

General terms of business, altec ComputerSysteme GmbH

§ 1 Scope

1. Except for an express agreement in writing to the contrary, our deliveries and performances are exclusively effected in accordance with the following rules.
2. General terms of business of the customer that oppose, deviate from or supplement our general terms of business do not become part of the legal relationship between us and the customer unless we expressly agree to them in writing.
3. "Consumer" in the sense of these terms are natural persons, with whom we enter into business relationships, without those persons being engaged in industrial or self-employed activities. "Entrepreneur" in the sense of these terms are natural persons or legal entities or companies possessing legal capacity (e.g. Limited Partnerships), with whom we enter in business relationships, whose actions are part of their industrial or self-employed activities. "Customer" in the sense of these terms are consumers as well as Entrepreneurs.

§ 2 Offer, closing of the contract, prices

1. We offer without engagement. Upon ordering goods the customer declares legally binding his intention to acquire the ordered goods. Any orders, be it oral, in writing or via e-mail or internet, all other agreements as well as oral supplementary agreements and assurances require our written acknowledgement and do not become legally binding without. In case of immediate shipment of the goods the acknowledgement may be supplanted by the shipment of the goods.
2. In case a consumer orders goods by electronic means, we will immediately acknowledge the receipt of the order. The acknowledgement of receipt does not constitute a legally binding acceptance of the order. The acknowledgement of receipt may be combined with our declaration of acceptance of the order. The wording of the contract will be stored by electronic means and be sent to the customer upon his request together with these general terms of business.
3. All specifications given with our offer or with the declaration of acceptance, e.g. descriptions, drawings or pictures, only serve to illustrate the ordered goods and are not legally bindings unless they are expressly declared as binding in writing.
4. Our deliveries and performances are effected upon the basis of the price list current at the time of our acceptance of the order. The prices are given ex works/ex storage facility and include Umsatzsteuer (VAT).
5. As an exception to number 4., our prices are without engagement when business relations with entrepreneurs are concerned. In this case we may base our invoice on the price list current at the date of delivery if the agreed date of delivery is later than three months after the acceptance of the order.

§ 3 [relates to consumer business only]

§ 4 Delivery, Passing of Risk

1. The shipment of goods is effected ex works/ex storage facility unless the collection by the customer is agreed in writing. If the goods are shipped, the actual cost of shipment will be added to the price of the goods.
2. The routing and means of shipment are left to our discretion, according to usual trade practice, unless they are explicitly agreed in writing.
3. In the case of the buyer being an Entrepreneur, the risk of accidental destruction and/or accidental damage of the goods passes to the buyer upon the handing-over of the goods to (a proxy of) the buyer, in the case of shipment with the handing-over of the goods to the forwarding agent, carrier, or any other person or entity appointed to effect the shipment. The goods are shipped insured unless agreed differently in writing. The cost of the insurance will be added to the price of the goods.
4. [relates to consumer business only]
5. Default of the customer with the acceptance of the goods equates to the handing-over. In this case we may store the goods at the customer's cost and risk, and are entitled to invoice the goods immediately even if a later date of payment had originally been agreed upon.

§ 5 Term of Delivery, Rescission of Contract

1. Terms and dates of delivery are not binding unless we expressly declare them obligatory in writing. Terms of delivery start upon the customer's reception of our confirmation note.
2. We reserve the right to withdraw from a contract in whole or in part if our supplier fails to provide the goods properly or in time for reasons beyond our control. In case of labour disputes or other interruptions probable to be disposed of within reasonable time, we are entitled to postpone shipment for the duration of the interruption. In case of Force Majeure or other interruptions beyond our control improbable to be disposed of within reasonable time, we are entitled to postpone shipment for the duration of the interruption or to withdraw from a contract in whole or in part. In any of the aforementioned cases we will immediately inform the customer about the unavailability. As far as we additionally choose to withdraw from a contract, we will immediately refund any payments already effected. The customer may reject part shipments only if he credibly assures that a part fulfillment of the contract is of no interest to him.
3. In case we default the customer may appoint an adequate period of grant and, if we fail to effect shipment during that period, withdraw from the contract.

§ 6 Demonstration of Defect, Warranty

1. Goods received are to be checked by the Entrepreneur immediately upon reception. Obvious defects have to be notified to us immediately, at the latest within a time limit of fourteen days within reception of the goods. After the time limit, any complaints relating to obvious defects are excluded. The sending of the notification within the time limit is sufficient. Supplementary, Art. 377 HGB (German Code of Trade) is applicable for merchants in the sense of German Trade Law.
2. [relates to consumer business only]
3. Small and/or technically unavoidable deviations of quality, colour or shape, as well as those conforming to general trade practice – even from the description of the goods in the offer or from samples –, do not constitute a defect and may not be claimed, except for the deviation being objectively unacceptable to the customer.
4. We are entitled to inspect and check the goods after each claim of defect.
5. For goods delivered to an Entrepreneur, we warrant the lack of manufacturing, material or other defects for twelve months after the passing of risk. Should any defects show within the warranty period, we either fix the defect or replace the defective good by a defect-free one, at our discretion, at no cost to the customer.
6. [relates to consumer business only]
7. The customer has to provide the time and opportunity necessary to effect the measures deemed necessary by us. If our measures to fix the defect or replace the defective good fail twice, or if we are not in a position to effect such measures within an acceptable period, the customer may, at his discretion, demand a reduction of payment according to the rules of the BGB (German Civil Code) or withdraw from the contract. The right to withdraw, however, is not constituted by negligible contravention.

§ 7 Liability

1. If the customer opts for a withdrawal from the contract after a failure of our measures to fix the defect or replace the goods, he is not entitled to an additional payment of damages for the defect. If the customer opts for damages for the defect, the goods remain with the customer if this is objectively acceptable. Damages are restricted to the difference between the price and the value of the defective goods. This does not apply in case of malice on the part of the seller.
2. In case of injury to life, body and/or health we are liable for all our negligence or those of our servants.
3. In all other cases, we are not liable for slightly negligent violation of non-essential contractual duties regarding Entrepreneurs. Regarding Consumers, our liability is limited to the typical, direct average damage foreseeable for the type of contract in cases of slightly negligent violation of contractual duties. The aforementioned limitations also apply to slightly negligent violations of contractual duties by our legal representatives and/or servants.

4. The aforementioned limitations do not apply to the claims resulting from product liability according to the Produkthaftungsgesetz (German Product Liability Act).
5. The customer's claims for damages prescribe within one year after the passing of risk regarding the goods. This does not apply in the case of malice on our part and in the case of 2. and 4.

§ 8 Payments

1. All payments are to be effected within ten days net cash after the date of the invoice unless expressly agreed differently in writing.
2. The customer may effect payment per C. O. D., invoice or credit card. Cheques and bills are accepted in fulfillment only. Bills are taken in only upon express written agreement. Bill and discount charges will be charged to the customer.
3. We are entitled to balance the customer's payments with our oldest due claim against the customer, even if the customer's payment instructions differs.
4. If circumstances come to our notice that, according to our merchant's discretion, cast doubt on the customer's creditability, we are entitled to condition deliveries upon prepayment or C. O. D.. If such circumstances come to our notice after delivery, we are entitled to declare our claims due immediately. In the case of taking in of bills, we are entitled to demand immediate cash payment on delivery of the bills.
5. The customer may only declare setting off with undisputed or nonappealably proofed claims. The customer may only lay a lien on his payment if his counter-claim is based upon the same contractual relation.

§ 9 Default Interest, Default of Payment

1. The customer defaults if he overruns the respite granted by § 8 No 1 or individually. In case of default, we will charge default interest of 5 per cent points p. a. over Base Interest Rate against Consumers and 8 per cent points over Base Interest Rate against Entrepreneurs. The default interest is due immediately. The claiming of possible higher default damages remains unaffected.
2. We are not obliged to continue deliveries in fulfillment of ongoing contracts before any due amounts invoiced are completely paid, including interest and cost.
3. If the customer defaults or if circumstances come to our notice that cast doubt on the customer's creditability, we may, notwithstanding the aforementioned conditions, declare all of our claims due immediately, without regard to any extended terms of payment, securities furnished or bills issued. In this case we are also entitled, notwithstanding any of our statutory rights, to demand prepayment before any deliveries are effected, to demand the furnishing of securities, and/or to withdraw from a contract after the lapse of an adequate period of grant. The cost of dunning letters and of the legal pursuit of our rights including all measures deemed necessary hereto (e. g. procurement of information, mandating of a claim agent) are default damages and will be charged to the customer.

§ 10 Retention of Title

1. We retain title regarding all goods delivered until the purchase price has been completely paid. If the customer is an Entrepreneur, we retain title until all of our claims arising out of the business relationship including interest, cost and expenses if applicable have been fulfilled. In case of a current account, the title retained serves as security for the balance in our favour.
2. Any processing or conversion of the goods is carried out by the customer for us as Producer in the meaning of § 950 BGB. The processed goods are considered goods with title retained in the sense of this terms. Upon processing or conversion with the customer's or a third party's goods, we become joint proprietor of the new goods in the proportion that equates to the relation of the invoice value of our goods to the value of the new goods. The same applies in the case of intermixture of our goods with those of the customer or a third party.
3. The Entrepreneur is entitled to sell the goods in the ordinary course of business. The customer herewith assigns to us his claims resulting from the selling of the goods, including any securities, at the amount of our claims resulting from our selling of the goods. In case goods with title retained are sold with the customer's or a third party's goods, the customer herewith assigns to us his claims at the amount of the value of our goods with title retained. In case goods with title retained are sold that have been processed or converted with the customer's or a third party's goods, the customer assigns his claims at the amount of the value of our joint proprietary share. We herewith accept the relevant assignment(s).
4. The Entrepreneur is entitled to collect claims arising from the selling of goods with title retained, however, we are entitled to revoke at any time. Upon our request, the Entrepreneur is obliged to inform his customers about the assignments in our favour, and to pass to us all information and documents required to collect the claims. Besides this, we are entitled to inform the Entrepreneur's customers, at his cost, about the assignment in our favour, and to collect the claims, if the Entrepreneur fails to meet his payment obligations and defaults.
5. The pledging as pawn or as security of goods with title retained to third parties is not permitted. In case of seizure, the customer is obliged to expressly notify our retention of title. The customer is obliged to immediately inform us about any seizure or any other attempt of a third party to get hold of the goods with title retained. The same applies in the case of the customer moving private or business premises.
6. Upon default, cessation of payment, application for Insolvency Proceedings either by the customer or by one of his creditors, and in the case of any violation of the obligations specified in No 5, we are – notwithstanding any further-reaching rights – entitled to withdraw from the contract, to take possession of the goods with title retained, and to sell it to third parties. The proceeds, after deduction of all expenses in connection with the sale – which we may calculate at 20% of the proceeds without any further proof, unless the customer proves them to be lower – will be set off against the customer's combined liabilities. Any amounts exceeding our claims will be paid to the customer.
7. In case the value of securities at our disposal exceeds the amount of the customer's combined liabilities by more than 20%, we are obliged to release securities of our choice at the respective value at the customer's request.

§ 11 Place of Performance, Place of Jurisdiction

1. In case the customer is a merchant in the meaning of German law or a legal entity of public law, the place of performance for all liabilities arising out of the contract is Hanover, Germany. In this case Hanover, Germany, is the exclusive place of jurisdiction for all disputes arising out of the business relations, including check and bill suits. At our discretion, we may also sue the customer at the courts of his general jurisdiction.
2. The contractual relationships are subject to German law exclusively. The standardized United Nations CISG, however, is not applicable.

§ 12 Concluding Provisions

1. In case any or all of the provisions of these General Terms of Business are or become invalid, or should a gap occur in a contract concluded on the basis of this General Terms of Business, the validity of the remainder of the provisions of these General Terms of Business and/or the contract remain unaffected. The parties agree that a provision shall be applicable that, within the boundaries of law, most closely approaches the economic meaning of the invalid clause(s), or that the parties would have agreed upon within the economic context of the contract had they been aware of the gap.
2. In case any of the provisions of these General Terms of Business that relate to the business relations with Entrepreneurs only is or becomes invalid, the respective provisions for Consumers come into effect. For the remainder, No 1 comes into effect analogously.