



**GENERAL TERMS AND CONDITIONS OF SALE  
(2018 Edition)**

These general terms and conditions of sale (“**GTCS**”) shall be applicable to the offering, manufacture, sale and delivery of products and services (herein both separately and jointly referred to as the “**Products**”) by any affiliated company of the Albéa Group (hereinafter referred to as “**Albéa**”) to its customer (hereinafter referred to as “**Customer**”) and form an integral part of the agreement between Albéa and its Customer.

**The GTCS constitute the sole agreement between Albéa and its Customer (hereinafter referred to as the “Parties”). The Customer represents that he has full knowledge and understanding of these GTCS and acknowledges having accepted them without reserves or limitations considering it had the opportunity to discuss and negotiate them with Albéa. Customer acknowledges that he was provided with all necessary information and advice to ensure that both Products and GTCS were meeting its requirements and that he issued a purchase order (hereinafter referred to as the “Order”) in full acknowledgment of the GTCS.**

**The simple issuance of an Order acceptance of Albéa’s quotation by a Customer shall be construed as an acceptance without any reserves of the present GTCS and as a waiver by the Customer to enforce its own general terms and conditions of purchase or any other terms inconsistent with the GTCS.**

**The GTCS may be amended and/or completed solely by written specific terms and conditions previously agreed by the parties.**

Failure by Albéa to enforce at any time any provision of these GTCS shall not be construed as a waiver of Albéa’s right to act or to enforce any such term or condition and Albéa’s rights shall not be affected by any delay, failure or omission to enforce any such provision.

### **1. Finalization of contract**

The Orders, once they have been accepted by Albéa are binding upon the Parties. Except as otherwise set forth herein, the Products are not replaced or reimbursed. Orders issued by the Customer are subject to the prior written approval of Albéa. In no event shall Albéa’s commencement of performance of the Customer’s Order be construed as tacit acceptance of the terms of such Order.

All information, specifications and all prices appearing in Albéa’s catalogs and/or documentation, including any quotation, shall be provided for information purposes only, and shall be binding on Albéa solely in accordance with the Customer’s Order duly accepted by Albéa.

Unless otherwise provided, the studies and recommendations provided to the Customer shall never be incorporated by reference into the Order. The Customer shall verify such studies and recommendations under its own control and responsibility, and shall ensure, prior to the design and manufacture of the Product or performance of the service, that the Product is compatible with its contemplated use, if need be by appropriate testing.



When permits, authorizations or formalities, such as *inter alia* relating to importation or exchange control, are required for importing the Products in the country of delivery or for payment of the Products sold, the Customer shall be solely responsible for obtaining or performing them in a timely manner and the Customer shall so inform Albéa at the latest on the Order's date of issue.

## **2. Toolings**

Unless otherwise provided for, toolings (equipment, machines, molds, prototypes, etc.) shall remain Albéa's property as an integral part of its production resources and intellectual property, even in the case where the Customer makes a financial contribution and/or in the case where it contributes to the definition of the specifications. Any financing by the Customer in view of covering all or part of the cost for producing the tooling shall in no event justify the transfer of the ownership of such tooling to the Customer, and shall not authorize the Customer to ask for the transfer of such tooling to another supplier without Albéa's prior written consent. Nor shall such financing limit Albéa's production of products with such tooling for other Customers. Only Albéa's name shall be marked on the tooling.

Unless otherwise provided, when tooling is provided by a Customer or it is expressly agreed, as an exception, that such tooling shall be manufactured only for a Customer and shall belong to such Customer and the full price of such tooling is paid by such Customer, the tooling shall remain the Customer's property. In such a case the Customer shall be liable for all costs and expenses (development, repairs, modifications and restorations, duties, taxes, etc.) and the Customer shall be invoiced for all such costs and expenses, if any. Such tooling shall be kept in Albéa's premises and Albéa shall perform maintenance on it and keep it in normal working order with respect to its service life and its specific characteristics as stated and agreed in writing at the time of its delivery by or for the Customer. Such tooling must be properly insured by the Customer or Albéa, as their "Keeper", against damage to it or its destruction. Each Party waives all rights of recourse against the other Party and its insurers on such basis and shall ensure that its insurers also waive such rights of recourse. Tooling shall be returned solely at the expiration of the Order related to the relevant Products, upon the Customer's written request and at the Customer's own expense, after payment, by the Customer, of all amounts due to Albéa (regardless of the due date of such amounts).

## **3. Delivery**

The delivery dates are provided by Albéa in the Order(s). Delays in such delivery dates shall not entitle to any cancellation or termination of the corresponding Order(s), nor any compensation or penalties. Such delivery dates and time periods shall be automatically extended in the case of delays due to a force majeure event in accordance with the terms of Article 7 hereunder, as well as in the case of breach or negligence caused by the Customer, late payment as provided in Article 4.2 hereunder. Unless otherwise provided for in the Order's written acceptance, deliveries shall be made in accordance with the customary tolerances accepted in the industrial sector of Albéa. Unless otherwise provided, Albéa reserves the right to require the Customer to accept delivery of all the Products in an Order in a single delivery.

Unless otherwise provided for in the Order's written acceptance, the Products shall be delivered in a packaging complying with usual customs and standards. Albéa shall not be



liable for any damage caused by inadequate packaging if such packaging has been requested or accepted by the Customer or if the Customer has not provided specific transportation instructions to Albéa in writing.

The Customer shall be prohibited from altering or modifying in whole or in part the packaging, markings, numbers and contents of Albéa's Products as they exist on the date of delivery, and shall be prohibited from using those which may have undergone such alteration or modification.

By express agreement, the Products shall be transported at the Customer's risks, even in the case where shipping is undertaken at Albéa's expenses. The Customer shall reserve all rights of recourse against the carrier in the event of missing goods, damage, delays, etc., and shall take all measures and perform all formalities that may be necessary in a timely manner.

Unless otherwise provided for in the Order's written acceptance and notwithstanding the retention of title clause in Article 5 hereunder, the costs and risks related to the Products (including the risk of loss or destruction) shall be transferred to the Customer in accordance with the applicable Incoterm as set forth in the Order, and if not, "Ex Works" (Incoterms CCI 2010) Customer(). The Customer undertakes to insure the Products, upon delivery, against all risks to which the Products may be subject or which the Products may cause.

In case applicable Incoterm is "Ex Works" and Customer fails to take delivery of the Products at Albéa's premises on the due date, Albéa shall invoice the Products on the due date as well as any storage additional fees Albéa may incur until Customer take effective possession of the Products.

The Customer shall immediately advise Albéa, by registered letter with return receipt, of any material or legal incidents (such as *inter alia* any seizure by a third party) which may affect the Products sold under a retention of title.

If the Products are subject to export restrictions (legal, regulatory or contractual), the Customer undertakes not to sell, provide or deliver to a third person, with or without remuneration, temporarily or permanently, the Products (including supplies and replacement parts delivered under the warranty), the documentation, the specifications and the information howsoever related to the Products, without the prior written consent of Albéa and/or the competent authorities concerned.

#### **4. Price - Payment Terms**

##### **4.1 Price - Price revision**

The price of the Products shall be established based on Albéa's written quotations. Orders shall be based on the quotations applicable on the Order date. The price established in the written acceptance of the Order may be modified automatically by Albéa until the date of delivery or performance if one or more factors having been used to establish the price undergo a change, even if such change was foreseeable at the time of the quotation. These factors include but are not limited to: raw materials and components, change of laws or regulations impacting wages or salaries or social security contributions, governmental charges, freight costs and insurance premiums. Albéa shall notify the Customer of such increase.



Notwithstanding the foregoing, Albéa's prices and rates shall be updated at least once per year. Prices and rates shall also be updated once per year after negotiation between the Parties. Such negotiation shall take place 3 months before the expiry of each 12-month time period and price changes shall be effective as of the anniversary date of the agreement or the Order between the Parties.

More generally, the price of certain items shall be established depending on minimum quantities previously discussed and agreed upon by the Customer. For all Orders of less than the minimum quantities, Albéa shall be entitled to invoice automatically the price as set forth according to the terms agreed upon by the Customer for the quantity "actually" ordered, or in lack of price scale based upon minimum agreed quantities, Albéa shall invoice performance costs after having informed the Customer, with the understanding that minimum quantities shall be established based on continuous uninterrupted production.

Unless otherwise provided for in the Order's written acceptance, all the prices of the Products shall be deemed "Ex works" (ICC Incoterms 2010), excluding duties and taxes.

If a rebate or discount is agreed, it shall only be due if the Customer strictly and completely respected all its contractual and legal obligations towards Albéa.

#### **4.2 Payment:**

Unless otherwise provided in the Order's written acceptance, the Customer shall make payments thirty (30) days net of the invoice date, beneficiary value in Albéa's bank account, by wire transfer, to the bank and the place indicated by Albéa.

For certain export Customers, payment shall be subject to prior obtaining of irrevocable documentary credit or another irrevocable guaranty and duly confirmed by an approved bank of Albéa, irrespective of the method and the place of delivery.

The payment shall be net of all deductions, withholdings or other charges. Unless otherwise provided and previously accepted by Albéa and/or stated in the invoice, the prices of the Products shall not be subject to any discounts or rebates by Albéa. Payment shall not be denied, delayed or interrupted for any reason whatsoever.

Without prejudice to any remedies or rights of recourse available to Albéa, all amounts (including charges and taxes) unpaid on the due date shall result in the immediate cancellation of any payment term, with the entire amount becoming due immediately, and such amounts shall bear interest for each day of delay at the in force legal interest rate, without prejudice to any damages that Albéa may claim. Such late payment interest shall be due automatically as of the first day following the date on which such amounts are due, without prior notice. Any delay in payment shall lead without further action and without any further formality by Albéa to a lump sum- compensation for costs connected with the enforcement of the receivable, of forty (40) euros payable by the Customer as compensation for recovery costs and an additional compensation if the recovery expenses incurred by Albéa exceed such amount. The Customer shall not claim any return under the warranty in Order to suspend payment of the Products. In addition, in case of late payment, Albéa shall be entitled (i) to suspend the performance of all its obligations, (ii) to terminate, by operation of law, all pending Orders



with such Customer within eight (8) days of receipt of a formal request for payment sent to the Customer by registered letter with return receipt, and (iii) to retake possession of all Products and all documents related thereto on the Customer's premises, without notice. The Customer shall be liable for the payment of all expenses and disbursements (including the transfer expenses) incurred by Albéa in retaking possession of the Products. Albéa shall also be entitled to request immediate payment of all other invoices, which shall become automatically due as a result of such delay, with immediate effect, with no formality other than notice by registered letter with return receipt, and without prejudice to any damages Albéa may claim from the Customer.

Under such circumstances, Albéa shall be entitled to require immediate payment in cash on the date of issuance of the Orders or prior to delivery of all new deliveries.

By express agreement, Albéa shall always have the right to set-off amounts it owes to the Customer against amounts due by the Customer to Albéa.

### **5. Title retention clause**

Albéa shall retain full and exclusive ownership of the Products until payment of the purchase price. Until full payment, the Customer must take all necessary measures to (i) ensure that the Products delivered are stored in proper conditions and are clearly identified as Products belonging to Albéa, such as to identify them and so that they cannot be confused with products from other suppliers, (ii) protect Albéa's rights over such Products, and (iii) immediately inform Albéa of any third-party claim related to such Products. The Products shall not be transferred, resold, pledged, or, more generally, subject to rights granted to any third parties. In the event of total or partial late payment of any invoice, and without prejudice to any other rights and remedies, Albéa expressly reserves the right to immediately retake possession of the Products. The Customer shall return the Products, at its own risk and expense, to Albéa upon first demand.

### **6. Compliance with regulations – Information**

The Customer, having accepted the Products' technical specifications, acknowledges having full knowledge of the design and properties of such Products and of the potential dangers associated with the Products. The Customer shall perform all necessary controls and tests on the Products. The Customer shall be solely responsible for compliance with the regulations in force related to the importing, marketing and use of the Products in their countries of delivery. The Customer shall be solely responsible for providing appropriate information to its customers and end consumers as to the use of the Products and/or their potential dangers and any consequences which may result therefrom.

### **7. Force Majeure**

Albéa shall not be liable for any damage incurred by breach of Albéa's obligations if an obstacle occurs independently of the intent of Albéa and if such obstacle prevents Albéa from fulfilling any of its obligation, if it can't be reasonably assumed that Albéa could have avoided or overcame such obstacle or its consequences, or that Albéa could have foreseen this obstacle at the time of the acceptance of the related Order.

Any natural disaster, storm, fire, flood, earthquake, accident, interruption of services, strike (including a strike affecting Albéa's suppliers), lock-out, interruption and/or delay in loading



or transportation, energy blackout, embargo, trade prohibition, shortage of or inability to obtain raw materials and/or components, disruption of supplies including but not limited to the supply of raw materials, components, formulas, substances energy or equipment, including the failure of the suppliers that supply Albéa, tooling accidents, sabotage, intervention of civil or military authorities, acts of war, declared or undeclared hostilities, terrorist act and riots, shall, *inter alia*, be considered obstacle preventing Albéa from fulfilling its obligations.

Albéa shall promptly notify the Customer in writing of any obstacle preventing Albéa from fulfilling its obligations with respect to performance of the Order. In such case, Albéa's obligations shall be suspended for the duration of the obstacle preventing Albéa from fulfilling its obligations, and the Order shall remain in effect.

In the case of an obstacle lasting more than three (3) months, any party may automatically terminate the affected Order, with immediate effect, by registered letter with return receipt. The Customer shall be required to take delivery and to pay for all Products manufactured until the date of termination and to compensate Albéa for all other costs and expenses already incurred in accordance with Article 9 hereunder.

## **8. Warranty**

The provisions relating to the warranty hereunder shall be in lieu of all mandatory warranties offered to the Customer, to the extent permitted by law.

Albéa warrants, on the terms and conditions defined hereinafter, that the Products shall comply with the contractual specifications, within the customary tolerances accepted in the industrial field of Albéa.

The Customer shall provide notice in writing to Albéa of all claims under the warranty for apparent defects, prior to any utilization/use/transformation of the Products and, in any event, within a maximum period of fifteen (15) days following delivery. Failing that, the Customer shall automatically lose the benefit of the warranty.

**Albéa warrants the Products against all non-conformities and defects, excluding apparent defects, and subject to any other provision hereof, for a period of six (6) months as of their delivery to the Customer.** The Customer shall provide notice in writing to Albéa of all claims under this warranty within five (5) days following the discovery of the non-conformity or defect. Failing that, the Customer shall automatically lose the benefit of the warranty. If Albéa confirms such non-conformity or such defect, Albéa shall either (i) repair the non-conforming Products, at its own expense, or (ii) replace the Products, at its own expense, or (iii) refund the Customer on a pro rata basis for the defective Products. The choice between a refund, replacement or repair of the Products acknowledged to be defective, shall be under the sole decision of Albéa, depending on the nature of the event triggering the warranty. The repairs or replacements performed pursuant to the warranty shall not extend the initial period of such warranty, as provided above.

Products shall be deemed defective in the event the defect is reproduced by Albéa during an examination of the Products, it being understood that the non-conformity shall be determined by reference to the corresponding contractual specifications.



The Customer shall comply with the terms stipulated by Albéa regarding *inter alia* the storage or use of the Products, and the Customer shall inform its own Customers or subcontractors of such terms. If the Customer does not provide such information, Albéa shall not be held liable on such basis.

**The following defects and non-conformities shall notably be excluded from the benefit of the warranty:**

- defects due to a failure to comply with Albéa's specifications and instructions,
- defects due to normal wear and tear,
- defects due to transportation or means of transportation used,
- defects due to storage conditions,
- defects due to specifications or requirements provided for by the Customer,
- defects resulting from alteration of the Products or their use by the Customer or by a third party without Albéa's prior, written consent,
- defects which did not exist at the time the Product was delivered to the Customer,
- defects in a Product which was not intended for sale or for any other form of distribution,
- defects attributed to the design of the final product incorporated by the Customer or a third party into the Product or into which the Product was incorporated by the Customer or a third party, or to the instructions of the final product's manufacturer;
- non-conformity resulting from the application of mandatory legal or regulatory rules,
- defects reasonably unknown given the state of scientific and technical art at the time of manufacturing.

Albéa shall not bear any responsibility or liability for any product not delivered by Albéa, such as *inter alia* other components used by the Customer. More specifically, Albéa shall not be liable when the failure of one of its Products is caused by other components with whom the said Products are combined by the Customer or a third party.

The foregoing warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, contractual or otherwise, including, without limitation, any warranty of merchantability, suitability or fitness for any purpose.

The Customer shall be liable *vis-à-vis* Albéa and shall compensate Albéa for all consequences resulting from all claims by third parties related to the Products when such Products were supplied in compliance with the Products' technical specifications.

## **8.2 Limitation of liability:**

**The Customer acknowledges that (i) the maximum total liability of Albéa related to the Products whatever the cause(s) foreseen by Albéa equals to five (5) % of the amount of the Order subject to a claim issued by the Customer (VAT excluded) and consents that with respect to the facts that Albéa knew or should have known higher liability could not have been foreseen by Albéa.**



**In no event and under no circumstances shall Albéa be liable, for any losses, liabilities and incidental, and/or immaterial costs, damages and other financial losses, or losses of use or damage to reputation, and whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or otherwise.**

## **9. Cancellation or termination of Orders – Transfer of Orders**

### **9.1 Cancellation or termination of Orders:**

The cancellation or termination of all or part of any Order shall be subject to Albéa's prior written consent. In the case of cancellation of all or part of any Order, the costs and expenses already incurred by Albéa and its subcontractors, such as inventories of finished and semi-finished products already manufactured or which are currently being manufactured, inventories of components purchased, shall be fully paid by the Customer.

### **9.2 Transfer of Orders:**

All Orders are accepted by Albéa in consideration of the Customer. As a consequence thereof, no Orders may be assigned or transferred, in whole or in part, by the Customer, to whomsoever, in any manner whatsoever and on any basis whatsoever, without Albéa's prior written consent. Albéa shall be entitled to freely subcontract Orders placed by the Customer with any third party of its choice and shall be freely entitled to transfer the Orders placed by the Customer and the rights and obligations related thereto to any of its affiliated companies within the Albéa Group, subject to reasonable prior written notice to the Customer.

## **10. Intellectual and industrial property**

The plans, designs, drawings, molds, photographs, production schematics, models, technical and commercial bills of material, recommendation documents, test results, catalogs, brochures, manuals, patents, models and designs, notes and, more generally, all documents and all written or oral information disclosed to the Customer, are and shall remain the property of Albéa. As a consequence, the Customer shall refrain from disclosing, using, adjusting or duplicating them without Albéa's prior written consent.

Any transfer of Albéa's intellectual and/or industrial property rights or know-how to the Customer, or any rights of the Customer over designs and models incorporated into the Products developed by Albéa, shall not entitle the Customer to use such rights to prevent or restrict Albéa's right to manufacture products for other Customers.

The Customer represents and warrants the existence of its title and rights to use any drawing, model, mold, patent, specification or any other industrial or intellectual property right that it makes or has made available to Albéa, and undertakes to hold Albéa harmless from and against any and all damage, losses, costs, expenses, claims, demands and liabilities arising out of or in connection with the alleged or effective infringement of third party's industrial or intellectual property rights which may result from Albéa's implementation or use or detention of such drawings, models, molds, patents, specification or any other industrial and/or intellectual property.

## **11. Hardship-change in circumstances**



To the extent the economic balance of the contractual relationship has been changed as result of unforeseen events such as external economic, political, monetary, fiscal, commercial, technical, legal circumstances, or events occurring after entering into the Order and/or contract, likely to create an unreasonable advantage to the benefit of one of the Parties in the execution of the Order and/or contract, affecting the balance of the Order and/or contract, the Customer and Albéa shall negotiate in good faith to adjust the GTCS and/or contract reasonably, taking into account the consequences of such circumstances.

Failure to reach an agreement between the Customer and Albéa or refusal to negotiate by one of the parties, within 30 days from the adjustment request, will entitle Albéa or the Customer to terminate the Order and/or contract without compensation, upon a three months' notice by registered letter with acknowledgment of receipt. During this period, the Order and/or the contract will continue under conditions in force on the date of termination notification.

### **12. Non-Solicitation**

The Customer agrees not to solicit, hire or employ, directly or indirectly, and / or through an intermediary, any employee, collaborator, officer or director of Albéa (including when the initial request has been made by the latter).

### **13. Severability**

In the event that any provisions of these GTCS and/or of the Agreement are declared to be unenforceable, the other provisions shall continue in full force and effect.

### **14. Governing law - Jurisdiction**

**The governing law shall be the Slovak laws of the country or of the state of Albéa's registered office.** The United Nation Convention on Contracts for the International Sale of Goods, adopted in Vienna (Austria) on April 11, 1980, shall not be applicable.

**Any dispute arising from the GTCS and/or the Agreement shall be subject to the exclusive jurisdiction of the courts of the Slovak Republic.**

Albéa reserves the right to seek judicial relief to protect its property interests.

### **15. Representation**

**The representatives of each Party represent and warrant that they have full authority to execute these GTCS or the Orders and to bind the Party they represent.**

### **16. Application of the General Terms and Conditions of Sale and Supply**

These GTCS shall be applicable as of March 2018, to all Orders received from Customers, and replace the GTCS previously in force and shall survive expiration, non-renewal or termination of the business relationship between Customer and Albéa.



**Albéa may amend these GTCS at any time and will edit the new version on its website <http://www.albea-group.com/fr/general-terms/sales.html> under the file entitled “Slovakia”.**