



## Terms of trade „Ahlborn Kunststoffe“

### I. General terms

All our offers, contracts and their implementation shall be exclusively subject to the conditions under consideration. Any deviations shall be agreed upon expressly in writing. By “principal” in these terms is understood: any (legal) entity which has entered into, or expressed the intention of entering into, a contract with our company, its representative(s), authorized agent(s), assignee(s) and heirs. The principal's own conditions will not be accepted until they are adopted by us. In every other case our conditions will, at all times, have precedence, even if precedence has been claimed otherwise.

Our conditions will also remain active for further contracts even it was not pointed out exclusively. All conditions and their implementations between the principal and the agent or his supplier as well as all changes in the contract will only be accepted by us if we confirmed them in a written manner.

Upon acceptance of our terms of trade the customer agrees that AKU can use his information for in-house marketing activities in digital or analog way. Disagreement has to be expressed in written form via fax or email.

### II. Offers

All offers made by us, in any form whatever, are free of all obligation (such as price, quantity or form of delivery), unless expressly stated otherwise. Description of the sold goods and technical information are without any obligation and free of being changed by us without any notice. The supplied weight of the goods stated by the supplier are dealt in average terms and do not necessarily represent the real weight of the supplied goods. The content of the offers must not be presented to other parties unless we agreed in a written form; nevertheless you must not misuse our offer in any possible way. Should an offer not lead to an order - the samples or any other sales material has to be returned by the inquirer unless other agreements were made. Materials sent by the principal will not be returned unless other agreements were made.

### III. Order Acceptance and Duties of Delivery

Buyer's terms of delivery as well as the buyer's terms of order will only be accepted if those were confirmed by the seller in written form. Not responding to the terms stated above by the seller shall not automatically result in acceptance of those. Delivery obligations may only result on written acceptance of the order by the seller. Orders have to be made in a written form and be transferred either by fax or email. Deliveries by the seller might be splitted if need. An increase or decrease of 10% in the total delivery amount of the goods sent by the seller has to be tolerated by the buyer. In case of a questionable buyers credit worthiness the seller has the right to either resist on payment in advance or any other securities preserved by the buyer or to cancel the contract of sale without any further obligations to the seller. In case of cancellation of the contract due to weak creditworthiness of the buyer, the buyer has to cover any costs resulting out of this case. If the buyer is in delay of acceptance we are allowed to storage the goods in our custody. In this case we will charge a storage fee of 0.5% of the invoice total sum per day where else we still have to

insist on completing the contract by the buyer or under setting a time limit to withdraw from the contract to use the goods in a different way. If this step is taken the buyer agrees to bear a 10% conventional fee of the total invoice sum

### IV. Minimum order value

Orders which don't exceed a minimum value of 250 € excl. VAT in Austria, 500 € excl. VAT for countries in the EU or 1000 € excl. VAT for any other foreign countries outside the EU will not be handled. For orders of minimum values a working fee will be charged if appropriate after case review.

### V. Prices and additional services

Prices are quoted free and ex work supplier's plant or storage facilities according to our terms stated in the offer, unpacked, without any delivery costs, export or import charges and tolls or in case of export outside the EU without export charges. In case of unexpected price increases by more than 5 % quoted on the orders confirmation during the time period between placing the order and date of delivery we are eligible to increase invoice sum by this amount.

### VI. Packaging

How packaging is done belongs to the authority of the seller. We are trying to choose the best way of packaging , to ensure the best protection at lowest prices and the most ecological friendly way. As a member of “BONUS-Holsystem” with membership number 2805 we do not take back released packing material.

### VII. Delivery, Sending of the goods and Redemption of goods

Risks involved in loading and/or shipping of the goods are borne by the buyer and on his costs. Risks are also borne by the buyer in case of transportation and loading of the goods when the goods are leaving the production plant or the stock commodities of the seller even though free sending of the goods was arranged between the parties of contract. If the buyer has forced delays in sending of the goods, the risk is borne by the buyer at the moment of stating readiness in sending the goods by the seller. Within this moment of declaring the readiness of sending the goods by the seller the goods become available to the buyer in terms of § 6 “Produkthaftungsgesetz” by the Austrian law (law upon product liability). Transport insurances covering goods to be sent won't be covered by us in general and will be only taken out if the buyer insist on it in a written form where else the buyer has to cover the costs of it. Orders on call have to be fulfilled by the buyer within 180 days if no other terms have been arranged. This time period starts by confirmation day of order. Goods produced on special orders will never be taken back by us. Standard products will be taken back by us only in special cases after we agreed to it moreover in perfect condition, packed, free house and not longer than 2 days after delivered to the buyer. In this case we will charge a 25 % fee of the total invoice sum.



### VIII. Delivery time

Time of delivery is held to be quoted free without any obligations ex work. In case a confirmed delivery time is delayed more than 4 weeks the buyer is eligible to cancel the order after setting a reasonable extra time. Failure to meet deadlines resulting out of force majeure, to industrial strife or by any other events beyond our control, the delivery time shall be extended by a reasonable time period. We are only liable for damages if we acted on intent or gross negligence. On orders on call a 6 month deadline is granted to the buyer to accept the goods. After this time period the supplier is eligible to claim takeover and payment of the goods by the buyer after a reasonable extra time was granted.

### IX. Terms of payment and Netting

Payment has to be done directly to us according to the quoted and agreed terms. Discounts may only be granted if we have agreed to them in written form. 50% of the total invoice sum has to be paid immediately upon receiving the order confirmation of the goods in case of orders of tools or special goods. Residual order sum has to be paid net without cash discount upon positive check of the samples or delivery of goods.

The setting off of any counterclaims against our claims for payment is excluded unless it is a question of counterclaims of the customer that have been recognized by us or that have been legally established. The customer cannot exercise any right of retention based on counterclaims deriving from a different contractual relationship to the concrete contractual relationship.

Invoices are due and payable without any deductions 30 days after the invoice date; in the event of late payment we charge interest at a rate which is 6 percentage points above the current base rate (Base: Euribor - ECB). In case of late payment the buyer agrees to cover all costs arising due to service use of a collection agency according to the Austrian Law (BGBl. Nr. 141/1996 ministry of economic affairs).

Bills of exchange require special agreement to be accepted. All expenses associated with bills of exchange and discounting are for the account of the customer. Save in the event of gross negligence, we bear no liability for any delays in presenting of bills of exchange or cheques.

### X. Property rights

All delivery items remain our property until full payment of our claims against the customer with regard to the purchase price or compensation for work (including such claims deriving from earlier or later transactions) as well as any incidental claims (e. g. interest on arrears, dunning charges) has been received. In case of bankruptcy, suspension of payment, liquidation of the opposite party, or decease of a natural person, we shall be entitled to cancel the order completely or in parts, without serving a formal summons or applying for judicial intervention, and to claim back the part of the goods left unpaid. Cancellation and taking back of goods leave our right to compensation of loss or damage intact. In these cases any claim against the buyer will be due for payment immediately and completely. The goods may be sold or used by the principal within the framework of its normal business activities but shall neither

be given as collateral nor provided as a security for the claims of a third party. As surety against the due payment of all our claims, of whatever nature, we shall moreover receive the right of distraint - through the occurrence of the claim - for all those goods in which substances supplied by us have been incorporated, or as a part. The order as signed by the principal and our written confirmation is valid as a private deed as expressed by the underlying law. The retention of title also applies to claims that are not yet due and payable or to deferred claims as well as to claims that we possess or acquire vis-à-vis the customer for any other legal reason as a contract of sale, a work performance contract or contract for work, in particular when said claims and receivables are substituted by abstract claims in the form of bills of exchange or cheques. The customer is entitled to dispose of the goods to which title is retained only in the ordinary course of business, in particular he is entitled to sell the goods further or to process them further until such entitlement is revoked by us. Any treatment or processing of the goods to which title is retained on the part of the customer is carried out on our behalf. However, the customer does not then have any claims to compensation for work against us. If a new corporeal thing or aggregate of things comes into being through joining the goods to which title is retained with parts that are not our property, we acquire a joint ownership share in such new thing or aggregate in the same ratio as that between our invoice amount for the objects to which title is retained and the manufacturing or acquisition value of the parts that are not our property. The customer pre-assigns to us the claims deriving from the further sale of goods to which title is retained vis-à-vis the second customer (extended retention of title). In the case of goods under joint ownership, this shall be done on a pro-rata basis in the value ratio. If the value of the goods to which title is retained has been increased while in the possession of the customer by means of treatment or any other processing measures, the above-named pre-assignment shall be limited to the amount of our invoice plus 10 per cent. The customer shall not assert the unassigned parts of the claim to our disadvantage. The customer remains authorized in the ordinary course of business to collect the claims pre-assigned to us. This authorization to collect can be revoked by us at any time without any obligation to state reasons and we can also notify the second customer of the assignment at any time. If the customer already assigned the claims deriving from the re-sale of goods to which title is retained or of goods under joint ownership in favor of third parties (in particular to banks that have granted loans) at an earlier time than to us, this is not deemed to be a sale in the ordinary course of business. The customer shall notify us without delay of any attachment by third parties or of any other impairment of the goods to which we have retained title or of the claims (part claims) pre-assigned to us and arising from the further sale of said goods. The customer shall on demand grant access to his business premises for the purpose of ascertaining, marking, segregated storage or removal of the goods to which title is retained. The customer undertakes to give us the information required to assert pre-assigned claims against second customers and to furnish us with copies of the necessary instruments of evidence from his business records. Insofar as the value of



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our rights deriving from the regular or extended retention of title in connection with any other real security granted to us by the customer exceeds the value of our claims from the business relationship by more than 10 per cent, we will on demand of the customer release items offered as security at our own option.

### **XI. Notice of Defects and Warranty**

All plastic products might change their form or color if they are stored at very hot or cold temperature or over a long period of time. You should handle them with care on transportation or storage them in a proper way. Normal differences e.g. quality, color, dimension, and surface may occur and may not lead to complaint note. The supplier is responsible to conduct the delivery upon the confirmation of order or samples whereas the dimensions and scales of the goods and samples will be binding only to the extent of tolerances which occur during the production process and/or the specifications of the producer. Those tolerances might be either of technical and/or material nature. Features of the product are only granted by covered standards e.g. ÖNORM, DIN, EN, ISO or ASTM, manuals, guidelines provided by whomever in special by the producer, service contracts or any other advices given.

The supplier does not take any responsibility for adequacy use of the goods as this has to be conducted by the buyer. Any examinations of those have to be borne by the customer and agreed by the supplier in detail. All costs arising by such examinations have to be covered by the customer.

After arrival of delivered goods or of goods that have been processed by us, the customer must check these to the customary extent in accordance with normal trading standards and shall file any complaints regarding material or processing defects in writing without delay as stated in § 377 HGB. The customer is obliged to provide us with all relevant information and documents (e.g.: photos, samples, bill of parcels). Our obligations as stated above exist only insofar as the customer notifies us immediately in writing of any claims asserted by the third party and does not acknowledge an infringement and insofar as all defense measures and negotiations for a settlement remain open to us. Claims of the customer are excluded, insofar as he is answerable for the infringement of industrial property rights. Claims of the customer are also excluded insofar as the infringement of industrial property rights was caused by special fixed parameters of the customer, by an application that could not be foreseen by us or by the fact that the delivery or service was changed by the customer and used together with products that were not supplied by us. We must first be given the opportunity for belated fulfillment of our obligations at our option within a reasonable period of time. According to the law any valid and in time claimed defects will be either: given a credit note for defective goods, exchanged or reworked by the supplier whereas he will decide what measure will be taken. Claims defect become statute barred after time period provided by law or if rejected in written form by us within 3 months if not enforced by court.

Further claims of the customer against us and our agents on account of a deficiency in title or any other claims of this kind apart from those regulated in this Article are excluded.

Claims for damages and for the reimbursement of expense incurred by the customer (hereinafter: claims for damages) for any legal reason whatever, in particular due to a violation of duties arising out of the obligation relationship and from unlawful actions, are excluded.

### **XII. Damages and Product Liability**

The supplier is only liable for damages resulting out of his intent or gross negligence.

In case of deliveries to a commercial customer any liabilities resulting out of damages underlined by the Austrian Produkthaftungsgesetz, BGBl. 1988/89 (law upon product liability) or others are excluded. If goods are delivered or sold to commercial customers or resellers those have to ensure that these rights are excluded to their customers in appropriate contracts with their later costumers as well. If those exceptions are not made any liabilities to their later customer/s have to be borne on their own.

### **XIII. Export**

The parties agree to respect the international rules regulating typical business rules and underlying Incoterms based on the Madrid Agreement. The Madrid Agreement as well will be the guideline towards claims for faulty goods and damages only if those are not dealt in an individual way between the parties.

### **XIV. Court of Jurisdiction and Applicable Law**

This contract shall be subject to Austrian material law with exclusion of the UN CISG. If the customer is a consumer, the binding provisions of the law of the country in which he/she is normally resident shall also apply to this contract. Disputes shall be dealt with exclusively by the relevant responsible court at the headquarters of "Ahlborn Kunststoffe". If the customer is a consumer as defined by the Consumer Protection Law the competence of the court applies, whose district includes the customer's domicile, normal place of abode or workplace. The place of fulfillment shall be the head quarters of "Ahlborn Kunststoffe". The common contractual language is German if no other language was set by the parties on a written agreement

### **XV. Salvatorius Clause**

If one or more conditions of these terms of trade is/are/will be ineffective others won't be affected by that circumstance. The parties agree to accept new conditions which will cover the sense or meaning of the former in its best way. If terms underlay a contract with a customer are in conflict with the Austrian customer law or Austrian product law those will be set automatically ineffective but will be construed to the next possible covering condition.

**Valid after 1<sup>st</sup> January 2012**