

# General Terms and Conditions of Purchase

ALACsystems GmbH · In der Welsmicke 5 · D-57399 Kirchhundem  
Amtsgericht Siegen: HRB 6061  
CEO: Kay Naber



## Section 1 General / scope

1.1 The following terms and conditions of purchase apply to all business relations between ALACsystems GmbH (hereinafter "ALAC") and its business partners and suppliers (hereinafter "Supplier"), provided the Supplier is an entrepreneur (Section 14 BGB), a legal person under public law or federal special funds.

1.2 The terms and conditions of purchase apply, in particular, to contracts regarding the sale and/or the delivery of moveable items (hereinafter also: goods), without consideration given to whether or not the Supplier manufactures the goods or purchases them from suppliers (Sections 433, 651 BGB - German Civil Code). The terms and conditions of purchase also apply – up until they are updated – to future contracts on the sale and/or delivery of moveable items with the same Supplier without the ALAC having to repeatedly refer to such terms and conditions in each individual case.

1.3 These terms and condition of purchase apply on an exclusive basis. The Supplier's general terms and conditions of business to the contrary or those that are vary from or supplement ALAC's conditions shall only become an element of the contract insofar as ALAC has expressly consented to their validity in writing. This approval requirement shall apply in any case, including if ALAC unreservedly accepts the Supplier's deliveries although it is aware of the Supplier's general terms and conditions of business

1.4 Individual agreements entered into with the Supplier in individual cases (including subsidiary agreements, supplementary information and amendments) shall in any case have preference over these conditions of purchase. A written contract or the written confirmation by ALAC shall be authoritative with regard to the content of such agreements.

1.5 Statements and notifications of legal relevance that are forwarded by the Seller to us after the contract has been entered into (e.g. setting periods, warnings or issuing a withdrawal) are subject to the written form in order to be deemed valid.

1.6 References made to the validity of statutory requirements only provide clarification in terms of their significance. The statutory requirements therefore also apply without such clarification provided they are not directly amended or expressly ruled out by these conditions of purchase.

## Section 2 Entering into a contract

2.1 The order placed by ALAC shall acquire binding force at the earliest upon written submission or confirmation. The Supplier is to draw ALAC's attention to obvious errors (e.g. typographical and calculation errors) and incomplete details in the order, including the order documents, for the purpose of correction or providing supplementary information prior to acceptance. Otherwise the contract shall be deemed to have not been entered into.

2.2 The Supplier is required to accept ALAC's order in writing within a period of 5 days. A limited order acceptance shall be deemed a new offer that is deemed to have been accepted unless ALAC objects in writing within a reasonable period, at the latest, however, within 14 days calculated from receipt of the offer.

## Section 3 Prices / terms and conditions of payment

3.1 The price stated in the order has binding force. The prices apply as "delivered duties paid" (DDP) to the place of destination. All prices are to be understood to include statutory turnover tax if this is not stated separately.

3.2 In the absence of agreements to the contrary in an individual case, the price includes all services and ancillary performance on the part of the Supplier (e.g. assembly and installation) as well as all incidental costs (e.g. proper packaging, transport costs including potential transport and third party liability insurance). At ALAC's request, the Seller is to take back packaging material.

3.3 The agreed shall fall due for payment within 60 days from delivery and performance in full (including acceptance that may have been agreed) as well as receipt of a proper invoice. If ALAC effects payment within 30 days, the Supplier shall grant a 4% trade discount, if ALAC effects payment within 45 days, the Supplier shall grant a 3% trade discount, on the net invoice amount. In the case of bank transfers, payment shall be deemed to have been received in good time if the transfer order is received by ALAC's bank prior to expiry of the payment period. ALAC shall not be responsible for delays by the banks involved in the payment process.

3.4 ALAC is not required to pay interest after the due date. The annual default interest is 5 percentage points above the base lending rate. The statutory requirements apply to the occurrence of default on the part of ALAC, whereby contrary to this, where applicable, in any case the Supplier shall be required to issue a written warning.

3.5 ALAC is has setting off and retention rights as well as the right to non-performance of the contract as specified by law. ALAC is entitled, in particular, to hold back due payments as long as it is entitled to claims against the Supplier resulting from incomplete or faulty services.

3.6 The Supplier shall only have a right to set off or retain regarding res judicata or undisputed counter-claims.

## Section 4 Delivery time / default in delivery

4.1 The price stated in the order by ALAC has binding force. Agreed dates and periods and times have binding force. Receipt of delivery shall be authoritative with regard to honouring the agreed delivery dates, periods and times.

4.2 The Supplier undertakes to notify ALAC in writing without undue delay if it is likely that it cannot honour agreed delivery times – for whichever reasons.

4.3 If the Supplier fails to render its service or fails to render it within the agreed delivery period or defaults, the rights of ALAC shall be determined – in particular with regard to withdrawal and compensatory damages – in accordance with the statutory requirements. This does not affect the provisions set out in the following Section 4.4.

4.4 If the Supplier defaults, ALAC may – in addition to further-reaching statutory requirements – request flat-rate compensation of the damage it sustains as a result of default in the sum of 1% of the net price for each complete calendar week, in total however not more than 5% of the net price of the goods delivered late. ALAC is reserved the right to furnish proof that it sustained greater damage. The Supplier is entitled to prove that ALAC incurred no damage or only significantly less damage.

4.5 Partial deliveries are only permitted if they have been expressly agreed upon in writing.

## Section 5 Force majeure

In cases of force majeure and other unforeseeable, unavoidable and extraordinary circumstances for which responsibility is not held (including fire, flooding, tsunamis, typhoons, hurricanes, earthquakes, acts by public enemies, government restrictions, prohibitions, expropriation or the imposition of quotas by government departments, embargoes, unrest of industrial action), the contracting parties shall be released from the obligations to perform for the duration of the disruption and to the extent of its effects. This also applies if these events occur at a time at which the affected contracting party is in default. The contracting parties undertake, as part of acceptable action, to furnish the necessary information without delay and adjust their obligations in good faith in line with the changed circumstances. If the Supplier is unable to perform the delivery as a result of the above-mentioned force majeure, ALAC shall be entitled to reduce the delivery quantity stated in the order for the duration of the disruption without being under obligation to the Supplier, and cover its requirements elsewhere. In the event the Supplier's tools or means of production are required for other manufacture, production or inspection of the subject matter of contract, ALAC shall be entitled to take over these subject to payment of reasonable and customary remuneration. If the delivery or performance is delayed by more than four months as a result of an above case of force majeure, both ALAC and the Supplier

shall be entitled, by way of exclusion of all claims for damages, to withdraw from the contract regarding the quantity affected by the delivery disruption.

## Section 6 Performance / delivery / passing of risk / default in acceptance

6.1 Goods shall be delivered "free domicile" to the location stated in the order provided nothing to the contrary has been expressly agreed upon in writing between ALAC and the Supplier. If the place of destination is not stated and nothing to the contrary has been agreed upon, goods are to be delivered to ALAC's principal place of business in Kirchhundem. The respective place of destination is also the place of performance (obligation to be performed at the creditor's place of business).

6.2 The cost of packaging and insurance as well as for the transport regarding all export, import and customs formalities, including all customs duties and similar levies, and for official license and other documents shall be borne by the Supplier. The same applies to the cost of test certificates as well as the necessary quality and test marks.

6.3 A delivery note containing details of the date (issue and shipping), content of the delivery (product number and quantity) as well as ALAC's order identification (data and number) is to be enclosed with the delivery. In the absence of a delivery note or if it is incomplete, ALAC shall not be responsible for resulting processing and payment delays. ALAC is to be provided with corresponding notice of dispatch with the same content separate from the delivery note.

6.4 The risk of possible loss and possible deterioration of the item shall pass to ALAC upon the hand-over at the place of performance. Insofar as acceptance has been agreed upon, it shall be authoritative for the passing of risk. In other respects, the statutory requirements laid down in the service contract shall also apply accordingly to acceptance. The hand-over or acceptance shall be deemed to have occurred if ALAC defaults in acceptance.

6.5 The statutory requirements apply to the occurrence of default in acceptance on the part of ALAC. The Supplier is expressly required to offer its service to ALAC if a certain or determinable calendar period is agreed upon for action or collaboration on the part of ALAC (e.g. provision of material). If ALAC defaults in acceptance, the Supplier may request compensation for additional expenses in accordance with the statutory requirements (Section 304 BGB). If the contract applies to an untenable item to be manufactured by the Seller (individual manufacture), the Supplier shall only be entitled to further-reaching rights if ALAC undertakes to collaborate and is responsible for the lack of collaboration.

## Section 7 Obligation to furnish information and documentation / tax, customs and foreign trade and payments law

7.1 The Supplier undertakes to state ALAC's order number as well as all tax and customs information and such relevant to export control law in all ALAC's shipping documents, delivery notes and other documents. If it fails to do this, delays in the payment of the supplied goods shall not be ALAC's responsibility. The Supplier shall be liable for delays in the case of selling on.

7.2 The Seller undertakes to inform ALAC of export and circulation bans as well as licensing requirements in the case of (re) exports of goods it has supplies in accordance with German, European or US American export and customs provisions as well as the export and customs provisions of the country of origin of the goods it has supplied. The Supplier shall, in particular, state the following information in its offers, order confirmation and invoices:

- The export list number in accordance with Annex AL to the German Foreign Trade Ordinance or list items of other relevant export lists (such as Annex I of the EC Dual-Use Ordinance),
- With regard to goods subject to the provisions of the US American (re) export controls, the ECCN (Export Control Classification Number) in accordance with the US Export Administration Regulations (EAR),
- The trade policy and preferential goods origin of the goods it has supplies as well as the components, including technology and software,
- The statistical goods number (HS Code) of the goods it has supplies as well as
- A contact person at its company for clarifying potential enquiries by ALAC.

7.3 The Supplier undertakes to inform ALAC without undue delay of all amendments to the information requested in Section 7.2. Furthermore, the Supplier undertakes, at ALAC's request, to notify ALAC in writing of all information and documents required for selling on and shipping the goods that it supplies and their components.

7.4 At ALAC's request, the Supplier undertakes to issue a valid supplier declaration or long-term supplier declaration for the goods it supplies. In the event that the supplier declaration or the long-term supplier declaration proves to be invalid faulty, the Supplier undertakes to make available to ALAC on request fault-free and complete information sheets confirmed by the customs authorities with regard to the goods origin. In the event that legal action is taken against ALAC or its customers by a financial authority, in particular a customs authority, regarding incorrect declarations of origin, or if ALAC or its customers sustain other pecuniary disadvantages as a result of incorrect declarations of origin, and if the error is based on incorrect origin details of the Supplier, the Supplier shall render ALAC or its customers exempt in that respect.

7.5 The Supplier undertakes to supply a material data sheet (in brief MDS) for all the goods it supplies, including their components, and to furnish proof of the material composition of a component, semi-finished product, substance and pure compound, in line with the requirements of the automotive industry in the IMDS (International Material Data System). In the event that legal action is brought against ALAC or its customers regarding lacking or incorrect material data sheets, the Supplier is to render ALAC or its customers exempt in full.

7.6 The Supplier undertakes to ensure that an updated IMDS data set shall be made available at the latest 4 weeks after incorporating a substance in the REACH candidate list for all goods it supplies, including the components of such goods. The Supplier shall be liable for costs as a result of incorrect declarations.

7.7 The Supplier is to make available to ALAC all information and documentation free of charge.

## Section 8 Quality

8.1 The Supplier is to ensure that its deliveries comply with acknowledged technological standards, safety and other requirements, the statutory requirements (e.g. ElektroG, RoHS Directive 2005/95/EC), including DIN standards, the agreed technical data (including national and international standards) and warranted characteristics). Alterations to the delivery item and the production process are subject to prior, written approval by ALAC.

8.2 With regard to the initial sample review, ALAC refers to the VDA - document "Securing the quality of suppliers, supplier selection - quality agreement - production process and product release - quality assurance in series - declaring content substances", VDA Volume 2, current status. Irrespective of this, the Supplier is to review the quality of the delivery items on an ongoing basis.

8.3 ALAC reserves the right to enter into an additional quality assurance agreement (QAA) with the Supplier. In such a case, the QAA shall be deemed an integral part of the contract.

## Section 9 Faulty delivery

9.1 The statutory requirements apply to ALAC's rights in the case of material defects and defects in title (including wrong and shortfall delivery as well as inappropriate assembly; faulty assembly or operating instructions) and in the case of other violations of obligations by the Supplier provided nothing to the contrary is provided for below.

9.2 In accordance with the statutory provisions, the Supplier shall be liable, in particular, for the fact that the goods are of the agreed quality upon the passing of risk to ALAC. In any case, the product descriptions which – in particular by way of description or reference in ALAC's order – are the subject matter of the respective

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contract or were incorporated in the contract in manner similar to that applied to these conditions of purchase, shall apply as an agreement on the quality. In that respect it is irrelevant whether or not the product description emanates from ALAC, the Supplier or the manufacturer.

**9.3** Contrary to Section 442 ( 1 ) p 2 BGB, ALAC shall be entitled to warranty claims without restriction if ALAC remained unaware of the defect in the case of entering into the contract as a result of gross negligence.

**9.4** The statutory requirements (Sections 377, 381 HGB) apply to the commercial obligation to inspect and provide notification of defects subject to the following condition: ALAC's obligation to inspect is restricted to defects of which it clearly becomes aware during its incoming goods controls by way of an external assessment, including the delivery documents and in terms of its quality controls by way of random checks (e.g. transport damage, wrong and shortfall delivery). There shall be no obligation to inspect insofar as acceptance has been agreed upon. In other respects, the extent to which an inspection is expedient is relevant, with consideration given to the circumstances of the individual case based on the ordinary course of business. This does not affect ALAC's obligation to provide notification of defects for defects identified at a later date. In all cases ALAC's complaint (notification of defects) shall be deemed given without undue delay and in good time if it is received within 5 workdays by the Supplier.

**9.5** The costs incurred by the Supplier for conducting the inspection and subsequent improvement (including potential dismantling and installation costs) shall be borne by the Supplier if it becomes clear that in fact a defect did not apply. This does not affect ALAC's liability to provide compensation for damages in the event of unjustified requests for the rectification of defects. However, insofar ALAC shall only be liable if it has acknowledged, or has not acknowledged as a result of gross negligence, that no defect applied.

**9.6** If the Supplier fails to honour its obligation to provide subsequent improvement – at ALAC's discretion by way of rectifying the defect (subsequent improvement) or by supplying a fault-free item (replacement) – within a reasonable period set by ALAC, ALAC may rectify the defect itself and request that the Supplier provide compensation for the necessary expenses in that respect or that it provide an appropriate advance. If the subsequent performance by the Supplier fails or is unacceptable for ALAC (e.g. as a result of particular urgency, risk regarding occupational safety or the pending occurrence of disproportionate damage), setting a period shall not be required. ALAC shall notify the Seller of such circumstances without undue delay, where possible sooner.

**9.7** In other respects, in the event of material defects or defects in title, in accordance with the statutory requirements ALAC shall be entitled to reduce the purchase price or withdraw from the contract. In addition, ALAC shall be entitled to compensatory damages and reimbursement of expenses in accordance with the statutory provisions.

## Section 10 Supplier recourse

**10.1** ALAC is entitled to the recourse claims provided for by law within a delivery chain (supplier recourse in accordance with Sections 478, 479 BGB) without restrictions alongside the warranty claims. ALAC is entitled, in particular, to precisely request the type of subsequent performance or replacement to be performed by the Supplier that the Supplier is to provide for its customer in an individual case. This does not restrict ALAC's statutory choice (Section 439(1) BGB).

**10.2** Before ALAC acknowledges a warranty claim asserted by one of its customers (including the reimbursement of expenses in accordance with Sections 478(3), 439(2) BGB), ALAC shall request notify the Supplier and request a written comment by way of a brief presentation of the facts. If the comment is not provided within a reasonable period and if a solution characterised by common consent is not brought about, the warranty claim actually granted by ALAC shall be deemed to have been settled with its customer: In such a case the burden of furnishing proof of the opposite shall lie with the Supplier.

**10.3** The claims resulting from the supplier recourse shall also apply if prior to sale the goods were further processed by ALAC to a consumer or one of its customers, e.g. by way of installation in another products.

## Section 11 Production / exemption / third party liability insurance

**11.1** If the Supplier is responsible for product damage, it is to render ALAC exempt from third party claims insofar as the cause is within its area of dominance and organisation and it is liable in external dealings.

**11.2** As part of its obligation to render ALAC exempt, the Supplier is to reimburse expenses in accordance with Sections 683, 670 BGB that arise as a result of or in conjunction with third party legal action, including recall campaigns conducted by ALAC. ALAC shall inform the Supplier – where possible and acceptable – of the content and scope of the recall measures, and give the Supplier the opportunity to comment. This does not affect further-reaching statutory claims.

**11.3** The Supplier is to take out and maintain a product liability insurance policy with flat-rate cover of at least € 5 million for each case of personal/material damage.

## Section 12 Statute of limitations

**12.1** The mutual claims of the contracting parties shall fall under the statute of limitations in accordance with the statutory requirements provided nothing to the contrary is provided for below.

**12.2** Contrary to Section 438(1) No. 3 BGB, the general limitation period for warranty claims is 3 years from the passing of risk. If acceptance has been agreed, the period of limitation shall commence upon acceptance. The 3-year limitation period shall also apply accordingly to claims resulting from legal titles, whereby this does not affect the statutory limitation period for in rem claims for surrender of third parties (Section 438(1) No 1 BGB). Beyond this, under no circumstances shall claims resulting from defects in title fall under the statute of limitations as long as the third party may still assert the right against ALAC – in particular in the absence of a limitation period.

**12.3** The limitation periods of the Sales Law, including the above extension, apply – with legal force – to all contractual warranty claims. Insofar as ALAC is entitled to non-contractual claims for damages regarding a defect, the normal statutory limitation shall apply (Sections 195, 199 BGB) if application of the limitation periods laid down in the Sales Law in an individual case does not lead to a longer limitation period.

## Section 13 Proprietary rights

**13.1** The Supplier is to ensure that no third party rights are violated in conjunction with its delivery.

**13.2** If legal action is brought against ALAC by a third party regarding the infringement on third party rights as a result of use of the goods as per agreement, the Supplier undertakes to render ALAC exempt from such claims on the first request. ALAC is not entitled to enter into any agreements with the third party – without the Supplier's approval – in particular it is not entitled to enter into a composition agreement.

**13.3** The supplier's obligation to render ALAC exempt applies to all expenses that the ALAC incurs as a result of or in conjunction with the action brought by a third party.

**13.4** The statutory period of limitation applies.

## Section 14 Reservation of title / provision

**14.1** The transfer of ownership of the goods to ALAC is to occur unconditionally and without consideration given to the price. However, if ALAC accepts in an individual case conditional conveyance following an offer of the Supplier by way of payment of a purchase price, the Supplier's reservation of title shall expire at the latest upon payment of the purchase price of the supplied goods. ALAC shall remain authorised in the ordinary course of business, including prior to payment of the purchase price, to sell on the goods by way of advance assignment of the resulting claim (alternatively applicability of the basic reservation of title and extended reservation of title applicable to the selling on). Therefore, in any case all other forms of the reservation of title, in particular the extended form, and the extended form that applies to further processing, are excluded.

**14.2** Insofar as ALAC procures from the Supplier, it reserves ownership to such items. Processing or transformation thereof by the Supplier shall be deemed to have been performed on behalf of ALAC. If the reserved goods are processed using other items that ALAC does not own, ALAC shall acquire co-ownership of the new item in proportion of the value of its item (purchase price plus turnover tax) to that of the other processed items at the time of processing.

**14.3** If the item made available by ALAC is inseparably mixed with items not owned by ALAC, ALAC shall acquire co-ownership of the new item in proportion of the value of the reserved item (purchase price plus VAT) to that of the other mixed items at the time of mixing. If the mixing occurs such that the Supplier's item is to be regarded as the principal item, it shall be deemed agreed upon that the Supplier assigns to ALAC proportionate co-ownership – ALAC hereby accepts the transfer of ownership. The Supplier shall store the exclusive property or the co-owned property on behalf of ALAC.

**14.4** ALAC reserves ownership of tools. The Supplier undertakes to use the tools exclusively for the manufacture of the goods ordered by ALAC. The Supplier undertakes, at its own cost, to separately store the tools owned by ALAC, and to insure these with appropriate cover against destruction and loss. At the same time, the Supplier assigns to ALAC at this point in time all compensation claims resulting from such insurance. ALAC hereby accepts the assignment. The Supplier undertakes to perform servicing and inspection work that may be required with regard to ALAC's tools, and perform all maintenance and repair work at its own cost in good time. It is to notify ALAC immediately of potential cases of disruption. If it fails to do so, this shall not affect claims for damages.

**14.5** Insofar as the security rights to which ALAC is entitled in accordance with Section 14.2 and/or Section 14.3 exceed the purchase price of all of ALAC's unpaid reserved goods by more than 10 %, ALAC undertakes, at the Supplier's request, to release the security rights at its own discretion.

## Section 15 Secrecy

**15.1** ALAC reserves ownership and copyrights to diagrams, plans, calculations, implementation instructions, drawings, models, templates, samples, data sheets, software and similar items. Such documents are to be used exclusively for the contractual performance, and are to be returned to ALAC once the contract has been executed. Duplicating such items shall only be permitted as part of company requirements and the copyright provisions. Secrecy is to be maintained regarding the documents. In dealings with third parties, and following the end of the contract. The obligation to maintain secrecy shall only expire if and insofar as the know-how contained in the surrendered documents has been placed in the public domain.

**15.2** The above provision applies accordingly to substances and materials (e.g. software, finished and semi-finished products) and to tools, templates, samples and other items that ALAC makes available to the Supplier.

**15.3** Employees and subcontractors are to be placed under obligation accordingly.

**15.4** The contracting parties may only use their business association for advertising purposes following prior, written approval.

## Section 16 Social responsibility / environmental protection

**16.1** The Supplier undertakes to comply with the respective statutory regulations on dealing with employees, environmental protection and occupational safety, and to work towards reducing negative effects on humans and the environment during its activity. To that end the Supplier shall endeavour as part of its available options to set up and further develop a management process in accordance with ISO 14001. Furthermore, the Supplier shall comply with the principles of the UN Global Compact Initiative. These largely apply to the protection of international human rights, the right to collectively agreed negotiations, the abolition of slave and child labour, the elimination of discrimination with regard to appointments and employment, responsibility for the environment and preventing corruption.

**16.2** The Supplier confirms that the products and materials supplied to ALAC do not contain any conflict materials within the meaning of Section 1502 of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act.

## Section 17 Court of jurisdiction, choice of law, written form, final provisions

**17.1** The law of the Federal Republic of Germany applies to these conditions of purchase and all legal relations between ALAC and the Supplier. Application of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) and the German conflict of law rules is excluded.

**17.2** If the Seller is a merchant within the meaning of the German Commercial Code, a legal person under public law or special federal funds, ALAC's principal place of business in Kirchhundem shall be deemed the exclusive – and international – place of jurisdiction for all disputes resulting from the contractual relationship provided this does not conflict with any obligatory laws. However, ALAC is entitled to bring legal action against the Supplier at its general, statutory place of jurisdiction.

**17.3** Insofar as the contract or these conditions of purchase contain omissions, to fill such omissions legally valid provisions shall be deemed agreed upon that the contracting parties would have agreed upon in accordance with the economic objectives of the contract and the purpose of these conditions of purchase had they been aware of the omission in the provisions.