by ALBILEX does not constitute an acknowledgement of Terms and Conditions or purchase policies of the Purchaser.
- 1.3 The ALBILEX Terms and Conditions shall also apply to any future business of the Purchaser with ALBILEX, and this does not require any other express reference to the ALBILEX Terms and Conditions.

### 2. Conclusion of a Contract

The conclusion of the contract shall be accomplished by the confirmation of the Purchaser's order by ALBILEX under the stipulations stated therein as well as the ALBILEX Terms and Conditions. By way of submitting the Purchaser's order, the Purchaser declares that he/she agrees with the ALBILEX Terms and Conditions. Any deviations from the Terms and Conditions shall only bind ALBILEX if this has expressly been confirmed by ALBILEX in writing.

### 3. Goods to be Delivered, Condition of the Goods

- 3.1 A final description of the owed condition of the goods is given in the confirmation of the order by ALBILEX. ALBILEX owes no additional condition or quality of the goods.
- 3.2 ALBILEX grants no guarantee (*Garantie*) in regard to delivery items unless this is expressly agreed upon in written form in the confirmation of the order under the term "guarantee" or "*Garantie*".
- 3.3 It is the Purchaser's obligation to verify whether the delivery items are suitable for his business and the planned purpose.

### 4. Purchase Price

- 4.1 ALBILEX prices shall apply ex works Usingen unless expressly stipulated otherwise. Statutory VAT as well as shipment and possible insurance will be charged separately and additionally.
- 4.2 Any taxes and tariffs shall be borne by the Purchaser. These are not included in the price.

### 5. Payment

- 5.1 Payment is to be made within 10 (ten) days following receipt of invoice without any deduction and free of charge and expense to the bank account stated by ALBILEX in the invoice, unless otherwise stipulated in the confirmation of the order by ALBILEX.
- 5.2 Should the Purchaser fail wholly or partially to pay the purchase price for the delivery items within the period stipulated in clause 5.1, he/she gets into arrears without any further notice by ALBILEX.
- 5.3 In case of Purchaser's arrears, ALBILEX shall be entitled to claim interest on these arrears at a rate of 9% p.a. over the current basic interest rate of the European Central Bank. This shall not inhibit any further statutory rights of ALBILEX.
- 5.4 In case several claims are outstanding, payments will be charged to the respective oldest claim including incidental expenses and interests, unless expressly stipulated otherwise by ALBILEX.
- 5.5 During the term of the Purchaser's arrears, ALBILEX shall not be obliged to further effect deliveries already agreed upon, but shall be entitled to request an advance payment for any outstanding deliveries in the amount of the total outstanding purchase price.

- 5.6 Should ALBILEX have reasonable doubts as to the Purchaser's solvency or his/her willingness to pay, in particular on the grounds of non-fulfillment of payment obligations or a subsequent deterioration of his/her economic position, ALBILEX shall be granted the right to make any claim immediately due and payable, and to request the Purchaser to effect an advance or security payment in the amount of the purchase price.

## **6. Delivery**

- 6.1 Delivery periods and dates shall only be binding if these have expressly been stipulated as binding in written form in the confirmation of the order. Any delivery periods and dates shall be subject to ALBILEX being supplied in time itself, unless ALBILEX can be held liable for not having made a respective cover purchase or is in any other way responsible for the lack of delivery to itself. Delivery periods and dates refer to the dispatch date of the goods ex works ALBILEX in Usingen.
- 6.2 Should delivery be delayed due to reasons ALBILEX cannot be made liable for, in particular in cases of Force Majeure, ALBILEX delivery periods and dates shall be extended or delayed according to the duration of the impediment. Events of Force Majeure shall in particular be shortage of energy and resources, industrial action, government orders or distribution and operation interruptions. Should the delay exceed the delivery periods and dates originally stipulated as binding for more than 60 (sixty) days, both, ALBILEX and the Purchaser shall have the right to withdraw from the contract. In this case, the Purchaser shall be excluded from his/her right to claim damages.
- 6.3 Should the delivery be delayed due to reasons ALBILEX can be made liable for, the Purchaser shall be obliged to request ALBILEX in writing to effect delivery within a reasonable period of at least 4 (four) weeks. Thus, ALBILEX is put in default.
- 6.4 In case such a delivery period or date was stipulated to be non-binding, the Purchaser shall only be entitled to give the above mentioned notice at the earliest 4 (four) weeks after transgression of the non-binding delivery period or date.
- 6.5 The Purchaser shall only be entitled to claim damages for default in delivery pursuant to clause 6.3 above subject to the provisions under clause 11 below.
- 6.6 The goods delivered shall be received and temporarily stored by the Purchaser even in case they show minor defect. This shall not affect the Purchaser's warranty rights pursuant to clause 10 below.
- 6.7 Partial deliveries by ALBILEX shall be admissible unless they are not reasonably justifiable towards the Purchaser and under consideration of the parties' interest.

## **7. Shipment and Packing**

- 7.1 Unless otherwise expressly stipulated in writing, shipment shall be made at the expense of the Purchaser.
- 7.2 The Purchaser's shipment requirements shall only be deemed binding for ALBILEX if they were expressly acknowledged by ALBILEX in writing.
- 7.3 Unless any particular packaging was expressly agreed upon by the parties in writing, ALBILEX decides on reasonable packing and shipment at its sole discretion. With particular regard to hazardous materials ALBILEX is obliged to comply with administrative and statutory requirements.

## **8. Passing of Risk**

- 8.1 The risk shall pass to the Purchaser at the time of submission of the goods to the forwarding agent, freight carrier or other executing person.
- 8.2 Should the Purchaser delay payment of the purchase price or acceptance of the goods to be delivered, he/she is to fetch the goods from ALBILEX's premises. Risk will be passed to the Purchaser at the time of ALBILEX's notice of making the goods available for transport on ALBILEX's premises.

## 9. Extended Retention of Title, Securities

- 9.1 ALBILEX retains the title to all goods ordered by the Purchaser (hereinafter "Conditional Commodity") until the purchase price has been settled in full (Retention of Title).
- 9.2 The Purchaser herewith assigns any claims (including any ancillary rights and securities) which arise, regardless the legal reason, in the context of the sale or disposal of the Conditional Commodity to ALBILEX in advance. Should the Conditional Commodity be sold combined with other goods for a total price, the cession shall be limited to the invoice value of the Conditional Commodity including VAT. Insurance claims as well as claims for damages the Purchaser acquires due to loss or damage of the Conditional Commodity are likewise assigned to ALBILEX herewith.
- 9.3 ALBILEX hereby accepts cessions pursuant to clause 9.2 above.
- 9.4 The Purchaser is obliged to insure Conditional Commodity sufficiently at his/her own expense against the risk of fire, water, and theft. The Purchaser shall be obliged to prove his/her insurance coverage on ALBILEX's request.
- 9.5 The Purchaser shall be entitled to sell the Conditional Commodity within the ordinary course of business and to collect the claim assigned to ALBILEX. The Purchaser shall be obliged to keep the Conditional Commodity clear of third party rights, in particular it is not to be used as pledge or assigned by way of security. Should the Purchaser sell the Conditional Commodity, he/she shall be obliged to retain ownership for himself/herself until the purchase price for the Conditional Commodity is fully paid.
- 9.6 The Purchaser shall be obliged to immediately give ALBILEX written notice if the Conditional Commodity suffers any damage or is affected by third party measures (e.g. by way of a pledge or enforcement measures). In case of a pledge, the Purchaser shall immediately inform the pledging creditor of MEKATEM's ownership and forward ALBILEX a copy of the sheriff's return (*Pfändungsprotokoll*) as well as any other documents required for action in opposition to the execution of the pledge order by ALBILEX (*Drittwiderspruchsklage*). The Purchaser shall bear all costs in connection with such action.
- 9.7 On ALBILEX's request, the Purchaser will give any information requested in regard to ALBILEX's securities and issue ALBILEX an assignment deed on the claims assigned, as customary in banking.
- 9.8 The Purchaser's right in the ordinary course of business to sell the Conditional Commodity or to call in claims assigned as securities shall not apply, if the Purchaser gets in arrears or no longer duly fulfills his/her obligations arising from the business relationship in spite of ALBILEX's reminder. Furthermore, ALBILEX shall be entitled to revoke this right at any time, if serious doubts in regard to the Purchaser's creditworthiness exist or grow stronger.
- 9.9 After the revocation or elimination of the Purchaser's right ALBILEX shall be entitled to exploit the Conditional Commodity at its reasonable discretion and in its own or the Purchaser's name. ALBILEX may exercise the exploitation itself. Furthermore, in this case ALBILEX shall be entitled to collect assigned claims itself.
- 9.10 The returns from the exploitation and the collection of securities less charges and any VAT liabilities will be set against the Purchaser's liabilities at ALBILEX's choice. Any surplus will remain with the Purchaser.

## 10. Purchaser's Warranty Rights

- 10.1 ALBILEX warrants the Purchaser that the goods delivered are in accordance with the conditions agreed upon pursuant to clause 3 above at the time of passing of risk.
- 10.2 Should any defect to the delivered goods occur, ALBILEX shall be entitled to either remedy the defect or to provide a substitute. In order to do so, the Purchaser shall be obliged to grant ALBILEX a reasonable period of at least 4 (four) weeks in his/her notification of defect after its receipt. In case such a remedy or substitute delivery is unsuccessful, ALBILEX shall be entitled to make one further attempt to remedy the defect or provide a substitute delivery within 2 (two) weeks after receipt of the Purchaser's written notice of the failure of the first remedy or substitute delivery. Should this second attempt also fail, the Purchaser shall be entitled to claim for a reduction of the purchase price (*Minderung*) or to rescind the contract (*Rücktritt*) in case of a substantial defect.

- 10.3 The Purchaser's warranty rights may only be exercised, if he/she examines the delivered goods immediately after delivery and, should any obvious defect have occurred, gives ALBILEX written notice of this defect immediately by comment in the delivery slip, or, at the latest, within 7 (seven) days of the passing of risk. In case the defect was not obvious and could not be detected when duly examining the goods at the time of delivery, the Purchaser may only exercise his/her warranty rights if he/she gives ALBILEX written notice of this defect within 7 (seven) days after detection. Should the Purchaser fail to examine the goods delivered or fail to give notice of the defect within the above mentioned period, any warranty right of the Purchaser shall be excluded.
- 10.4 Should the Purchaser rescind the contract the consumption of the delivered goods and the non-utilization of the goods' fruits are to be taken into account respectively.
- 10.5 ALBILEX shall not be held liable for any defect caused to the delivered goods or other goods due to inadequate or improper use, incorrect and careless handling, non-compliance with the safety data sheet provided by ALBILEX, inadequate operating media or changes made by the Purchaser or a third party without prior permission by ALBILEX.
- 10.6 The warranty period shall be 1 (one) year from the passing of risk.

### **11. ALBILEX's liability**

- 11.1 ALBILEX shall be held fully liable for any damages caused by intent or gross negligence.
- 11.2 In case of injury to an essential contractual obligation due to regular or slight negligence by a legal representative or vicarious agent (*Erfüllungsgehilfe*), ALBILEX's liability is limited to the damage which is typically foreseeable in such a case. Any further liability due to regular or slight negligence is excluded.
- 11.3 Deviating from clause 11.2 above ALBILEX shall be held fully liable for all damages to life, health or the bodily integrity caused by intent or the negligent breach of a duty or intent or the negligent breach of a duty by a legal representative or vicarious agent (*Erfüllungsgehilfe*) of ALBILEX.
- 11.4 As far as the clauses above limit ALBILEX's liability this limitation also applies to the liability of ALBILEX's bodies, personnel, freelancers, employees, legal representatives and vicarious agents (*Erfüllungsgehilfe*).
- 11.5 ALBILEX does not take any responsibility for any damage the objects to be cleaned and/or disinfected or Purchaser's personnel or vicarious agent (*Erfüllungsgehilfe*) suffered due to inadequate or improper use, incorrect and careless handling, non-compliance with the safety data sheet provided by ALBILEX as well as inadequate operating media.
- 11.6 All compensation claims, with exception to those under clauses 11.1 and 11.3 above, shall become time-barred after the period of 2 (two) years, as far as they have not already expired under the provision of clause 10.6 above. The limitation period shall begin with the completion of the year in which the claim arose. The statutory limitation period shall apply for claims under clauses 11.1 and 11.3 above.
- 11.7 The statutory liability under the provisions of the *Produkthaftungsgesetz* remains unchanged.

### **12. Retention, Set-off, Assignment**

- 12.1 The Purchaser is only entitled to set off against ALBILEX any unchallenged claim or any claim recognized by declaratory judgement. This shall also apply if the Purchaser asserts his/her right to refuse performance, or his/her right of retention.
- 12.2 The Purchaser shall only be entitled to assign this contract, or any particular claims arising from it, to a third party with the express written agreement of ALBILEX.

### **13. Invalidity of Certain Provisions**

The invalidity of any provision of these Terms and Conditions or their impracticability shall not affect the validity of the remaining provisions.

**14. Amendments**

Any amendment to these Terms and Conditions or any other contractual agreements of the parties must expressly be made in written form in order to be valid. This shall also apply to agreements to overrule or relieve this formal requirement.

**15. Place of Fulfillment and Jurisdiction**

- 15.1 Place of fulfillment for any obligation arising from any business relationship of the parties is Usingen.
- 15.2 Place of jurisdiction for any legal action taken under these Terms and Conditions or in their context shall be Frankfurt am Main.

**16. Applicable Law**

The legal relationship of the parties shall be governed solely by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not be applicable.

Usingen, August 2015