

**General Terms and Conditions of Sales and Delivery**  
**of Almamet GmbH, Gewerbestrasse 5a, 83404 Ainning**

[Version of: 23.02.2017]

### 1. Scope

(1) These General Terms and Conditions of Sales and Delivery ("GTCs") of Almamet GmbH shall exclusively govern all of our business relations with our customers ("Buyers"), and in particular they shall govern our offers, purchase agreements and deliveries of goods on the basis of orders placed by customers. Terms departing from our GTCs, in particular general terms and conditions of the Buyer, shall not apply, even where we do not expressly object to them (and even following our receipt of such general terms and conditions). Neither our silence nor our unreserved delivery of goods nor failure to expressly assert reservations shall constitute any confirmation thereof. Individual agreements with the Buyer departing from these GTCs shall in all cases take precedence over our GTCs.

(2) Our GTCs shall only apply if the Buyer is a merchant (Sec 14 German Civil Code), a legal entity under public law or a special fund organised under public administrative law. They shall not apply to consumers (Sec 13 German Civil Code). Our GTCs neither benefit nor impose obligations on third parties. We are authorised to use third parties in performing our services.

### 2. Formation of contract

(1) Our offers are non-binding unless we have expressly designated them as binding or they provide for a specified period for acceptance. Dimensions, weights and other details are provided on a non-binding basis unless we have expressly designated them as binding.

(2) Orders placed by Buyers are deemed to constitute binding offers to enter into a contract, which we may accept within 14 calendar days of our receipt thereof. Contracts will only be deemed formed at such time as we confirm them in writing. Individual agreements departing from these GTCs shall take precedence; oral agreements must be confirmed in writing for evidentiary purposes.

### 3. Delivery periods

(1) We reserve the right to agree a delivery period for each individual contract.

(2) If we are prevented from performing our obligations as a result of the occurrence of *force majeure* events affecting us or our suppliers and which, despite the exercise of such care as is reasonable in the circumstances, we were unable to avert, such as war, sovereign acts, domestic disturbances, forces of nature, accidents, other unforeseeable, unavoidable and serious disruptions of operations

and delays in deliveries of crucial operating materials or precursor materials, the delivery period shall be deemed extended by a period equal to the duration of the event, plus a reasonable time for restarting production.

(3) Strikes and lockouts shall in all cases be deemed events over which we have no control.

(4) If a *force majeure* event prevents us from delivering the goods or renders it unreasonable for us to do so, we may resile from the contract; the Buyer shall have the same right if, as a result of the delay, it is unreasonable to require him to accept the goods.

(5) Without prejudice to our rights in the event of a default of the Buyer, delivery periods and dates shall be deemed extended by the period of the Buyer's default in respect of his obligations to us under this contract.

(6) In the event of a default on our part, the Buyer may resile from the contract after expiry to no avail of a reasonable grace period set by the Buyer.

### 4. Shipping

(1) Unless we have provided confirmation to the contrary, our shipping of goods/delivery of goods shall be at the risk and cost of the Buyer, ex works (EXW – INCOTERMS 2010), even if the price is quoted "free destination" or FOB (INCOTERMS 2010). In the latter cases, the costs of shipping to the railway siding, freight, insurance, loading on board ship and the like shall merely constitute costs advanced by us for the Buyer's account. We assume no liability for timely forwarding by rail, ship or road, provided that we have done everything necessary and reasonable on our part to effect timely delivery.

(2) In the event of delivery EXW, the risk of accidental destruction of the goods shall pass to the Buyer as soon as we have handed the goods over to the forwarder, haulier or other person or entity designated as responsible for handling shipping. Where shipping or handing over of the goods is delayed due to circumstances for which the Buyer is responsible, then the risk shall pass to the Buyer on the date on which the goods were readied for shipping and we gave the Buyer notice thereof.

(3) Goods as to which we have given notice of readiness for shipping but which the Buyer fails to accept within the agreed period are deemed to be stored at the risk of the Buyer and shall, for purposes of payment, be deemed to have been already delivered. We reserve the right in such case to place the goods in our warehouse and to charge the Buyer storage fees or to hand them over to a forwarding agent for storage, at the Buyer's cost and risk. We expressly disclaim all liability for damage occurring as a result of storage or shipping of the goods.

(4) In the event of shipping FOB the Buyer must ensure timely and precise shipping instructions are provided and that the necessary shipping space is allocated in a timely manner. Where the Buyer fails to satisfy this condition, he shall be liable for pay-

ment of the goods even before the goods have been loaded on board. The goods shall in such case be deemed stored for the Buyer's account and risk, in line with sec. 4(3).

## 5. Framework agreements, quantities and weights

(1) To the extent the parties have concluded a framework agreement or a call off agreement, the Buyer shall accept the goods at approximately equal intervals over the term of the contract. Where orders are not placed as special orders, orders shall be filled in the sequence in which they were placed. Calculation of quantities shall be undertaken on the basis of the quantities actually delivered rather than the quantity of goods for which the call off order was placed. In the event that the Buyer's individual orders exceed the quantities specified under the contract, we shall be entitled to cancel the order to the extent of the surplus quantities or to charge the Buyer for them at our prices in effect on the date of delivery. We shall have no obligation to alert the Buyer to the fact that the quantities covered by the contract have been exceeded.

(2) Deliveries under framework contracts shall be effected solely on the terms of such contracts. We shall have no obligation to take account of any rules or instructions given at the time the call off order is issued, where they deviate from these GTCs, and we hereby disclaim all liability for the consequences arising out of any failure to comply with such rules or instructions.

(3) The parties are deemed to have expressly agreed that over- or under-deliveries of up to 10 percent of the quantities ordered shall be permitted. For calculating the quantities of goods delivered, the individual quantities as stated in our count and the total quantities indicated in our consignment notes and invoices shall govern.

## 6. Defects

(1) The Buyer shall have the rights provided under applicable law in respect of defective goods, without limitation unless otherwise agreed below.

(2) The Buyer hereby undertakes to examine the goods delivered by us immediately upon receipt. Any obvious defects must be raised in writing within 14 calendar days from the date they were discovered; written notice of latent defects must be given no later than 14 calendar days from the date they are discovered otherwise, the Buyer will be deemed to have approved the goods.

(3) In cases of well-founded claims of defects, we shall be obliged and entitled, at our option (which we shall choose within a reasonable time), to initially remediate the defect (subsequent performance) or to supply goods which are free of defects (subsequent delivery). In cases of remediation we shall be entitled to undertake at least two attempts at remediation unless otherwise indicated, in particular, by the type of item or defect or unless the other circumstances otherwise require. The Buyer shall support us in such endeavours, in particular by

concretely describing problems that arise, informing us in a comprehensive fashion and affording us the necessary time and opportunity to undertake remediation.

(4) Where subsequent performance fails or where the reasonable period set by the Buyer for subsequent performance expires to no avail or where no such period is required under the applicable provisions of law, the Buyer may resile from the contract pursuant to what is provided by law, or may reasonably abate the compensation. However, a right of rescission shall not apply in respect of defects which are non-material.

(5) The Buyer may only assert claims of any kind (in particular: claims for consequential damages as a result of refusal of deliveries due to breach and claims for frustrated expenditures) in line with secs. 9 and 10 hereof.

## 7. Retention of title

(1) We hereby reserve title to all goods delivered by us (Retention of Title Goods) until such time as the Buyer has settled the entirety of the liabilities under his business relationship with us (including those arising in future), irrespective of the legal basis thereof.

(2) Processing or transformation of the Retention of Title Goods is deemed undertaken for our benefit as the manufacturer, within the meaning of Sec 950 German Civil Code, without this imposing any obligation on us. The processed goods shall be deemed 'Retention of Title Goods' within the meaning of this section.

(3) In the event of the Buyer's processing of Retention of Title Goods with other items of goods not belonging to us, we shall be entitled to co-ownership (fractional ownership) of the new item on a *pro rata* basis, based on the ratio of the invoice price of the Retention of Title Goods to the total invoice value of the other items of property used.

(4) Where the Retention of Title Goods are commingled or combined with other items of property and our title to the Retention of Title Goods lapses as a result thereof (Secs 947, 948 German Civil Code), the Buyer's title or co-ownership rights to the commingled mass or unitary item of property shall pass to us on a *pro rata* basis, based on the ratio of the invoice price of the Retention of Title Goods to the total invoice value of the other commingled or combined items of property. The Buyer is deemed to hold the items in custody for us free of charge.

(5) The rules governing Retention of Title Goods applicable under this section 7 shall apply *mutatis mutandis* to co-ownership shares arising under secs 7 (3) and (4) hereof.

(6) The Buyer is only authorised to re-sell the Retention of Title Goods in the ordinary course of business. Specifically, the following shall apply:

a) Where the Buyer grants its customers a payment deferral in respect of the sales price, he shall be obliged to reserve title to the goods sold vis-à-vis his customers on the same terms as we have specified

in respect of the Retention of Title Goods. In the absence of such reservation, the Buyer is not authorised to resell the Retention of Title Goods.

**b)** The Buyer hereby assigns to us by way of security, now and in advance, his claims to receivables or other claims for compensation to which he is entitled from his customer. Such claims shall serve as collateral for our claims to the same extent as the Retention of Title Goods themselves. We hereby accept the assignment as well as all other assignments required pursuant to this sec. 7. The Buyer is only entitled and authorised to resell or otherwise use the Retention of Title Goods where it is ensured that claims for receivables thereunder pass to us.

**c)** Where the Retention of Title Goods are sold by the Buyer together with other goods not supplied by us, the assignment of the claim for the receivables based on the sale shall apply only in the amount of the invoice value of the Retention of Title Goods being sold in the individual case. In respect of the sale of goods as to which we have co-ownership shares pursuant to sec. 7 (3) and (4), the assignment of the claim for the receivables shall apply in respect of the amount of such co-ownership share.

**d)** Where the assigned receivables are included within an open account, the Buyer is deemed to assign to us, now and in advance, that portion of the balance owing under the open account which corresponds to the amount of such receivables.

**e)** Until notice of revocation by us, the Buyer is deemed authorised to collect the receivables he has assigned to us. We are only permitted to make use of that right of revocation in the event of disposal (section 7 (6) g)).

**f)** Where the Buyer uses the Retention of Title Goods to perform a mixed contract for works and services or works and goods [*Werk- oder Werklieferungsvertrag*], the receivables thereunder are assigned to us to the same extent as provided in this section 6 b) to e).

**g)** Where we resile from the contract due to acts of breach by the Buyer (in particular: in the event of a payment default), we shall be entitled to demand surrender of the Retention of Title Goods to us.

**(7)** Where the value of the collateral existing for our benefit and capable of realisation exceeds the secured receivables by a total of more than 10%, we shall have a duty to release collateral to such extent upon request of the Buyer.

**(8)** Our rights of retention of title pursuant to this section 7 shall also apply until such time as we have received full indemnification for contingent liabilities we have incurred in the interests of the Buyer.

## 8. Payment terms

**(1)** Our prices are in all cases quoted net of VAT, which shall be added thereto at the statutory rate in force from time to time. Unless otherwise agreed, our invoices are due for payment within 30 calendar days from the date the invoice is received and delivery or formal acceptance occurs. Absent notification to the contrary by the Buyer, payments by the

Buyer shall be applied to the oldest receivable in each case. After payment has fallen due, default interest shall be charged at a rate of 8 percent over the base interest rate in force in each case. We reserve the right to assert claims for damages in excess thereof based on the Buyer's default.

**(2)** Where, during the term of the contract, the Buyer's financial position deteriorates or where we receive what we deem to be insufficient information regarding the Buyer or where payment for items which have fallen due is not received in line with the parties' agreement, we shall be entitled, even in cases of ongoing legal relations, to demand full or partial prepayment or payment of security for the purchase price for deliveries then outstanding under all open orders and immediate payment of deferred amounts under invoices, even where bills of exchange have been provided for them. We also reserve the right to assert claims beyond the foregoing.

**(3)** Payments must be made in cash, strictly net without deduction of bank charges, or transferred to us via the usual bank accounts. If we accept bills of exchange, the Buyer shall be responsible for all ancillary charges. The Buyer may not derive any right to demand our acceptance of bills of exchange from our one-time or repeated acceptance of bills of exchange.

**(4)** Without any contractual limitation in line with the provisions of applicable law, the Buyer may set off claims for payment from us based on a breach of our duty arising out of this contract to deliver the goods or based on defects of the goods against our claims for payment of the purchase price. The Buyer may only set off claims other than those referred to in the foregoing sentence to the extent that they are undisputed or have been adjudicated with *res judicata* effect or are ripe for judgment.

**(5)** The Buyer is only entitled to assert rights of retention based on counterclaims arising out of the same contractual relationship.

## 9. Liability

**(1)** We shall bear liability in line with the rules of applicable law, without contractual limitation,

**a)** for losses arising under a breach of a warranty we have assumed;

**b)** for intentional acts or omissions;

**c)** for damages based on the fact that we have fraudulently concealed a defect;

**d)** for injury to life, limb or health based on an intentional or negligent breach by us or otherwise on intentional or negligent acts by our legal representative or vicarious agent;

**e)** for any losses other than those referred to under section 9 d), based on an intentional or negligent breach by us or otherwise on intentional or negligent acts by our legal representative or vicarious agent and

**f)** claims under the Product Liability Act.

(2) In cases other than those referred to in section 9 (1), our liability is limited to such losses as are foreseeable and typical for the contract, where the loss is based on a negligent breach of material obligations by us or one of our legal representatives or vicarious agents. Material obligations (cardinal obligations) are obligations the performance of which is a *sina qua non* to the proper performance of the contract *per se* and on the performance of which the Buyer ordinarily relies or is entitled to rely, e.g. our obligation to supply goods that are free of defects.

(3) In cases other than those referred to in secs. 9 (1) and (2), we hereby disclaim liability for negligence on our behalf and on behalf of our legal representatives and vicarious agents.

(4) The defence of contributory negligence shall remain unaffected by the foregoing.

(5) The provisions in sec. 9 above shall apply to all claims for compensatory damages, both contractual and extracontractual, irrespective of the legal basis thereof and shall also apply, *mutatis mutandis*, to our claims for frustrated expenditures.

(6) To the extent our liability is disclaimed or limited under the provisions in section 9 above, this shall apply also in respect of personal liability of our salaried employees, other workers, staff members, representatives and vicarious agents.

## 10. Prescription

(1) Without contractual limitation, in the following cases prescription periods shall be governed by the provisions of applicable law:

a) Claims of the Buyer against us based on liability for intentional acts or omissions;

b) Claims of the Buyer against us for defects of goods where we have fraudulently concealed the defect or where we have assumed a warranty for the qualities of the goods;

c) Claims of the Buyer against us for defects of goods where the defect consists of an *in rem* right of a third party on the basis of which the surrender of such goods may be demanded;

d) Claims for recourse against suppliers in cases involving final delivery of the goods to a consumer (Sec 479 German Civil Code);

e) Claims of the Buyer for payment of damages

- based on an intentional or negligent breach by us or otherwise on intentional or negligent acts by our legal representative or vicarious agent;

- for injury to life, limb or health based on an intentional or negligent breach by us or otherwise on intentional or negligent acts by our legal representative or vicarious agent and

- claims under the Product Liability Act.

(2) In all cases other than those enumerated in sec 10 (1), the prescription period for claims by the Buyer for substantive defects of the goods shall be one year from the date the goods are delivered to the Buyer.

## 11. General provisions

(1) Contracts between us and the Buyer are governed by the law of the Federal Republic of Germany, but are excluded from any application of the UN Convention on the International Sale of Goods (CISG).

(2) The place of performance for delivery is the designated destination for delivery; for payment, the place of performance is D-83404 Airing.

(3) Jurisdiction and venue for all disputes with merchants, legal entities under public law or special fund entities organised under public administrative law arising directly or indirectly out of these contract relations shall lie with the courts of D-83278 Traunstein/Obb.; at our option, we shall also be entitled to file suit in the courts located at the place of the Buyer's registered office.

(4) Amendments and addenda to agreements shall be recorded in writing for evidentiary purposes. The foregoing shall also apply to any waiver of this clause. Either party may demand that an amendment or addendum to this agreement be recorded in writing. The foregoing is without prejudice to individual agreements made by the parties. Guarantees and warranties of the qualities of goods provided by us, notices of defects, reminders and the setting of deadlines by the Buyer and declarations on abatement of the purchase price, rescission or termination by the Buyer shall only be valid if given in written form. Under these GTCs, the written form requirement is satisfied by telecommunications transmission via facsimile, and in cases of contracts, by an exchange of letters. In all further and other respects, Sec 127 (2) German Civil Code shall not apply.

(5) In the event that individual terms of this contract (including these GTCs) should be or become invalid or unenforceable in whole or in part, the validity of the remaining terms of such contract (including these GTCs) shall not be affected thereby. To the extent that the parties' contract or these GTCs should be found to contain contractual gaps, such gaps shall be filled by such legally valid provisions as the parties would have agreed to if they had been aware of the contractual gap, in light of the commercial objectives of their contract and the purposes of these GTCs.