

**General Terms and Conditions of Delivery and Services ("GTC") as of 01.07.2019 by:**

**Alba tooling & engineering GmbH, Forstau, Austria;**

**Alba tooling & engineering GmbH, Bissendorf, Germany;**

**Alba MMB GmbH, Vilsbiburg, Germany;**

**Alba tooling & engineering s.r.o., Surany, Slovakia;**

**Alba tooling & engineering d.o.o., Slovenj Gradec, Slovenia;**

**hereinafter collectively referred to as "Alba."**

## **1. Scope of Application**

**1.1** These General Terms and Conditions (GTC) apply to all business relationships of Alba and serve as the basis for offers, deliveries, payments, legal acts, legal transactions, and other services provided by Alba, particularly the delivery of goods and services. These GTC apply to all current and future business relationships with the customer, even if they are not specifically referenced in individual cases.

**1.2** Any deviating terms and conditions of the customer shall not be binding on Alba, even if Alba does not explicitly reject them upon the conclusion of the contract, and they shall only apply to the extent that Alba has expressly agreed to them in writing. In the event of contradictions in the contractual foundations, the following order of precedence applies: (i) Any special agreements, provided they have been confirmed in writing by Alba; (ii) these GTC of Alba (as well as the terms referred to in these GTC); (iii) statutory provisions, but not contractual norms (e.g., ÖNORM standards). Assembly and installation of machinery will only be carried out by Alba upon special written agreement and exclusively in accordance with the special assembly conditions of the Austrian Association of the Machinery and Steel Construction Industry in their current version.

**1.3** These GTC are designed for legal transactions between businesses. If, in exceptional cases, the GTC are applied to legal transactions with consumers, they shall only apply to the extent that they do not contradict the provisions of the first main section of the Austrian Consumer Protection Act (KSchG).

## **2. Conclusion of Contract - Contract Content**

**2.1** Offers from Alba are non-binding and should be understood merely as an invitation for the customer to place an order. The customer's order is considered an offer to Alba. The contract is concluded upon

acceptance of the offer (the order) by Alba.

**2.2** Customer orders are binding for the customer once they have been received by Alba. Alba may accept the order within a period of two weeks (binding period) through a written order confirmation. Actual performance or silence from Alba does not constitute acceptance.

**2.3** The order confirmation contains the final description of the services to be provided by Alba, particularly the technical and commercial details as well as the application and safety regulations. Changes and additions to the content of the order confirmation require written form to be valid. Information in catalogs, brochures, circulars, price lists, etc., is only binding if explicitly referenced in the order confirmation. Alba reserves the right, at its discretion, to only partially accept or fulfill customer orders if the service is divisible; in such cases, the order is only valid to the extent of the portion of the service accepted by Alba, and the customer shall have no claims arising from the non-acceptance of the remaining portion.

**2.4** Alba reserves the right to make design changes and other modifications to technical data and performance features even after the order has been concluded, provided these changes serve technical advancements.

### **3. Prices - Costs**

**3.1** The prices quoted by Alba are ex works (EXW) in EURO, excluding statutory VAT and other taxes at the applicable legal rate. Packaging is not included in the price.

**3.2** If the customer places an order that deviates from Alba's non-binding (total) offer, Alba reserves the right to adjust the price accordingly. The prices are based on the production costs (material prices, wages, general overhead, etc.) at the time of the order confirmation. Even after the contract has been concluded, Alba is entitled to pass on any increases in production costs as well as increased or newly introduced fees and taxes to the customer.

**3.3** Packaging will only be taken back upon explicit agreement unless otherwise required by law.

### **4. Invoicing - Payment Terms**

**4.1** Alba is entitled, at its discretion, to issue partial or advance invoices. Unless specific payment terms have been agreed upon in individual cases, the following shall apply: For deliveries (including deliveries of works), 30% of the price is due upon receipt of the order confirmation, with the remaining 70% due upon delivery. If the customer refuses to accept the delivery, the invoice becomes due for payment 14 days after Alba announces the readiness for shipment. For works, 30% of the price is due upon receipt of the order confirmation, with the remaining 70% due upon completion of the work. If the customer unjustifiably refuses to accept the work, the invoice becomes due for payment 4 weeks after Alba announces the completion of the work. In the event of late payment, Alba is entitled to charge default

interest at a rate of 9.2 percentage points above the base interest rate and to claim dunning fees of EUR 40 per reminder.

**4.2** The customer is not entitled to assert rights of retention or other rights to refuse performance or to offset counterclaims, except for claims expressly acknowledged in writing by Alba or determined by a final court judgment.

**4.3** Alba is entitled, regardless of any contrary provisions or designations by the customer, to apply payments to outstanding claims against the customer at its discretion.

**4.4** If the customer is in default with an agreed payment or other performance, Alba may, at its discretion and without prejudice to other rights, (i) refuse to fulfill its own obligations until the overdue payments or other performances are made, (ii) declare the entire remaining purchase price due immediately (loss of payment term), or (iii) withdraw from the contract after setting a reasonable grace period.

**4.5** If facts become known to Alba after the conclusion of the contract, particularly the customer's default on payment for previous deliveries, that reasonably suggest that the payment claim is at risk due to the customer's lack of performance capability, Alba is entitled to declare the entire remaining purchase price due (loss of payment term) and refuse to perform its own services until full payment is made.

## **5. Delivery – Risk Bearing**

**5.1** Deliveries (including work deliveries) are carried out – unless otherwise agreed – from Alba's premises/warehouse (EXW). For deliveries from the premises/warehouse, the delivery is considered fulfilled upon handover on the date specified by Alba. The customer is required to inspect and accept the goods immediately after handover. If the customer explicitly or implicitly waives the inspection of the goods, the delivery is deemed properly made and accepted once it leaves Alba's premises/warehouse. The goods are also considered properly delivered and accepted if Alba has declared the goods ready for dispatch and the customer refuses to accept the goods without justified reason. The goods are always transported at the customer's expense and risk, regardless of the agreed pricing for the delivery. Unless otherwise agreed, Alba is not obligated to insure the goods or the transport of the goods. This applies even if the transport is carried out or organized and/or managed by Alba. In the case of delayed departure from the premises/warehouse due to circumstances beyond Alba's control, the risk passes to the customer with the aforementioned delivery date.

**5.2** Work services are considered fulfilled with the acceptance on site or the announcement of completion. Once Alba announces completion to the customer, the customer has – if an acceptance inspection has been agreed – 4 weeks to accept the work service. After the expiry of these 4 weeks, the service is deemed to have been properly performed.

**5.3** An acceptance inspection must be agreed in writing at the time of contract conclusion. If no deviating regulations are made, the acceptance inspection is to be carried out at the place of manufacture or at a location determined by Alba during Alba's normal working hours. The general practice of the relevant industry for the acceptance inspection is decisive. Alba must inform the customer of the acceptance inspection in good time so that the customer can be present at the inspection or be represented by an authorized representative. After an acceptance inspection, a protocol of the acceptance must be drawn up. If the acceptance inspection shows that the performance meets the contractual requirements and functions properly, this must be confirmed by both parties. The customer is responsible for bearing the costs incurred by them or their authorized representative in connection with the acceptance inspection, such as travel, living expenses, and compensation for expenses.

**5.3** The risk for a (partial) performance passes to the customer at the time of its provision (fulfillment). The customer is obliged to accept the performance delivered or ready for acceptance in accordance with the contract immediately; otherwise, the delivery or performance is considered to have been made on the day on which acceptance or approval by the customer should have taken place in accordance with the contract; from this point in time, the risk of accidental loss and/or deterioration passes to the customer. The same applies in the event of a breach of cooperation obligations by the customer and the resulting consequences.

**5.4** Otherwise, the INCOTERMS in the version valid on the date of the contract conclusion apply.

**5.5** The customer is responsible for obtaining any official and possibly required third-party permits in a timely manner and at their own expense. This particularly applies to import and/or export licenses or foreign exchange permits or similar permits.

**5.6** Alba is entitled to make partial and/or preliminary deliveries. Alba may unilaterally postpone or suspend performance of the contract, especially if (i) there are outstanding claims against the customer or (ii) if the economic conditions as per point 4.5 change so that Alba's claims no longer appear adequately secured, or (iii) if proper and/or timely acceptance by the customer is not ensured. The customer will have no claims of any kind as a result. Alba is also entitled to make the provision of performance dependent on sufficient security from the customer or an appropriate advance payment.

**5.7** Delivery dates as per point 5.1 are non-binding unless explicitly agreed as fixed. Delivery deadlines begin at the earliest with the date of fulfillment of all technical, commercial, and/or other requirements

to be fulfilled by the customer (e.g., advance payment, deposit, or security, any required permits). Fixed delivery deadlines only apply if unforeseeable or independent circumstances, such as cases of force majeure, hinder, delay, or make compliance impossible; regardless of the sphere in which such circumstances occur or whether they are an external or internal event. These circumstances also include war, armed conflicts, official interventions and prohibitions, transport/customs delays, transport damage, energy/raw material shortages, lack of materials, labor disputes (e.g., lockouts or strikes), as well as the failure or refusal to deliver by a key supplier. These circumstances also entitle to an appropriate extension of the delivery deadline (at least for the duration of the hindrance), even if they occur at the supplier. Such circumstances also entitle Alba, at its option, to withdraw from the contract or to adjust the performance object accordingly.

**5.8** In the event of a delay in acceptance by the customer, Alba may store the goods at the customer's expense. Delivery is considered to have been made and accepted from the moment of the delay in acceptance. Market-standard storage costs are considered agreed upon; in the case of third-party storage, the customer must cover the actual storage costs. The agreed payment terms remain unchanged. Any additional claims by Alba remain reserved.

## **6. Retention of Title**

**6.1** The goods from Alba remain the sole property of Alba (retained goods) until all claims of Alba against the customer from the respective order have been fulfilled, even if individual parts have already been paid for. Until that time, the customer is only authorized to resell, process, or otherwise use the retained goods in the ordinary course of business, subject to revocation by Alba. Pledging, transferring as security, leasing, or any other transfer of the retained goods is only permitted with Alba's prior written consent.

**6.2** In the event of the resale of the retained goods, the customer hereby assigns to Alba – until the settlement of Alba's claims – any claims arising from the resale, including future claims against their customer/client, as security. The assignment also extends to balance claims arising from existing current accounts or upon termination of such relationships between the customer and their customers/clients. If the retained goods are resold together with other items without a separate price being agreed for the retained goods, the customer assigns to Alba, with priority over other claims, that portion of the total claim corresponding to the invoice amount of the retained goods. The customer is authorized to collect the assigned claims from the resale until revoked; however, the customer is not entitled to otherwise dispose of these claims. Upon Alba's request, the customer must notify their customer/client of the assignment and provide Alba with the necessary documents to enforce its rights against the customer/client, as well as provide all necessary information. The customer bears all costs of collection and any interventions. In any case, the customer must make a corresponding note of the assignment in their books and on their invoices.

**6.3** If retained goods are processed by the customer into a new movable item, this is done for Alba's benefit without Alba being obligated thereby. The new item transfers to Alba's ownership at the time of processing in proportion to the value of the retained goods to the other goods.

**6.4** If the customer defaults on their payment obligations in whole or in part, is over-indebted or has stopped payments, or if an insolvency application is filed or insolvency proceedings are opened, Alba is entitled to immediately take back all goods still subject to retention of title; Alba may also assert further rights from the retention of title immediately; the same applies if the customer's economic conditions change as per point 4.5.

**6.5** In the case of third-party seizure or other third-party access to the retained goods, the customer must immediately notify in writing. Furthermore, the customer is obliged to immediately point out Alba's ownership rights and assert Alba's ownership at their own expense and to indemnify and hold Alba harmless regarding all costs for maintaining and defending the ownership.

**6.6** During the period of retention of title, the customer must handle the retained goods with care, keep them in proper condition, insure them for their full value against all risks, including fire, and endorse the insurance policies in favor of Alba.

## **7. Warranty**

**7.1** Unless otherwise agreed (particularly in these General Terms and Conditions), the statutory warranty provisions apply.

**7.2** Alba warrants against defects that impair usability and are based on a defect in design, material, or workmanship, as well as assured properties. Assured properties are only those explicitly specified or guaranteed in writing by Alba. No warranty claims (or other claims) can be derived from product descriptions by Alba (or a third party), including (but not limited to) information in catalogs, brochures, advertising materials, written and/or oral statements, etc., which have not become an explicit part of the contract. If goods are manufactured by Alba according to the customer's specifications, Alba's warranty only extends to the contractual implementation of the specification.

**7.3** The warranty period ends after six months unless different warranty periods are agreed for individual goods. The warranty period begins with the delivery or, in the case of other services not consisting of goods, with the completion (delivery) of the service.

**7.4** A warranty claim requires that the customer immediately, but no later than within five days, notify Alba in writing of the defects, including the nature and extent of the defects (defect notification). Defects that can be detected during a careful inspection or test runs must be reported at the time of inspection or immediately after the test run. If a defect notification is not made or not made in a timely manner, the service is considered to be in accordance with the contract, and the customer loses all claims, particularly warranty and damages claims. Hidden defects can only be claimed within a reasonable period, especially depending on the type of service; the above notification obligations apply accordingly. The customer must provide Alba with the opportunity to inspect the complaint, otherwise, claims may be lost. If the inspection of a defect notification reveals that no warranty case exists, Alba is entitled to demand compensation for all expenses. Costs for inspection and attempted or performed defect rectification will be charged by Alba at actual costs. If Alba rejects the defect notification in writing, the customer must assert their warranty claim in court within six months, otherwise, any warranty claims are lost.

**7.5** The customer must prove that the defect was present at the time of delivery. The application of §§ 924, 933b ABGB (Austrian General Civil Code) is excluded.

**7.6** Subject to mandatory legal provisions, Alba reserves the right to fulfill the warranty claim by choice through repair, replacement, or price reduction. For repair or replacement, the customer must provide Alba with the necessary time and opportunity within a reasonable scope. If the customer refuses this or unduly shortens this time, Alba is released from the warranty and defect rectification.

**7.7** Replacement by the customer is only permissible if Alba has been requested to remedy the defects and Alba does not take any action (repair/replacement/price reduction) within 4 weeks.

**7.8** Defect notifications will only be considered (except for hidden defects) if the service is still in the condition at the time of delivery. Warranty and any other liability, regardless of the legal grounds, are excluded for defects caused by negligent, improper, careless, or incorrect handling or use, non-compliance with descriptions and specifications, or circumstances beyond normal operating conditions. Alba does not warrant damages resulting from unsuitable or improper use, faulty assembly, commissioning, or repair of the performance object by the customer without Alba's written consent. The

same applies to defective or careless handling, use of unsuitable operating materials or replacement materials, or chemical, electrochemical, or electrical influences. The same applies to repair orders or modifications or alterations to old or third-party goods, as well as for the delivery of used goods. For goods sourced by Alba from a subcontractor specified by the customer, Alba is only liable within the scope of claims it has against the subcontractor. This also applies to defects resulting from materials supplied by the customer.

**7.9** The warranty claim expires if the customer makes modifications to the delivered goods without Alba's written consent or if a third party not explicitly authorized by Alba makes modifications. Remedying defects under warranty or through attempts at improvement does not extend the originally agreed warranty period.

## **8. Other Liability**

**8.1** Subject to differing provisions in these General Terms and Conditions, Alba is only liable for property damage arising during the performance of the contract, outside the mandatory application of the Product Liability Act (PHG), if intent or gross negligence can be proven against Alba or its agents. Alba's liability for minor negligence, loss of profit, (direct and indirect) consequential damages, and financial losses, including unachieved savings, interest losses, and damages from third-party claims against the customer, is excluded.

**8.2** In all cases of Alba's liability (also under the other provisions of these General Terms and Conditions), the customer must prove Alba's culpability. The applicability of § 1298 sentence 2 of the Austrian General Civil Code (ABGB) is explicitly excluded.

**8.3** Alba assumes no protective duty towards the actual user of the goods supplied by Alba; Alba's contractual intent is not directed at entering into agreements with protective effect for third parties within the framework of the contract concluded with the customer.

**8.4** Should the customer be held liable under the Product Liability Act, the customer hereby expressly waives any recourse against Alba pursuant to § 12 PHG. If the customer markets the goods supplied by Alba outside the European Economic Area, they undertake to exclude the liability according to the Product Liability Act with respect to their buyer, provided this is possible under the applicable laws of the buyer's country. In the event of failure to meet this obligation, the customer must indemnify and hold Alba harmless against all kinds of third-party claims based on product liability.

**8.5** Limitations of any kind on the obligations of the customer under the Product Liability Act and any limitations on Alba's claims for compensation under this Act or other provisions are not recognized.

**8.6** In the event of non-compliance with any conditions (such as operating instructions) for use and utilization or with official approval conditions, any claim for damages and any other liability of Alba is excluded. If a good or a component is manufactured based on customer specifications, the customer assumes the risk of the accuracy of the specification and liability for all damages and patent-related consequences.

**8.7** Claims for damages by the customer are subject to a one-year statute of limitations from the knowledge of the damage and the injuring party.

## **9. (Other) Withdrawal from the Contract**

**9.1** The customer is entitled to withdraw from the contract only in the event of a delivery delay attributable to Alba's gross negligence and after the expiry of a reasonable grace period of at least four weeks, expressly threatening withdrawal. The withdrawal must be made by registered letter.

**9.2** Alba is entitled to withdraw from the contract without setting a grace period, notwithstanding other provisions of these General Terms and Conditions and its additional rights, if insolvency proceedings are opened against the customer's assets or an application for the initiation of insolvency proceedings is rejected due to insufficient assets. Alba may also withdraw from the contract if (i) there are outstanding claims against the customer, or (ii) if the economic conditions change according to Section 4.5, so that Alba's claims no longer appear adequately secured, or (iii) if the proper and/or timely acceptance by the customer is not ensured. The customer shall have no claims of any kind arising therefrom.

**9.3** Alba's withdrawal may, in any case, also apply only to an open part of the performance already provided or to be provided by Alba.

**9.4** In the event of a change of ownership or a change in the customer's shareholding structure, Alba is granted the right to withdraw from contracts with the customer within a period of 3 (three) months from

the time of becoming aware of the change.

**9.5** Without prejudice to any further rights and claims of Alba, in the event of withdrawal, already performed services or partial services must be invoiced and paid for as per the contract. This also applies if the delivery or service has not yet been accepted by the customer and to preparatory actions performed by Alba. Instead, Alba also has the right to demand the return of delivered items.

## **10. Intellectual Property Rights**

**10.1** If a performance by Alba is based on plans, sketches, construction details, drawings, or other specifications from the customer, the customer must fully indemnify and hold Alba harmless from any infringement of intellectual property rights. Any legal costs incurred by Alba must be reasonably advanced by the customer.

**10.2** Documents from Alba such as plans, sketches, drawings, drafts, graphics, designs, layouts, images, models, descriptions, usage instructions, as well as samples, catalogs, brochures, illustrations, etc., remain the intellectual property of Alba (or any other author). They are subject to relevant legal provisions regarding reproduction, imitation, competition, etc. Documents provided by Alba to the customer remain the property of the author and may not be reproduced, used in any way, or made accessible to third parties without Alba's consent. They must be returned upon request.

**10.3** All material and immaterial rights to the contractual subject matter, including intellectual property, comprehensive copyright with all rights to all documents and information provided during the course of contract negotiation and execution (including warranty, maintenance, and support), remain solely with Alba. This applies even if these items were created based on requirements and/or contributions from the customer, and regardless of whether a contract between Alba and the customer is concluded. The customer cannot derive any exclusive rights from these items.

**10.4** The customer must not remove, alter, cover, or otherwise obscure any references to Alba's copyright, trademark, or other intellectual property rights on the goods. The customer is only permitted to translate accompanying documentation for commercial purposes with Alba's prior consent.

**10.5** Alba assumes no liability for any infringement of commercial protection rights or (copyright) rights of third parties by the goods. The customer must promptly inform Alba of any claims made against them

on this basis. If third-party rights conflict with the customer's rights, the customer may withdraw from the contract after a written notice period with a warning of termination, provided Alba does not grant a legally unobjectionable usage possibility within a reasonable period.

**10.6** If goods owned by Alba, on which the customer has any kind of commercial protection or copyright (e.g., labels, designs, packaging, etc.), and Alba is entitled (e.g., due to the exercise of retention of title due to the customer's payment delay) and/or obligated (e.g., to mitigate damages) to exploit these goods, the customer hereby grants irrevocable and free consent for Alba to exploit such goods in any form, in Alba's own name and at its own expense. The customer irrevocably waives any claims against Alba for infringement of their own commercial protection or copyright.

## **11. Export/Import Licenses**

**11.1** Products and know-how supplied by Alba are intended for use and retention in the delivery country agreed upon with the customer. Re-import/export is only permissible with Alba's consent and is subject to the foreign trade regulations of the Republic of Austria or any other agreed delivery country. The customer must independently familiarize themselves with these regulations. Regardless of whether the customer specifies the final destination of the delivered contract products, it is the customer's responsibility to obtain any necessary approvals from the relevant foreign trade authorities before exporting such products.

**11.2** Any further delivery of goods by the customer to third parties, whether or not known to Alba, requires simultaneous transfer of the export license conditions. The customer is liable to Alba for proper compliance with these conditions.

## **12. Place of Performance - Jurisdiction - Applicable Law - Prohibition of Assignment**

**12.1** The place of performance for all services, payments, and deliveries is Alba's registered office, even if delivery takes place at another location as agreed.

**12.2** Austrian substantive law exclusively applies to all legal transactions between Alba and the customer, including those governed by separate delivery agreements and these General Terms and Conditions, with the exception of its conflict-of-laws rules, particularly those of private international law

that refer to the application of foreign law. If Austrian law provides for the application of specific international substantive norms (e.g., the UN Sales Convention), these shall not apply.

**12.3** The competent court at Alba's registered office is agreed upon as the jurisdiction for all disputes arising from or in connection with the legal relationship with Alba. However, Alba is also entitled to sue the customer in any other court that may have jurisdiction under national or international law, particularly at the court where the customer's registered office is located.

**12.4** The provisions in the preceding clauses also apply if disputes arise regarding the formation and/or validity of the order and/or the effectiveness of the jurisdiction agreement.

**12.5** The customer is not entitled to transfer their rights and obligations under the contract to third parties without Alba's prior express written consent; this does not apply to the possible assignment of monetary claims between businesses from business transactions.

### **13. Confidentiality**

The customer is obligated to keep all business and trade secrets of Alba, as well as any information related to the subject matter of the contract, regardless of type or content, strictly confidential. This confidentiality obligation also applies explicitly to all employees of the customer, who must be made aware of this obligation. The customer must take and maintain appropriate measures to ensure compliance with this confidentiality requirement.

### **14. Miscellaneous**

**14.1** The headings of the provisions in these General Terms and Conditions are for organizational purposes only and should not be used to interpret the provisions. Should any provision of these General Terms and Conditions be or become wholly or partially invalid, all other provisions of these General Terms and Conditions shall remain effective. An invalid provision shall be replaced by a valid provision that most closely approximates the content and purpose of the invalid provision.

**14.2** No business development between Alba and the customer, nor any delay or omission in exercising a right, remedy, or recourse granted to Alba under these General Terms and Conditions, shall be

considered a waiver of these rights. Any rights and remedies granted by Alba are cumulative and exist alongside and in addition to any other legally granted rights, remedies, and recourses.

**14.3** The customer is required to notify Alba immediately in writing of any changes to their business address. If such notification is not made, statements to the customer shall be deemed received even if sent to the last known address provided to Alba.

**14.4** In the event of a translation of these General Terms and Conditions into any language other than German, the German version shall be authoritative and binding and shall be used for any interpretation.