

**General Terms and Conditions of Kurt Allert GmbH & Co. KG, Oberndorf am Neckar, Germany**  
**(Last updated: January 2022)**

**1. Applicability**

- 1.1 These General Terms and Conditions (GTC) apply to all present and future offers, orders, deliveries and services (hereinafter: "Services") of Kurt Allert GmbH & Co. KG (hereinafter: "Kurt Allert").
- 1.2 These GTC apply exclusively to companies (§ 14 BGB, German Civil Code), public-law entities or special funds under public law (hereinafter: "Customer").
- 1.3 Our Customer's general terms and conditions contrary or deviating from these GTC shall not apply, even if we do not expressly object to them. The unconditional acceptance or execution of an order does not make our Customers' general terms and conditions part of the contract.

**2. Offers, Contract Conclusion and Object of our Services**

- 2.1 Our offers are subject to confirmation and valid for a period of 30 days, unless otherwise expressly stated.
- 2.2 By placing an order, the Customer makes a binding offer to enter into a contract, which we can accept within 14 days. The contract is concluded upon receipt of our order confirmation by the Customer. The order confirmation can be sent by post, fax or e-mail.
- 2.3 The scope and object of our Services are determined by our written order confirmation. Documents attached to our offers, information on the website or in brochures serve only to inform the Customer.
- 2.4 If the Customer wishes to make changes or extensions to the order after conclusion of the contract, the additional costs incurred in this respect are to be remunerated separately. In this case, we will prepare a supplementary, non-binding cost estimate, which we will send to the Customer in textform (via e-mail or telefax). The Customer can submit his order to us on the basis of this supplementary cost estimate by signing and returning it by post, fax or e-mail within 14 days. By placing the order, the Customer bindingly declares his supplementary contract offer, which we can accept within one week. The contract for the supplementary services requested by the Customer is concluded upon receipt of our order confirmation by the Customer. The order confirmation can be sent by mail, fax or e-mail.
- 2.5 We reserve the right to make changes concerning our Services (e.g. weights, measurements, use values, capacity, tolerances, technical data, product descriptions) and images thereof (e.g. drawings, sketches and illustrations) to the extent that such changes do not alter the goods or services significantly or the suitability for the intended purpose does not require exact conformity, and if and to the extent the alterations or deviations are reasonably acceptable to the Customer.
- 2.6 We reserve all property rights and copyrights to cost estimates, drawings and other documents; they may not be made accessible to third parties. Drawings and other documents belonging to offers must be returned to us immediately upon request if the Customer does not place the order with us.

### **3. Prices; Terms of Payment; Packaging; Return of Packaging**

- 3.1 Prices are net prices plus the statutory value added tax (VAT), if applicable.
- 3.2 The prices indicated in the order confirmation shall apply.
- 3.3 Packaging shall be charged to the Customer; the costs of packaging are indicated separately in the invoice.
- 3.4 Transport packaging will be taken back. The modalities of return of transport packing shall be agreed individually; they are indicated in our offer and the order confirmation.
- 3.5 Unless payment in advance or discount has been agreed, payment shall be due without any deduction within 10 days upon delivery and receipt of the invoice. The deduction of a cash discount is permissible if this has been individually agreed in writing.
- 3.6 The Customer shall be in default 30 calendar days after receipt of a proper invoice with VAT statement without necessity of a reminder. The statutory provisions on default of payment shall apply.
- 3.7 In the event that the Customer is overdue for more than 4 weeks with a claim which amounts to at least 20 % of all claims of Kurt Allert against the Customer, we are entitled to call all invoices for services up to that point may be called for immediate payment. In this case, we are entitled to demand advance performance or security for future orders. § 321 BGB (German Civil Code) shall remain unaffected.

### **4. No Set-off and Assignment**

- 4.1 The Customer shall only be entitled to a right of retention as well as the right of set-off if his counterclaims are undisputed, legally established, acknowledged by us or based on warranty claims.
- 4.2 The Customer shall not be entitled to assign claims arising from the contract concluded with us to third parties.

### **5. Delivery; Time of performance; Customer's Duty to cooperate; Force Majeure**

- 5.1 Delivery shall be FCA („Free Carrier“) Austrasse 36, Oberndorf am Neckar Incoterms 2020. At the Customer's request, we shall ship to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging of the packaging material). The Customer shall bear the packaging costs as well as shipping and transport costs.
- 5.2 Delivery dates indicated in the order confirmation shall not be binding, unless expressly agreed otherwise in individual cases.
- 5.3 Delivery on time by Kurt Allert shall be subject to the condition that all commercial and technical questions between the parties have been clarified and that the Customer has fulfilled all its obligations, such as providing the required official certifications or permits, or making advance payments. If this is not the case the delivery date shall be appropriately extended. This shall not apply if Kurt Allert is responsible for the delay.

- 5.4 If the Customer is in default of acceptance or culpably violates his other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to assert further claims. Insofar as the aforementioned preconditions exist, the risk of accidental loss or accidental deterioration of the goods shall pass to the Customer at the point in time at which the Customer is in default of acceptance or debtor's delay.
- 5.5 Delays in the provision of services due to operational disruptions caused by force majeure, in particular due to operational disruptions for which Kurt Allert is not responsible, strikes, lockouts, official decrees as well as due to pandemics or forces of nature, shall release Kurt Allert from the obligation to provide the Services for the duration of the disruption and to the extent of its impact. The agreed time of performance shall be extended by the duration of the impediment to performance. Delays which occur due to measures for the protection of employees or a possible closure of Kurt Allert or its suppliers ordered by the authorities due to a pandemic shall be deemed to be force majeure. Kurt Allert shall inform the Customer immediately upon becoming aware of an event of force majeure. If the performance of the Service is delayed by more than three months, the Customer and Kurt Allert shall each be entitled to withdraw from the contract with respect to the affected service. If the Customer cannot reasonably be expected to continue the (remaining) contract in the event of partial withdrawal or partial termination, the Customer shall be entitled to withdraw from or terminate the entire contract. Before exercising the right of termination, the parties shall attempt to find a solution that enables the continuation of the contract (or parts thereof).

## **6. Transfer of risk and Shipment**

- 6.1 The risk of loss of or damage to the goods shall pass to the Customer upon handover of the goods to the person designated to carry out the shipment.
- 6.2 If the shipment is delayed due to circumstances for which the Customer is responsible, the risk shall pass to the customer from the day of readiness for shipment.
- 6.3 At the Customer's request, we will insure the shipment at the customer's expense according to the customer's specifications.
- 6.4 Kurt Allert shall only be permitted to make partial deliveries if such partial deliveries are reasonably acceptable for the Customer, in particular in terms of the contractually agreed intended use, if the delivery of the remaining ordered goods is ensured and no significant additional expenditure or extra costs for the Customer will incur.

## **7. Warranty / Claims for defects**

- 7.1 In case of delivery of products and provision of Services, the Customer's warranty claims are limited to the right of supplementary performance. If the supplementary performance fails, the Customer may, at his discretion, demand a reduction of the remuneration or withdraw from the contract.
- 7.2 The Customer shall only be entitled to claim any defects provided that the Customer has complied with the statutory inspection and notification obligations (§§ 377, 381 HGB (German Commercial Code)). The Customer shall inspect the delivered goods immediately upon delivery. Obvious defects shall be reported within 5 working days after receipt of the goods by the Customer or his representative, stating the defect claimed by the

Customer in textform (via e-mail or telefax). In this case, the goods shall be left untouched for the purpose of inspection by Kurt Allert. Non-obvious defects of any kind shall be reported immediately after their discovery. In all other respects § 377 HGB (German Commercial Code) shall apply.

- 7.3 A malfunction or a deviation of the contractual specifications of the delivered goods shall not be considered as a defect if and to the extent that this is caused by failure to observe the “Technical guide for installation and maintenance of hinged steel belts F179”. This technical guide can be downloaded and read on <https://www.allert.com/en/downloads/>.
- 7.4 If the Customer sets his own specifications regarding material, design and type for the performance of our Services, we shall manufacture the products in accordance with the Customer's specifications. If we manufacture according to the Customer's specifications, we do not assume any warranty for defects based on the Customer's specifications, unless these are due to a defect identifiable by us. The Customer undertakes to exempt us from liability for direct and indirect damages caused by his specifications.
- 7.5 The general limitation period for claims arising from material defects and defects of title, with the exception of claims for damages, is one year from the handover of the manufactured products to the Customer or, in the case of distance selling, from the handover to the forwarding agent, carrier or other person designated to carry out the shipment.

## **8. Retention of Title**

- 8.1 Until all our claims arising from the business relationship with the Customer have been completely settled, we shall retain title to the products delivered and the tools manufactured by us (hereinafter: "Retained Goods").
- 8.2 The Customer shall carefully store, maintain and, if necessary, repair the delivered goods which are subject to retention of title at its own expense, and to insure such goods against fire, water damage, burglary and theft. Upon request, the customer shall provide us with proof of insurance by submitting the insurance policy.
- 8.3 The Customer may neither pledge the Retained Goods to third parties nor assign them as security before the secured claims have been paid in full. The Customer shall notify us immediately in writing if and to the extent that third parties have access to the Retained Goods that are our property.
- 8.4 The Customer may resell the Retained Goods in the ordinary course of business. In this case, the Customer assigns to us his claims from the resale of the Retained Goods in the amount of the final invoice amount agreed between us and the Customer, including value-added tax; we hereby accept the assignment. This assignment shall apply irrespective of whether the Retained Goods have been resold without or after processing by the Customer. The Customer remains authorized to collect the claim even after the assignment. Our authority to collect the claim remains unaffected. However, we will not collect the claim as long as the Customer meets his payment obligations, is not in default of payment and in particular no application for the opening of insolvency proceedings has been filed or payments have been suspended.
- 8.5 If the Customer has resold the Retained Goods and is in default of payment, an application for the opening of insolvency proceedings is filed or payments have been suspended, we can demand that the Customer informs us of the claims assigned as security from the resale of the Retained Goods and their debtors, provides us

with all information necessary for the collection of the claims, hands over to us the necessary documents and informs the debtor of the assignment.

- 8.6 The processing or transformation of the Retained Goods by the Customer shall always be carried out in our name and on our behalf. In this case, the Customer's expectant right to the reserved goods shall continue to apply to the transformed item. If the reserved goods are processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the objective value of the Retained Goods to the other processed objects at the time of processing. In order to secure our claims against the Customer, the Customer also assigns to us such claims to which he is entitled against a third party as a result of the combination of the goods subject to retention of title with a property; we accept this assignment already now.
- 8.7 If the value of the Retained Goods or the recoverable value of the securities available to us exceeds the claims to be secured by more than 10%, we shall be obliged to release the securities. We shall be entitled to select the securities to be released at our discretion.
- 8.8 If the law of the country where the delivered goods are located does not allow for retention of title or only in a restricted format, Kurt Allert shall reserve the right to retain other rights to the Retained Goods. The Customer shall cooperate with all required measures (e.g. registration) to realise the retention of title or other rights in place of retention of title and to protect these rights.

## **9. Tools**

- 9.1 If special tools are required for the execution of the order, we remain the owner of the tools manufactured by us or a third party contracted by us. This applies also if the Customer pays tooling costs in whole or in part.
- 9.2 Tooling costs are listed separately in the offer and in the order confirmation. They are due for payment on conclusion of the contract without deduction.
- 9.3 In the event of change requests by the Customer before completion of the tools which affect the planning and completion of the tools, we are entitled to demand reimbursement of the additional costs from the Customer. The costs for subsequent changes to the tool shall be borne in full by the Customer.

## **10. Intellectual Property Rights of third parties**

- 10.1 If we manufacture or deliver on the basis of drawings, models or samples provided by the Customer, the Customer shall be responsible for ensuring that intellectual property rights of third parties are not infringed thereby. If we are prohibited by third parties from producing or delivering the products due to an infringement of third-party intellectual property rights, we shall be entitled, without further examination of the factual and legal situation, to stop work and demand reimbursement of our expenses from the Customer.
- 10.2 The Customer undertakes to indemnify us against any claims of third parties which these should assert due to the infringement of intellectual property rights. If we incur damages in the event of an infringement or the assertion of an intellectual property right, the Customer shall compensate us for such damages.

## **11. Liability**

- 11.1 We shall be liable without limitation in accordance with the statutory provisions for injury to life, physical injury or damage to health, in accordance with the Product Liability Act, for assumption of a quality guarantee, in the case of fraudulent concealment of defects, and for damages caused intentionally.
- 11.2 We shall also be liable for a grossly negligent breach of duty in accordance with the statutory provisions. In the event of a breach of a non-essential contractual obligation, liability shall be limited to the foreseeable damage typical of the contract.
- 11.3 In the event of slight negligence, we shall only be liable if essential contractual obligations are breached; in this case, our liability shall be limited to the foreseeable damage typical of the contract, the occurrence of which could have been expected.
- 11.4 In all other respects our liability is excluded.
- 11.5 Essential contractual obligations are those whose fulfilment enables the proper execution of the contract at all and on whose observance the Customer regularly relies and may rely.
- 11.6 The above-mentioned exclusions and limitations of liability shall also apply in favour of Kurt Allert's organs, legal representatives, employees and other vicarious agents.

## **12. Place of performance; Jurisdiction; Applicable law**

- 12.1 Place of performance, also for subsequent performance, is the registered office of Kurt Allert in Oberndorf am Neckar, Germany.
- 12.2 The sole place of jurisdiction for all disputes arising out of or in connection with the performance of the Services shall be Oberndorf am Neckar, Germany. We are also entitled to assert claims at the Customer's general place of jurisdiction.
- 12.3 The law of the Federal Republic of Germany shall apply; the UN Convention on the International Sale of Goods (CISG) shall not apply.