

Terms of Sale and Delivery

(Status as of 01/2014)

I. Scope

1. The following Terms of Sale and Delivery apply exclusively. General terms and conditions of Ordering Party apply only to the extent that we have agreed to them expressly and in writing.
2. Any subsidiary verbal agreements are invalid.
3. These Terms of Sale and Delivery are a fixed part of all quotations and contracts and are also valid for all future transactions between the contracting parties, even when they are not expressly agreed to once again.

II. Conclusion of Contract, Documents, Property Rights

1. The order is only deemed to be accepted if it has been confirmed by us in writing. Until such time, our quotation is subject to alteration.
2. Alterations or additions on the part of Ordering Party compared to the original order and all supplementary agreements reached by the parties to the contract with regard to the order also require our written confirmation in order to be valid.
3. To observe the written form, it is sufficient to make the additions, alterations or supplementary agreements reached available to Ordering Party in the text in quoted but unsigned form.
4. We reserve the proprietary right and copyright to cost estimates, drafts, drawings and other documents; they may be made available to third parties only with our agreement. Drawings and other documents that we transmit for quotations are to be returned upon request at any time and in all events, if the order is not placed with us. Insofar as we have delivered items according to drawings, models, samples or other documents provided Customer, who shall guarantee that the property rights of third parties are not infringed upon. If a third party prohibits us particularly from manufacturing and delivering such items by invoking property rights, we are entitled to discontinue any further activity and to claim damages – without being obliged to review the legal situation. Furthermore, Customer shall undertake to release us immediately from all claims made by third parties related to documents made available to us by Customer.
5. We reserve the right to charge the costs for samples and test parts and the tools needed for their production. We shall invoice the production costs of tools required for the series production, unless agreed otherwise. All tools remain our property in all cases, even when their production costs are fully or partly covered by Customer, unless agreed otherwise in writing.

III. Specification of Services

1. The quality of the delivery or service is ultimately described with expressly agreed performance features (e.g. specifications, markings, release, other designations).
A warranty for a specific intended use or a specific suitability is accepted only insofar as this is agreed expressly and in writing; moreover, Customer shall be solely responsible for the suitability and use risk. Anything other than the expressly agreed performance features or other qualities of deliveries, products and services is not owed. We reserve the right to deviations in physical and chemical variables that are typical or unavoidable for technical reasons, including colours, recipes, processes and the use of raw materials as well as order volume insofar as this is not unreasonable with respect to Customer.
2. Information relating to the delivered item and service (e.g. in catalogues, product information, electronic media or on labels) refer to our general experience and knowledge and only relate to reference values or markings. Neither this product information nor expressly agreed performance features/intended uses relieve Customer of the need to test suitability for the intended use of the product.
3. Information on quality and use options for our products do not include any guarantees, specifically not in accordance with §§ 443, 444, 639 of the German Civil Code (BGB), unless designated expressly as such in writing.

IV. Delivery

Shipping is effected at the expense and risk of Ordering Party. Ordering Party also bears the risk when carriage free delivery is agreed. Ordering Party is to arrange for insurance of the goods during transport to customer at his expense. In the case of carriage paid delivery, the freight payment is to be regarded as an expense made for Ordering Party.

V. Packaging

Packaging is invoiced at cost. Returning empty crates carriage paid and in proper condition results in a credit of two-thirds the charged value unless agreed otherwise in writing.

VI. Delivery Time, Partial Deliveries

1. Specified delivery times are - even if a delivery date has been agreed with Customer - only approximate and non-binding unless the delivery date has been designated as fixed expressly in writing via agreement. Any confirmed delivery date shall be subject to initial correct, complete and on-time delivery to ourselves. The delivery deadline shall be considered met if the delivery has left our facilities or we have informed Customer that the goods are ready by the time the deadline has elapsed. The delivery deadline does not begin until Customer has

properly met all of the required obligations, e.g. providing technical data and documents, approvals and payment or the transfer of a guarantee of payment.

2. We shall be entitled to partial deliveries.

VII. Force Majeure, Enforcement Measures

1. Events due to force majeure and other circumstances beyond our control that make it impossible to carry out accepted orders on time exempt us from the accepted delivery and service obligation for as long as the cause remains. In particular, this applies to energy and raw material shortages, labour disputes, official decrees, traffic problems or operational breakdowns or if subcontractors are either not able to supply us at all, properly or in a timely manner due to events caused by force majeure or the other aforementioned reasons.

2. Applying for the commencement of insolvency proceedings, submitting a statutory declaration in accordance with § 807 of the German Code of Civil Procedure (ZPO), any payment difficulties or knowledge of considerable deterioration in the financial situation of a customer entitle us to cease deliveries immediately and refuse to fulfil ongoing contracts if Customer does not provide payment in kind or supply appropriate security upon request.

VIII. Claims due to Defects, Obligation to Provide Notification of Defects

We shall be liable for defects in goods we deliver only in accordance with the following provisions:

1. Customer shall fulfil its duties of inspection and objection in accordance with § 377 of the German Commercial Code (HGB).

2. In the event of a defect, Customer shall be entitled to demand rectification (at our discretion, either through remedial work or replacement).

3. In case of replacement, Customer shall be obligated to return the defective material upon request.

4. A claim to rescission of the contract or decrease of the surcharge shall exist only if the defect cannot be remedied within a reasonable period, rectification would incur disproportionate costs, would be unreasonable or is to be considered failed for other reasons. However, Customer shall have no right of withdrawal for only minor defects.

5. In the event of complaints, Customer shall immediately provide us with opportunity to examine the goods that are the subject of the complaint; in particular, the goods that are the subject of the complaint must be made available to us upon request and at our costs. In the event of unjustified complaints, we reserve the right to charge the transport costs and inspection expenses to Customer's account.

6. Claims due to defects shall not exist if the defect is due to non-compliance with operation, maintenance and installation instructions, unsuitable and inappropriate use or storage, faulty or negligent handling or installation, natural wear and tear, or intervention in the object of the delivery by Customer or third parties.

7. Customer shall not be entitled to the aforementioned claims for products that we do not deliver as new goods according to the terms of the agreement.

8. No returns of sold goods that are free of defects shall be accepted.

IX. Liability

1. We shall be liable for damage claims of any kind, particularly those arising from fault at conclusion of the contract, breaches of duty and unlawful acts (§§ 823 ff. BGB), insofar as malice or gross negligence exists on the part of aluline, our employees or our agents.

2. For damage resulting from fatal injury or other physical injury or harm to health, warranties or in case of infringement of essential contractual obligations, we shall also be liable for ordinary negligence. In case of infringement of essential contractual obligations, our liability shall be limited to the average immediate damages typical of this type of contract for the respective type of goods. The above provision shall also apply to infringements of duties on the part of our employees and persons employed to perform the contract.

3. For infringement of property rights, we shall be liable in accordance with the above provisions, insofar as those property rights are infringed during utilisation of our goods in accordance with the contract that are valid in the Federal Republic of Germany and have been published at the time of our delivery. This shall not apply insofar as we have manufactured the delivery items in accordance with the drawings, models or other descriptions or specifications from Customer and we are unaware or are not required to be aware that property rights are thereby infringed. In this case, our customer shall be liable for any infringements of property rights that occur or have already occurred. Customer is obliged to notify us immediately of any possible or asserted infringement of property rights of which it becomes aware and to release us of third-party claims and all costs and expenses incurred.

4. Claims for decreasing and for exercising a right of withdrawal shall be excluded insofar as the statute of limitations has expired for the claim to rectification.

5. Our liability due to defects of the delivery item in accordance with the provisions of product liability law, from unlawful acts (§§ 823 ff. BGB) due to tort product liability and §§ 478, 479 BGB (regress of last seller) shall remain unaffected by the above provisions insofar as these provisions set forth liability for personal injury and property damages for objects in private use.

6. In all other cases, our liability shall be excluded except for the cases listed in Numbers 1 and 2.

X. Statute of limitations

1. Warranty claims, claims for compensation for damages and claims for reimbursement for expenses of Customer shall expire one year from the beginning of the statutory limitation period, unless the claims are defect claims for goods that have been used for a structure according to their usual use and have caused its defectiveness – in this case, the limitation period shall be 5 years.

2. Claims for decreasing and for exercising a right of withdrawal shall be excluded insofar as the statute of limitations has expired for the claim to rectification.
3. The above limitation periods shall not apply insofar as we have acted with gross negligence or deliberately or insofar as we are liable in case of fatal injury or other physical injury or harm to health, or for damage to privately used items, nor shall they apply in the cases of §§ 478, 479 BGB.

XI. Intended Use, Delivery to Third Parties

1. The goods and objects delivered by us are manufactured in accordance with the provisions valid in the Federal Republic of Germany; unless expressly agreed otherwise, they are not intended for use and/or resale in the USA, US territories or Canada.
2. In case of reprocessing/resale to third parties of our goods, Ordering Party/Customer shall include our device description/operating manual and – for deliveries outside the territory of the European Union, particularly for deliveries to the USA, to US territories or Canada – a device description and assembly/operating manual in compliance with the requirements of government agencies and specific traffic situations existing there.
3. For resale of our goods or delivery items by Ordering Party/Customer to the USA, US territories or Canada, Ordering Party/Customer, as the company placing it on the market, is responsible to us for ensuring that the products correspond to the relevant standards and regulations in force there.

XII. Security

1. We shall retain title on all goods delivered by us until such time as the buyer has settled all claims, even the conditional claims, including incidental claims that we have against Customer arising from the commercial transaction with us; in this regard, all shipments shall be considered one related delivery transaction. For a revolving account, the property for which title is reserved shall be the security for our claim for payment of account balance. The above provisions shall apply for any claims that arise in future.
2. Customer shall be entitled to resell or process the purchased goods, or to mix them with other goods, as part of the ordinary course of business; however, as of now, Customer assigns all claims arising from resale, processing, combination or other legal grounds in conjunction with the purchased goods (particularly insurance contracts or unlawful acts) in the final invoice amount agreed with us (including value-added tax). The sale to other parties shall be equivalent to use for fulfilling works contracts or contracts for goods and labour by Customer.
3. The retention of title shall also extend to the products arising from processing, combining or joining of our goods to their full value, in such cases where these processes are carried out for us such that we are the manufacturer. If the property rights of third parties remain in case of processing, combining or combination with the third-party goods, we shall obtain co-ownership in proportion to the objective values of these goods. If the goods cease to be our property due to joining or combining, Customer shall, as of now, transfer the property and/or expectant rights to which Customer is entitled to the new inventory or item in the amount of the invoice value of the goods delivered by us and have custody of it for us at no charge.
4. Customer shall be authorised to collect the claims from resale despite the assignment, unless we have revoked the authorisation. We shall not collect the claims ourselves as long as Customer duly fulfils its payment obligations to us. Upon our first written request, Customer shall be obligated to provide us with the names of the parties who owe the assigned claims and to notify the debtors of the assignment.
5. We shall be entitled to revoke the authorisation of Customer for resale as part of Section 2 and to collect the claims assigned to us effective immediately, if Customer defaults in its payments to us, has difficulty making payments due to a substantial deterioration of its financial situation or fails to duly fulfil its contractual duties to us. If insolvency proceedings are initiated for Customer's assets, all payments are ceased, an affidavit is given in accordance with § 807 of the German Code of Civil Procedure (ZPO) or if Customer's corporate ownership changes in conjunction with financial difficulties, the authorisation for resale and for collecting the claims assigned to us shall automatically become void.
6. Customer shall have custody of the items to which we have co-ownership or property rights with the care of a prudent businessperson at no charge to us and insure them against fire, break-ins, theft, and other usual risks.
7. Customer shall be prohibited from pledging as collateral the goods delivered under retention of title or assigning them as security. Customer shall notify us immediately of any seizure or any other impairment of our property rights by third parties and confirm the property rights in writing, both to the third party and to us. The Ordering Party shall bear the residual costs incurred by us for any legal dispute arising from this despite our winning the dispute.
8. In the event of violation of the contract on the part of the Ordering Party, particularly payment default, we shall be entitled to demand return of the goods; the Ordering Party gives its consent as of now to a return of the goods in this case. The return of the goods shall be construed as a rescission of the contract only if we expressly declare so. The costs incurred by us for the return (particularly transport costs) shall be to the Ordering Party's account. The Ordering Party shall be entitled to demand redelivery of the returned goods without an express declaration of withdrawal only after full payment of the surcharge and all costs.
9. The securities to which we are entitled shall not be included insofar as the value of our securities exceeds the nominal value of the claims to be secured by 20%.

XIII. Terms of Payment, Offset and Retention Rights

1. The invoice amounts are payable within 10 days with 2% cash discount or after 30 days net unless otherwise agreed.
2. If different payment conditions become necessary for time reasons to those stated in our quotations and order confirmations, these shall come into effect without the need for prior notice.

3. The retention of amounts owed to us due to any additional claims and offsetting with counter-claims are not permitted unless these claims are undisputed or decided with legal effect.
4. Furthermore, in the event of payment default of Customer, we shall be entitled to demand payment of any outstanding remaining surcharge instalment payments or other claims against Customer and make further deliveries arising from this contract or other contracts immediately dependent on a previous deposit of a security or a payment.
5. If we accept bills of exchange, discount and bank charges are borne by the buyer.
6. We accept no responsibility for punctual presentation and protests. Bill of exchange payments do not constitute cash payments.

XIV. Assignment, Place of Performance

1. Customer shall be entitled to assign its claims from the contractual agreement only with our previous consent.
2. The place of fulfilment of all claims arising from the business relationship, particularly from our deliveries, shall be the respective location from which the delivery is made.

XV. Jurisdiction; applicable law

1. The court of jurisdiction for all claims arising from the business relationships, particularly from our deliveries, shall be Wangen im Allgäu, Germany. This court of jurisdiction shall likewise apply to disputes regarding the origin and effectiveness of the contractual relationship. However, we shall be entitled to also file suit against Customer in the courts responsible for its headquarters.
2. With respect to customers based abroad, we shall also be entitled to have differences of opinion or disputes arising from or in conjunction with the business relationship, without possibility of recourse to legal action, decided in accordance with the arbitration code of the Zurich Chamber of Commerce by one or three arbitrators appointed in accordance with this code. The court of arbitration is based in Zurich, Switzerland. The arbitration proceedings shall be held in German. The finding of the arbitrator(s) shall be final and binding upon the Parties involved.
3. The law of the Federal Republic of Germany shall apply, excluding its international private law, insofar as it refers to the validity of another legal system. The application of the uniform UN sales law (CISG) and other bilateral and multilateral treaties serving to standardize international sales of goods shall be excluded.

XVI. Partial Invalidity

Should any of portion of this Agreement be deemed wholly or partly invalid or be amended, this shall have no effect on the validity of the remaining portions. In this case, the Parties shall undertake to replace invalid clauses immediately with a valid clause that is most similar to the economic purpose of the invalid clause.

XVII. Storage of Personal Data

Ordering Party agrees to storage by us of company and personal data in the course of business transactions.

(The current Terms of Sale and Delivery can be viewed and printed on our website at any time).

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