

# General Terms and Conditions of Sale and Delivery of ALTANA New Technologies GmbH

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## 1. GENERAL

- 1.1 These General Terms and Conditions of Sale and Delivery of ALTANA New Technologies GmbH (hereinafter referred to as "we" / "our") shall only apply to persons within the meaning of section (§) 14 of the German Civil Code (BGB), i.e. natural or legal persons who, when purchasing goods from us (hereinafter referred to as the "Goods"), are acting within commercial or self-employed professional activity (hereinafter referred to as "Customers"). Sales to consumers within the meaning of § 13 BGB shall be excluded.
- 1.2 Our General Terms and Conditions of Sale and Delivery shall apply to contracts concluded between us and Customers. This includes contracts made via the usual sales channels (orders by e-mail and fax, inter alia) as well as those concluded via our online platforms (in case we offer sales via an online platform).
- 1.3 Once our General Terms and Conditions of Sale and Delivery have been introduced to the Customer, they will apply to all further, similar business relationships between us and the Customer, unless otherwise agreed to in writing.
- 1.4 These General Terms and Conditions of Sale and Delivery shall apply exclusively. Any terms and conditions of the Customer that conflict with or deviate from these General Terms and Conditions of Sale and Delivery shall not apply unless we have expressly accepted them in writing. Silence in response to such deviating terms and conditions shall not be deemed to be consent, also not regarding any future contracts.

## 2. OFFERS AND ORDERS

### 2.1 General

- 2.1.1 Our offers are subject to change and are non-binding unless we have expressly designated them as binding. They are merely invitations to the Customer to place a binding order thereon. A contract - even in the course of ongoing business - is formed as soon we confirm the Customer's order in writing or via e-mail or deliver the Goods. Our order confirmation determines the content of the delivery contract. If delivery is effected immediately, the invoice may replace the order confirmation.
- 2.1.2 The obligation to deliver an item defined only by its category does not mean we assume the risk of procurement. We are only required to deliver from our own stock. We shall not be deemed to have granted a guarantee unless we have specified a property as guaranteed in writing.
- 2.1.3 If the Goods ordered by the Customer are not in stock or available for immediate delivery at the time of such order, we will send a notification of the estimated delivery date upon receipt of the Customer's order. This notification does not constitute an acceptance of the order. In this case, the Customer is entitled to revoke its order to us in writing within 2 weeks after having received the notification of the estimated delivery date. If the Customer does not revoke its order within that period of time, the Customer shall be bound to its order. Section 2.1.1 applies accordingly for the process of order confirmation.

### 2.2 Conditions for orders placed via online platforms (in case we offer sales via an online platform)

- 2.2.1 Only registered Customers are entitled to order via our online platforms. There is no right to registration nor continued registration. Once registered, the Customer agrees to the exclusive applicability of these General Terms and Conditions of Sale and Delivery.
- 2.2.2 Customer orders of the Goods listed on our online platforms are deemed to be offers submitted by the Customer to conclude a corresponding contract with us. By selecting the appropriate button, the Customer can add Goods to the "shopping cart" and specify the desired quantity of the Goods. If the Customer clicks on the "shopping cart" button, the Customer can view its shopping cart at any time without any obligation, change the desired quantity and remove individual items from the shopping cart by clicking on the "remove" button. If the Customer wishes to submit an offer to conclude a purchase contract for the Goods, the Customer can continue the ordering process by clicking on the "proceed to checkout" button displayed in the shopping cart. Next, the Customer enters the necessary data (e.g., delivery address and desired shipping method). The "continue" button takes the Customer to the next input step and finally on to the order overview. In the order overview, the Customer can check the data entry once again. Input errors or change requests can be corrected before finally placing the order by clicking the "edit", "edit shopping cart" or "back" button. Before sending the offer as part of the ordering process, the Customer must accept the General Terms and Conditions of Sale and Delivery once again. By clicking on the "send order" button, the Customer submits a legally binding offer to conclude a contract.
- 2.2.3 After the order has been completed, we will send electronic information to the Customer regarding the receipt of the order, which does not, however, constitute acceptance of the order. The order shall only be deemed accepted when the Customer receives an order confirmation, or the ordered Goods are delivered. The order confirmation determines the content of the contract. In case of immediate delivery, the invoice may replace the order confirmation. We are not obligated to accept the offer or the order.

## 3. PRODUCT SAMPLES, DOCUMENTS

- 3.1 The product properties of product samples are only binding to the extent we expressly agreed to specific product properties of the Goods in writing.

- 3.2 We reserve title and all copyrights and intellectual property rights to product samples, illustrations, drawings, data, cost estimates and other documents relating to the Goods disclosed or provided to the Customer. This does not apply to product samples the Customer has used in the ordinary course of business. The Customer undertakes not to give third parties access to the product samples, data and/or documents stated in sentence 1, unless we have given our express written consent.
- 3.3 The provisions of sections 3.1 and 3.2 shall apply vice versa to documents, drawings, or data provided by the Customer; we, however, may make these available to any third parties who have permission to take care of our contractual delivery obligations or who are our agents or suppliers.

#### **4. PROPERTIES OF THE PRODUCTS AND GUARANTEES**

- 4.1 Unless otherwise agreed, our product specifications (technical data sheets) exclusively determine the product properties of the Goods. Our product specifications are available at: <https://www.altana.com/cubic-ink.html> and are also be provided to you upon request and are hereby incorporated into these General Terms and Conditions of Sale and Delivery. Any other subjective or objective requirements concerning the Goods are excluded.
- 4.2 Information on product properties and shelf-life as well as other product information only constitute a guaranty if agreed to or specifically documented as such.
- 4.3 Our technical advice - whether verbally, in writing and/or through tests – is based on current knowledge. Before using the Goods, it is the Customer's responsibility to examine the suitability of the Goods and test them for quality and fitness for a particular purpose. This also applies to any potential infringement of intellectual property rights of third parties. Details and information about suitability and use of the Goods, even if mentioned in the product specifications, are non-binding and do not constitute a commitment regarding the Goods' properties or use.

#### **5. TERMS OF PAYMENT, PROVISION OF SECURITY**

- 5.1 Unless agreed otherwise, invoice amounts are due for payment without deduction within 30 days after the date of the invoice. Invoice amounts are payable in Euros to one of our bank accounts. Irrespective of the place of delivery of the Goods, our registered office shall be the place for fulfilment of Customer's payment obligations.
- 5.2 If the payment deadline is exceeded, the Customer will be in default without requiring any prior reminder. Upon default, default interest shall be due immediately at a rate of 9 percentage points above the base interest rate of the European Central Bank applicable on the due date of the claim for payment. The assertion of any further damage is reserved.
- 5.3 In case of Goods being exported, any costs relating to the transfer or payment of funds shall be borne by the Customer to the extent they arise in the country of the Customer.
- 5.4 The acceptance of orders and the execution of deliveries may be made dependent on the provision of a security or an advance payment. We are also entitled to demand payment concurrently with the delivery of the Goods.
- 5.5 If the Customer's financial situation deteriorates significantly after the conclusion of the contract, be this because of an application for the begin of insolvency proceedings on the part of the Customer, the begin of insolvency proceedings, the application for the submission of an affidavit or a detention order, or because there is a suspension of payments not based on rights of retention or other rights, and this jeopardizes the Customer's ability to fulfil its contractual duties, we are entitled to deliver the Goods after the Customer has made advance payment.
- 5.6 The Customer only has a right of retention or set-off regarding counterclaims that have not been disputed or have been legally determined binding by a court, unless the counterclaim is based on a breach of essential contractual duties (see section 10.1 for the definition) by us. The Customer may only exercise a right of retention if the counterclaim is based on the same contractual relationship.

#### **6. DELIVERIES, SHIPMENTS AND FORCE MAJEURE**

- 6.1 Binding delivery dates and deadlines must be agreed expressly and in writing. In the case of non-binding or estimated (approximately, about, etc.) delivery dates or deadlines, we will make reasonable efforts to meet delivery dates and deadlines. Any unilateral requests by the Customer shall not be binding on us unless we expressly agree to them in writing. Fixed-date transactions must be expressly designated as such and confirmed in writing by us.
- 6.2 If, despite proper stockkeeping, we do not receive deliveries or services from our suppliers for reasons beyond our control, or do not receive them correctly, in full or on time, or if events of force majeure occur, we will inform our Customers timely in writing or via e-mail. In this case, we are entitled to postpone the delivery for the duration of the impediment, or to withdraw from the contract in whole or relating to the non-fulfilled part, if we have met our above obligation to notify and have not assumed the procurement risk. Events of force majeure are strikes, lawful lockouts, actions of authorities, energy and raw material shortages, epidemics or pandemics, legally binding national or international embargo regulations, provisions for the fight against terrorism, transportation bottlenecks through no fault of us, and impairment of operations through no fault of us, for example due to fire, water or machine damage, and all other hindrances which, from an objective point of view, were not culpably caused by us. If a delivery date or a delivery period has been bindingly agreed and if the agreed delivery date or delivery period is exceeded due to events such as those under this section 6.2, the Customer is entitled to withdraw from the contract relating to the non-performed part of such contract after a reasonable grace period has expired, if it would be objectively unreasonable for the Customer to continue to be bound by the contract. In this case, the Customer has no further claims. If the impediment lasts longer than six months or if delivery becomes impossible, both parties are entitled to withdraw from the contract.

- 6.3 If there is a force majeure event and/or a case of late/incomplete delivery on the part of one of our suppliers pursuant to section 6.2, we are also entitled to initially make only partial deliveries in our sole discretion (§ 315 BGB) – without compromising the rights in section 6.2 – and to reduce the delivery quantities amongst our Customers, including affiliated companies, at our sole discretion (§ 315 BGB) and/or to interrupt the delivery. We will inform the Customer about this in due time in writing or via e-mail. The delivery will be continued, or the quantities remaining after the reduction will be delivered once the force majeure event or the case of late/incomplete delivery on the part of a supplier pursuant to section 6.2. has ended. The rights of the Customer pursuant to section 6.2 remain unaffected.
- 6.4 The Customer's claims for damages due to delay in delivery are capped at 0.5% of the net delivery price of the delayed Goods for each completed week of delay, not to exceed in total 5% of the stated net delivery price. If the delay is due to intent or gross negligence or constitutes a breach of an essential contractual duty (for the definition see section 10.1), the statutory liability remains in effect, which, in the event of a merely negligent breach of a contractual duty, is limited to the respective contract-typical and foreseeable damage.
- 6.5 If the Customer gives us a reasonable grace period after a delay in delivery and such grace period has expired, the Customer is entitled to withdraw from the contract. The Customer is only entitled to claim damages due to non-performance in the amount of the foreseeable damage if the non-performance is due to intent or gross negligence or due to a breach of an essential contractual duty (see section 10.1 for the definition).
- 6.6 The limitations of liability pursuant to sections 6.4 and 6.5 shall not apply if the parties agreed to a fixed-date transaction; the same applies if the Customer can assert that the immediate assertion of the claim for damages instead of performance is appropriate due to the delay for which we are responsible (§ 281 para. 2 BGB).
- 6.7 We shall not be in default for as long as the Customer is in default with the fulfilment of its obligations towards us, including those arising from other contracts.
- 6.8 Unless agreed otherwise, loading and shipping shall be carried out uninsured at the risk of the Customer ex works, i.e. EXW (Wesel) in accordance with the Incoterms 2020.
- 6.9 We have the right to choose the transport route and the means of transportation. We, however, will strive to take the Customer's wishes into account with regards to the shipping method and shipping route; any additional costs incurred due to this – even if freight-free delivery was previously agreed – shall be borne by the Customer.
- 6.10 If the parties agreed to Incoterms other than as set forth in section 6.8 and no representative of the Customer is present to receive the ordered Goods when they are delivered to the Customer, and if there is no discernible unloading area/depot at the delivery address that is accessible, secured and lockable for delivery, the confirmation of the driver (the transport company) shall suffice as proof that the Goods were delivered properly.
- 6.11 If our Goods are shipped in returnable containers, these returnable containers are to be returned to us, at our discretion, emptied of residues in exchange for new containers or sent back to us freight prepaid.

## **7. PRICES**

- 7.1 We will execute placed orders at the prices as agreed in the contract with the Customer (see section 2.1.1). The prices are quoted in Euro, except where otherwise specified, and shall be exclusive of value-added tax. Value-added tax will be invoiced separately at the respective applicable rate in accordance with the pertinent tax regulations.
- 7.2 Unless agreed otherwise, the prices shall be quoted per kg/net, pursuant to Incoterm clause stated in the order confirmation, duty unpaid, for delivery in non-returnable drums and/or intermediate bulk containers. If the Customer desires delivery of the Goods in smaller packaging like non-returnable pails and canisters, the price increases by the pail surcharge that is valid on the day the invoice is issued. If the Customer demands transport by express or airfreight, we will charge any additional costs.
- 7.3 We are entitled, at our reasonable discretion (§ 315 BGB, judicially reviewable pursuant to § 315 para. 3 BGB), to unilaterally increase the prices for our Goods in the event of an increase in personnel, production, material, raw material and/or procurement costs, logistics costs, wage and ancillary wage costs, social security contributions, and energy costs (e.g. for electricity and gas) as well as costs due to legal requirements, environmental regulations, currency regulations, changes in customs duties, and/or other public charges if this increase directly or indirectly affects the costs of the Goods and increases them by more than 5%, and if there are more than 4 months between the price agreement and the delivery. Such an increase is precluded if the cost increase for some or all of the above factors is offset by a cost reduction for some of the other above factors in relation to the overall cost burden for the Goods (cost netting). If the new price exceeds the original price by 30% or more, due to the aforementioned right to price adjustment, the Customer is entitled to withdraw its orders that have not yet been executed completely, i.e. from the part that has not yet been fulfilled. The Customer may, however, only assert this right immediately upon notification of the increase in prices.

## **8. RETENTION OF TITLE**

- 8.1 We retain the title to all Goods delivered by us (hereinafter referred to as "Conditional Goods"), until all our claims arising from the business relationship with the Customer, including any future claims from contracts concluded later, have been settled. This also applies to any balance in our favour, if any specific individual claim or all claims on our part have been included in a current invoice (current account) and the balance has been drawn.
- 8.2 At its own expense the Customer shall sufficiently insure the Conditional Goods, especially against fire, water, damage, and theft. Any claims against an insurance company arising from damage caused to the Conditional Goods is hereby already assigned to us in the amount of the value of the Conditional Goods. We hereby accept the assignment.

- 8.3 The Customer is entitled to resell the delivered Conditional Goods in the normal course of business. Any other disposition, in particular pledges or the granting of security rights is not permitted. If the Conditional Goods are not paid for immediately upon resale by the third-party purchaser, the Customer is obligated to resell them while retaining title to the Conditional Goods. The right to resell the Conditional Goods expires instantly if the Customer ceases payment or defaults on payment to us or if the Customer applies for or insolvency proceedings on its assets have begun. The same shall apply if the Customer is affiliated with a group of companies and/or if one of the circumstances described in the previous sentence occurs at the Customer's parent company or holding company.
- 8.4 The Customer hereby assigns to us all claims, including securities and ancillary rights, which the Customer has against the end user or against third parties as a result of or in connection with the resale of the Conditional Goods. We accept the assignment. The Customer is not permitted to enter into any agreement with its purchasers that excludes or impairs our rights or nullifies the advance assignment of the claim in any way. If the Conditional Goods are sold together with other items, the claim against the third-party purchaser in the amount of the delivery price agreed between us and the Customer shall be deemed to have been assigned, unless the amounts attributable to the individual Conditional Goods can be determined from the invoice.
- 8.5 The Customer remains entitled to collect the claims assigned to us until such right is revoked by us, which is permissible at any time. Upon our request, the Customer shall provide us with the information and documents necessary for the collection of the assigned claims and, if we do not do so ourselves, the Customer shall inform its purchasers immediately about the assignment to us.
- 8.6 If the Customer incorporates any claims from the resale of Conditional Goods into a current account relationship with its purchasers, the Customer hereby assigns to us in advance an acknowledged final balance that the Customer has in its favour in the amount which corresponds to the total amount of the claim from the resale of our Conditional Goods incorporated in the current account relationship. We hereby accept the assignment.
- 8.7 If the Customer has already assigned claims from the resale of the Conditional Goods delivered or to be delivered by us to third parties, in particular on the basis of recourse or non-recourse factoring or has made any other agreements on the basis of which our present or future security interests stated in this clause may be impaired, the Customer shall immediately notify us. In the event of recourse factoring, we are entitled to terminate the contract and demand restitution of the Conditional Goods already delivered; the same applies in the event of non-recourse factoring, if the Customer is unable to freely determine the purchase price of the claim under the contract he made with the factor.
- 8.8 If the Customer breaches the contract, especially if he is in default of payment, we are entitled to take back all Conditional Goods – without us having to first terminate the contract; in this case, the Customer must immediately surrender the Conditional Goods, unless the Customer has only committed a minor breach of duty. To determine the stock of the Conditional Goods delivered by us, our representatives may enter the Customer's business premises at any time during normal business hours. The return of the Conditional Goods only constitutes termination of the contract if we expressly declare this in writing or if this is required by mandatory statutory provisions. The Customer shall inform us about any access third parties have to the Conditional Goods or to any claims assigned to us.
- 8.9 If pursuant to above provisions we are entitled to securities whose value exceeds the secured claims by more than 10%, we will, if requested by the Customer, release the securities proportionately in our sole discretion.
- 8.10 Processing and editing of the Conditional Goods shall be carried out for us as manufacturer within the meaning of § 950 BGB, but without imposing any obligations on us. If the Conditional Goods are processed or inseparably combined with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the invoice value of our Conditional Goods to the invoice values of the other processed or combined items. If our Conditional Goods are combined with other movable objects to form a uniform object which is to be regarded as the main object, the Customer hereby assigns to us co-ownership thereof in the same proportion. The Customer shall hold the ownership or co-ownership in safe custody for us free of charge. The co-ownership rights arising hereunder shall be deemed to be Conditional Goods. Upon our request, the Customer shall be obligated at any time to provide us with the information required to pursue our ownership or co-ownership rights.
- 8.11 Once the Customer has suspended payment or filed an application for insolvency, the Customer is no longer entitled to resell, process, combine or mix any of the Conditional Goods. In this case, the Customer shall store and label the Conditional Goods separately and hold in trust for us any amounts it receives which arise from assigned claims, result from deliveries of the Consigned Goods and are due to us.
- 8.12 If retention of title expressly agreed herein is not recognised by the law of the country into which the Goods are delivered, or only subject to certain conditions, the Customer shall notify us about this at the latest at the time the contract is concluded. If the law of such country does not allow retention of title, or the extended retention of title, but permits us to reserve other rights regarding the Goods which serve purposes of security in a similar manner as a retention of title, we declare herewith that we will avail ourselves of these rights. The Customer undertakes to cooperate in fulfilling all the required measures (in particular, compliance with formal requirements). If such other rights, which serve to safeguard the rights of suppliers, do not exist either, the Customer shall provide equivalent securities, if we so request. If the Customer does not comply with this request, we may demand the immediate payment of all open invoices, regardless of any previously agreed payment deadlines.

## **9. WARRANTY AND NOTIFICATION OF DEFECTS**

- 9.1 The Customer shall inspect the delivered Goods for defects regarding their quantity and quality immediately upon delivery and shall notify us of any defects immediately, but no later than 8 days after receipt of the Goods; otherwise, the Goods shall be deemed approved. The Customer shall notify us of any defects not noticeable during this inspection immediately, within 8 days at the latest, upon discovery – but no later than within the period of statute of limitations set forth in item 9.6.

- 9.2 Any notice of defects shall be communicated in writing specifying the order-, batch-, invoice- and shipping numbers. Any complaint not made in due form and time shall exclude any claim of the Customer for breach of duty due to poor performance.
- 9.3 Upon commencement of processing, editing, combining or mixing with other items, the Customer shall be deemed to have approved the delivered Goods to be in accordance with the contract in the event of noticeable defects. The same shall apply in the event of onward shipment of the Goods away from the original destination.
- 9.4 In case of any noticeable defect, the Customer must leave the respective Goods in the transport container, so we can verify the complaint, unless we expressly waive the right to such by way of written declaration and the Customer ensures the separate storage of the respective Goods.
- 9.5 If the Customer timely notified us of provable defects, we will, in our sole discretion, remedy the defect ourselves, have it corrected by third parties or subsequently deliver Goods free of defects (subsequent performance). In the case of delivery recourse (§§ 445a, 445b, 478 BGB), the Customer has the right of choice. Before returning the Goods, the Customer shall seek our consent. Any returned Goods will become our property. If we do not meet our obligation to remedy or replace the defective Goods within a set appropriate grace period, if subsequent performance fails (whereby we are entitled to make two attempts), if we refuse to provide subsequent performance, or if this subsequent performance is unreasonable for us, the Customer - pursuant to statutory provisions - can withdraw from the contract, reduce the purchase price, demand reimbursement of expenses as well as compensation for damages within the limits mentioned under section 10. If the defect is only minor, there are no rights to withdraw from the contract or to reduce the purchase price. The right to claim damages pursuant to section 10, however, remains unaffected.
- 9.6 The statute of limitations period for claims arising from defects is 12 months from the passing of risk of the Goods to the Customer in accordance with the agreed Incoterms. This does not apply to cases pursuant to section 10.1 (1) – (8) below. The statute of limitations periods of §§ 438, para. 1, no. 2, 445b para. 1 and 634a para. 1 no. 2 BGB (German Civil Code) remain unaffected.
- 9.7 Our liability pursuant to section 10 remains unaffected.

## 10. LIABILITY, EXCLUSION AND LIMITATION OF LIABILITY

- 10.1 We are generally only liable for intentional acts and gross negligence on our part and our executive and non-executive employees, legal representatives, and vicarious agents, as well as our subcontractors. Our liability for slight negligence is excluded.

The above exclusion of liability does not apply to

- (1) the breach of essential contractual duties whereby essential contractual duties are those whose fulfilment characterise the contract and which the Customer may trust to be fulfilled,
- (2) the breach of duties within the meaning of § 241 para. 2 BGB, if the Customer can no longer be reasonably expected to allow our performance.
- (3) death or personal injury,
- (4) the assumption of a guarantee for the quality of a performance, for the existence of a successful performance or for a procurement risk,
- (5) deceit,
- (6) initial impossibility,
- (7) claims resulting from strict product liability law, or
- (8) other cases of mandatory statutory liability.

- 10.2 Unless we are liable for intentional breach of our contractual obligations, death or personal injury or there are other cases of mandatory statutory liability, we are only liable for the contract-typical and foreseeable damage.
- 10.3 Liability for indirect or consequential damages is excluded unless we acted intentionally or gross negligently or violated an essential contractual duty (see section 10.1 for the definition).
- 10.4 Our liability is capped at EUR 1,000,000.00 for each occurrence. This limitation of liability does not apply if we are accused of deceit, intentional acts or gross negligence, if there are claims resulting from death or personal injury, tortious action or not fulfilling an expressly assumed guarantee or the assumption of a procurement risk pursuant to § 276 BGB or in cases where higher liability amounts are mandatory as prescribed by the law.
- 10.5 Any additional liability for damages beyond what is described above shall be excluded without regard to the legal nature of the claim asserted. This applies, in particular, to claims for damages resulting from culpability in contract negotiations, other breaches of duty, or because of tort claims for damages pursuant to § 823 BGB.
- 10.6 The exclusions or limitations of liability pursuant to sections 10.1 to 10.5 above equally apply to our executive and non-executive employees, our legal representatives and vicarious agents, as well as our subcontractors.
- 10.7 Any claims the Customer may have for damages resulting from this contractual relationship the Customer may only assert within one year of the commencement of the statute limitations period. The same applies to competing claims from tortious acts as well as to any claims of consequential damages. This does not apply to cases listed in sections 10.1 (1) to (8). The statute of limitations period for delivery recourse pursuant to §§ 445a, 445b, 478 BGB also remains unaffected.
- 10.8 The above provisions shall not lead to a reversal of the burden of proof.

## 11. DATA PROTECTION

We store and process personal data provided by the Customer in accordance with applicable laws and regulations, as far as is necessary for establishing, defining, executing or changing the contractual relationship.

By using our online platforms (if we offer sales via an online platform), the Customer grants us the right to use the information and data made available or transmitted (including data in connection with Customer orders), as well as the information and data generated on this basis within the scope of the online platforms for the purpose of fulfilling our contractual duties, operating the online platforms, for data analyses, in particular for the purposes of marketing and customer service, and compliance with legal requirements and administrative orders. This includes in particular the right to transmit the declarations and data of the Customer to a third party, to the extent necessary to conclude or execute contracts with the Customer. The data protection information pursuant to Art. 13, 14, 21 and 77 EU General Data Protection Regulation is available at: <https://www.altana.com/cubic-ink.html>.

## **12. CONFIDENTIALITY**

- 12.1 The Customer shall hold in strict confidence all facts, documents and information (about Goods) which the Customer gains knowledge of in the course of the contractual relationship with us, which includes technical, financial, business and market-related information about the company or our Goods, provided that we have declared the respective information as confidential or there is an obvious interest in the confidentiality (hereinafter referred to as "Confidential Information"). The Customer will use the Confidential Information exclusively for the purpose of implementing and executing the contractual relationship with us.
- 12.2 The Customer shall require from its directors, officers and employees, who process or get to know the Confidential Information, equal confidentiality and restricted use obligations not less strict than herein. The passing-on of Confidential Information to third parties by the Customer requires our express prior consent in writing or via e-mail.
- 12.3 The above obligations of confidentiality and restricted use shall not apply if the Customer can prove that the respective Confidential Information:
- (a) is in the public domain at the time of disclosure;
  - (b) is published or otherwise becomes part of the public domain through no fault of the Customer;
  - (c) was in the possession of the Customer at the time of disclosure;
  - (d) was made available to the Customer by a third party who had the right to legally disclose it;
  - (e) was independently developed by the Customer without using or making any reference to the Confidential Information;
  - (f) is required to be disclosed pursuant to a law, regulation, rule or ordinance of any governmental body or court provided that the Customer - if legally permitted - has given prompt written notice to us of any such requirement.

## **13. COMPLIANCE**

The Customer is obligated to comply with all applicable laws regarding the Goods, especially anti-corruption regulations, regulations combating money laundering or financing of terrorism and anti-trust laws. Applicable anti-corruption regulations within the meaning of the previous sentence include but are not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act.

## **14. EXPORT CONTROL**

- 14.1 The Goods are – unless otherwise agreed in writing - always designated to remain, to be used, as well as to be sold in the first country of delivery agreed upon with the Customer. Unless required by law or otherwise agreed in writing, we are under no obligation to make available documents to the Customer for the import or export of the Goods from the first country of delivery. If we do make such information available to the Customer on an individual basis, this shall be done without any warranty or guarantee of the accuracy of the information. This does not give the Customer any right to obtain or use this information from us for any future business.
- 14.2 The export of certain Goods may be subject to authorisation – e.g. because of their nature, their intended use or their final destination. The Customer shall strictly comply with all applicable (re-) export control and sanctions regulations, especially those of the Federal Republic of Germany, the European Union and its member states as well as the United States of America and the United Nations.
- 14.3 Prior to any provision of the Goods, which the Customer had purchased from us to a third party, the Customer shall check and guarantee in particular by appropriate measures that
- (a) no embargo imposed by the European Union and its member states, by the United States of America and/ or by the United Nations shall be violated;
  - (b) the Goods are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless it has obtained the required authorization;
  - (c) the regulations of all applicable Sanctioned Party Lists of the European Union and its member states and the United States of America concerning the trading with entities, persons and organizations listed therein are obeyed.
- 14.4 Upon request, the Customer shall provide us with all requested end-use-certificates regarding the intended final destination of the Goods purchased from us without undue delay, but no later than within 10 days.
- 14.5 The Customer shall indemnify and hold us harmless from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any culpable violation of the above obligations pursuant to sections 14.1 to 14.4.

The Customer shall compensate us for all losses and expenses resulting thereof, in particular the costs and expenses of any possible legal defence as well as any contingent fines or penalties imposed by authorities. This provision does shall not lead to a reversal of the burden of proof.

- 14.6 If obligations pursuant to this section 14 would constitute a breach of any applicable mandatory anti-boycott rule legislated by the European Union or any of its member states, such conflicting obligations shall not be fulfilled.

**15. JURISDICTION AND APPLICABLE LAW**

- 15.1 The exclusive place of jurisdiction and venue shall be Wesel for any and all disputes arising out of the contractual relationships governed by these General Terms and Conditions of Sale and Delivery. We have, however, the right to file a lawsuit at the Customer's general place of jurisdiction.

- 15.2 These General Terms and Conditions of Sale and Delivery shall be governed by the laws of the Federal Republic of Germany without regard to its conflict-of-law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

- 15.3 If our order confirmations contain an Incoterm clause, the latest version thereof shall apply unless otherwise stated in our respective order confirmation.