

General Terms and Conditions of Sale

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



§ 1 Scope

1.1 The following terms and conditions of sale apply to contracts of purchase and service and contracts for work and materials (hereinafter the "Contracts") regarding delivery and/or manufacture entered into by ALAC systems GmbH (hereinafter "ALAC") and the Customer. They also apply – up until incorporation of up-dated conditions of sales – to all future contracts of purchase and service and contracts for work and materials entered into with the Customer, including if the incorporation of these is not expressly agreed upon again. The Customer's conditions to the contrary that ALAC does not expressly acknowledge in writing are non-binding, including if ALAC does not expressly object to them.

1.2 The following conditions of sale also apply if ALAC accepts the Customer's order although it is aware of the Customer's conditions to the contrary or those that vary from ALAC's conditions.

1.3 Insofar as ALAC and the Customer, in relation to a contract, have entered into contrary individual agreements with binding force that conflict with the following provisions, these conditions of sale shall have preference.

Section 2 Entering into a contract / performance content

2.1 ALAC's offers made to the Customer are subject to change without notice and non-binding. This also applies of ALAC has surrendered to the Customer documents, in particular drawings, weight and measurement details, catalogues, performance and consumption data as well as technical data and descriptions in the respective product information details or advertising material – including in electronic form. The Customer's order is deemed a binding contractual offer. In the absence of details to the contrary in the order, ALAC shall be entitled to accept this contractual offer within 2 weeks following receipt of such an offer. Acceptance may either be stated in writing (e.g. by way of confirmation of order) or by delivering the goods to the Customer. Upon entering into contractual negotiations, the Customer is to draw ALAC's attention in writing to special requirements in terms of performance with regard to quality and the intended use as well as other risks that may arise during use.

2.2 ALAC reserves all rights to diagrams, drawings, calculations, plans and other documents, in particular ownership and copyrights. This applies, in particular, to documents that have been described as "confidential" by ALAC. They may only be made available to third parties following express, written approval, and on request are to be returned to ALAC free of charge. Duplicating such documents and documentation shall only be permitted as part of company requirements and the copyright provisions. The Customer undertakes to treat as business secrets any commercial and technical information which is not in the public domain of which it becomes aware as the result of the business relationship.

2.3 In the case of sales according to samples or trials, these merely guarantee professional sample production but do not constitute any provision of a guarantee within the meaning of Section 276(1) BGB (German Civil Code) or any guarantee regarding the quality or durability of the items to be supplied by ALAC within the meaning of Section 443 BGB.

2.4 In the event of use of the delivery item outside Germany, the delivery scope for occupational safety and environmental protection devices shall be geared towards the affected agreement. In the event of doubt it shall be geared towards the requirements valid in the Federal Republic of Germany. The Customer is responsible for complying with the statutory or other requirements at the place of use.

Section 3 Prices

3.1 All prices are net prices without turnover tax. The Customer is to pay the turnover tax in the respective, statutory amount.

3.2 The agreed prices apply in each case ex ALAC works. Additional freight costs, packaging costs that extend beyond packaging that is customary in the trade, public levies (including withholding tax) and customs duties as well as the cost of insurance that may be requested by the Customer shall be borne by the Customer.

3.3 Transport and any other packaging in accordance with the Packaging Ordinance shall not be taken back by ALAC. They shall become the Customer's property. This does not apply to pallets.

3.4 The deduction of a trade discount is subject to a separate, written agreement.

3.5 Price changes are permitted if the period between entering into the contract and the agreed delivery time is longer than 4 months. If the wages, materials costs or the cost prices in line with market conditions increase accordingly up until completion of the delivery by more than 5 percent, ALAC shall be entitled to increase the price reasonably in line with the cost increase.

Section 4 Delivery

4.1 The start and honouring of agreed delivery obligations presuppose the honouring in full of collaboration duties that may apply to the Customer in the run-up to the delivery and honouring payment agreements that may apply prior to delivery. If these preconditions are not met, the delivery periods shall be postponed appropriately unless ALAC alone is responsible for the delay.

4.2 Insofar as ALAC cannot honour binding delivery periods for reasons that are not ALAC's responsibility (non-availability of the service), ALAC shall inform the Customer of this without undue delay, and simultaneously state the likely new delivery period. If the performance is not available within the new delivery period either, ALAC shall be entitled to wholly or partially withdraw from the contract. ALAC shall reimburse the Customer without undue delay for counter-performance that has already been provided. ALAC's own deliveries not made in good time by its suppliers are, in particular, deemed a case of non-availability of the performance. If ALAC has entered into a congruent covering transaction, neither ALAC nor its supplier shall be culpable or ALAC does not undertake to procure in an individual case, ALAC's statutory withdrawal or termination rights as well as the statutory requirements regarding the processing of the contract shall not be affected in the case of an exclusion of the obligation to perform (e.g. impossibility or unacceptability of the performance and/or subsequent performance). Furthermore, these general terms and conditions of sale shall not affect the Customer's withdrawal and termination rights in accordance with Section 8 (Warranty claims) and Section 9 (Liability) either.

4.3 The occurrence of default in delivery on the part of ALAC shall be determined in accordance with the statutory requirements. However, in any case, the Customer shall be required to issue a warning. If ALAC defaults in delivery, the Customer may withdraw from the contract as part of the statutory provisions if ALAC has not shipped the delivery or parts thereof once it has allowed a reasonable subsequent period set for ALAC to lapse. In such a case, the Customer shall be entitled to withdraw regarding the outstanding part. The Customer may only withdraw from the entire contract if it cannot use the partial delivery in line with the intended use because of the delay. The Customer may only withdraw from the contract if and insofar as ALAC is responsible for the delay. Solely Section 314 BGB applies in the case of a contract for the performance of a recurring obligation.

4.3 ALAC shall be liable in accordance with the statutory provisions provided the default in delivery is attributable to intentional or gross negligent breach of contract that is the responsibility of ALAC. Culpability on the part of representatives or vicarious agents is to be attributed to ALAC. Insofar as the default in delivery is attributable to minor negligent breach of contract, liability shall be limited to foreseeable and typical cases of damage.

4.4 Partial deliveries/partial services within the agreed delivery and performance times and corresponding partial settlements are permitted unless these are unacceptable for the customer.

4.5 If the Customer defaults in acceptance or culpably violates other collaboration obligations, ALAC shall be entitled to request compensation for the damage it sustained, including additional expenses that may apply. ALAC reserves the right to assert further-reaching claims.

4.6 Insofar as the preconditions of sub-section 4.5 apply, the risk of accidental loss of or accidental deterioration in the object of sale shall pass to the Customer at the time at which the Customer defaults in acceptance or defaults as debtor.

4.7 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 ALAC is unable to perform the delivery as a result of the above-mentioned force majeure, ALAC shall, therefore, be entitled to reduce the delivery quantity stated in the order for the duration of the disruption. 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 Customer 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.

4.8 ALAC is entitled, in the case of call-up contracts that have been brought about without an agreement on production and acceptance dates, to request a binding stipulation of the delivery periods or delivery dates if 3 months have passed following receipt of the order and/or confirmation of order but, however, delivery dates or delivery periods have not been stated. If the Customer fails to honour this request within 2 weeks following receipt of the written request by ALAC, ALAC shall be entitled to set a reasonable subsequent period for the Customer with the threat of rejection with regard to the statement requested by ALAC and once such a period has been allowed to lapse in vain withdraw from the contract. Furthermore, ALAC is entitled to request compensatory damages for the sustained damage. The above provision is also to apply in the event that the in the event of agreed call-up contracts the Customer does not call-up the agreed delivery quantities or not in the agreed amount.

4.9 In the case of variations in weight, the weight specified during the outgoing check by ALAC shall be authoritative unless the Customer furnishes proof that the weight it calculated was correctly specified. The same applies in the event of variations in weights and measurements.

Section 5 Shipping / passing of risk / acceptance

5.1 Goods shall be delivered ex loading point at Kirchhundem – Welschen Ennst, which is also deemed the place of performance. At the Customer's request and cost, the goods shall be sent to a location other than the place of performance (sale by delivery to a place other than the place of performance). In the absence of written agreements to the contrary, ALAC is entitled to determine the type of shipping (in particular transport companies, shipping route and packaging).

5.2 The risk of possible loss and possible deterioration of the goods shall pass to the Customer at the latest upon the hand-over. However, in the case of sale by delivery to a place other than the place of performance, the risk of possible loss and possible deterioration in the goods and the risk of delay shall pass upon delivery of the goods to the forwarding agent, the carrier or another person or agency entrusted with shipping. In the event that shipment is delayed on account of circumstances for which the Customer is responsible, risk shall pass to the Customer on receipt of notification of readiness for shipment. 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 an agreed acceptance. The hand over or acceptance shall be deemed to have taken place if the Customer defaults in acceptance.

5.3 If the Customer default in acceptance, fails to honour a duty to collaborate or if delivery of the goods is delayed for other reasons for which the Customer is not responsible, ALAC shall be entitled to request compensation of the resulting damage, including additional expenses (e.g. storage costs). This does not affect further-reaching claims.

5.4 Where requested by the Customer, ALAC shall take out transport insurance for the delivery. Insofar as costs are incurred in that respect, these shall be borne by the Customer.

Section 6 Payment / settlement / assignment / counter-claims

6.1 Payments are to be made within 30 days without any deductions from the invoice date. Receipt of the money by ALAC is authoritative with regard to making payment in good time. ALAC is entitled to initially to count received payments towards order receivables, then towards costs and interest on the primary obligation and only lastly towards the primary obligation itself.

6.2 ALAC is entitled to charge interest on payments in arrears at the statutory amount from the occurrence of default in payment irrespective of the option of asserting a claim for greater, actual damage.

6.3 Assigning claims against ALAC to a third-party is excluded. This does not affect Section 354a HGB (German Commercial Code).

6.4 The Customer shall only be permitted to set off using counter-claims if such counter-claims are undisputed, have been acknowledged by ALAC or have become res judicata or the counter-claims are subject to a mutual relationship regarding ALAC's claims.

6.5 The Customer shall only be permitted to retain payment regarding counter-claims if such counter-claims are undisputed, have been acknowledged by ALAC or have become res judicata or the counter-claims are subject to a mutual relationship regarding ALAC's claims. Furthermore, the right to retain shall only apply if the asserted counter-claim is based on the same contractual relationship as the claim.

6.6 If it becomes clear after entering into the contract that ALAC's claim for the purchase price is jeopardised as a result of the Customer's lacking ability to pay (e.g. as a result of an application for the institution of insolvency proceedings), in accordance with the statutory requirements ALAC shall be entitled to refuse to perform and – where applicable after setting a period – withdraw from the contract (Section 321 BGB). In the case of contracts for the manufacture of inseparable items (individual manufacture), ALAC may immediately give notice of withdrawal. This does not affect the statutory provisions on dispensing with setting the period.

Section 7 Reservation of title

7.1 All supplied goods shall remain ALAC's property (hereinafter "Reserved Goods") up until settlement in full of all current and future claims resulting from the legal relationship taken as a basis for the delivery and from the ongoing business relationship (secured claims).

7.2 The Customer undertakes to treat the Reserved Goods with due care. The Customer undertakes, in particular, to adequately insure the Reserved Goods at replacement value at his own cost against damage and destruction such as damage caused by fire, water and damage caused by theft. The Customer assigns to ALAC at this point in time its claims resulting from the insurance contracts. ALAC accepts the assignment.

7.3 The Reserved Goods may neither be pledged to third parties nor transferred by way of security prior to payment in full of the secured claims. The Customer is to notify ALAC in writing without undue delay if and insofar as third parties gain access to the Reserved Goods. All intervention costs shall be borne by the Customer provided they cannot be collected by the third party.

7.4 In the event of conduct in breach of contract on the part of the Customer, in particular in the case of default in payment, ALAC shall be entitled to take back the Reserved Goods. Taking back the Reserved Goods does not constitute withdrawal from contract on the part of ALAC. After taking back the Reserved Goods, ALAC shall be entitled to utilise these and the utilisation proceeds are to be set off against the Customer's liabilities – less reasonable utilisation costs.

7.5 In accordance with the following provisions, the Customer is authorised to sell on and/or process the Reserved Goods in the ordinary course of business.

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7.6 In the case of processing or linking the Reserved Goods with other goods by the Customer, ALAC shall be entitled to co-ownership of the new item in the proportion of the invoice value of the Reserved Goods to the value of the item created by way of the processing or linking at the time of the processing. The Customer assigns to ALAC at this point in time the ownership rights to which it is entitled, and shall gratuitously store the items subject to co-ownership on the part of ALAC on behalf of ALAC.

7.7 The Customer is only entitled to further process the Reserved Goods, link them with other items or sell them on in the ordinary course of business and as long as it is not in default. Any other disposal of the Reserved Goods is not permitted. If the Customer allows its customer to defer payment, in dealings with such a customer the Customer is to reserve ownership to the Reserved Goods at the same conditions under which ALAC has reserved ownership in the case of delivery of the Reserved Goods. Otherwise, the Customer shall not be authorised to sell on.

7.8 The Customer's receivables resulting from selling on the reserved goods are hereby assigned to ALAC. ALAC hereby accepts the assignment. The assigned receivables are aimed at providing security to the same extent as the reserved goods. The Customer is only entitled and authorised to sell on if it has been established that the receivables to which it is entitled as a result shall pass to ALAC.

7.9 If the reserved goods are sold at a total price by the Customer in conjunction with other goods not supplied by ALAC, the assignment of the receivable resulting from the selling on shall apply in the sum of the invoice value of the respective sold reserved goods.

7.10 If the assigned receivable is incorporated in an ongoing invoice, the Customer assigns to ALAC at this point in time a part of the balance that corresponds with the amount of this receivable, including the final balance from the current account. ALAC hereby accepts the assignment.

7.11 The Customer is authorised to collect the receivable assigned to ALAC up until such authority is withdrawn. ALAC shall be entitled to withdraw such authority if the Customer fails to properly honour its payment obligations resulting from the business association with ALAC, the Customer default in payment, an application is filed for insolvency proceedings regarding the Customer's assets or the Customer's ability to pay is otherwise impaired. If the preconditions for exercising the right of withdrawal are met, at the request of ALAC the Customer is to disclose without undue delay the assigned receivables and their debtors, make available all information required to collect the receivables, surrender to ALAC the documents in that respect and notify the debtor of the assignment. ALAC is also entitled to notify the debtor of the assignment.

7.12 If the value of the securities in place for ALAC exceeds the secured receivables in total by more than ten percent, the ALAC undertakes, insofar as the Customer's request, to release securities at ALAC's discretion.

7.13 The institution of insolvency proceedings regarding the Customer's assets or the rejection of the institution due to a lack of funds shall entitle ALAC to immediately withdraw from the contract and request return of the deliveries in that respect.

Section 8 Warranty claims

8.1 Details about ALAC's products, in particular the diagrams; drawings; weight, measurement and performance details stated in offers are not quality guarantees but merely goods descriptions or identifications.

8.2 The Customer's warranty claims presuppose that it has properly honoured its obligations to inspect and provide notification of defects (Sections 377, 381 HGB). Notification of defects is to be given in writing. During the period from the delivery up until notification of defects, the burden of proof with regard to properly handling the supplied goods, and the product-specific storage of such goods, lies with the customer.

8.3 Quality and durability guarantees for special features (warranted characteristics) as well as other independent guarantees shall only be provided if they are agreed upon in writing as such.

8.4 In the event of delayed notification of defects or notification of defects that is not properly made, the Customer shall forfeit its warranty claims unless the defect had been fraudulently concealed by ALAC.

8.5 In the case of justified notification of defects made in good time, ALAC shall rectify the defects by way of subsequent performance at the discretion of ALAC by eliminating the defect or delivering a fault-free item. The Buyer is to allow ALAC the time required and grant it the opportunity to provide the required subsequent performance, in particular hand over the goods for which notification of defects has been given for inspection purposes. In the event of replacement, the Customer is to return the faulty item to ALAC in accordance with the statutory requirements.

8.6 The expenses required to conduct an inspection and perform subsequent performance, in particular transport, travel, work and material costs, shall be borne by ALAC if a defect actually applies. However, if a request by the Customer to have defects rectified proves unjustified, ALAC may request that the Customer reimburse ALAC for the resulting costs.

8.7 If the subsequent performance has failed or if a reasonable period to be set by the Customer for the subsequent performance has been allowed to lapse in vain or may be dispensed with in accordance with the statutory requirements, the Customer may withdraw from the contract or reduce the purchase price. However, a withdrawal right shall not apply in the event of insignificant defects.

8.8 The Customer shall only have a right of recourse against us in accordance with Section 478 BGB insofar as the Customer has not entered into any agreements with its customer that extend beyond the statutory warranty claims.

8.9 The Customer's claims for compensatory damages or reimbursement of expenses incurred in vain shall only apply in accordance with Section 9 (Liability) of these conditions of sale, and in other respects are excluded.

Section 9 Liability

9.1 Liability on the part of ALAC for compensatory damages as a result of minor negligent violations of obligations - which are ALAC's responsibility or are attributable to ALAC - are excluded.

9.2 Liability on the part of ALAC for compensatory damages as a result of gross negligent violations of obligations - which are ALAC's responsibility or are attributable to ALAC - are limited to typical, contractual damage the occurrence of ALAC should have expected upon entering into the contract as a result of the circumstances it was aware of at that time.

9.3 ALAC shall only be liable for damage caused by default in the sum of up to 5 % of the remuneration agreed upon with ALAC.

9.4 The restrictions laid down in the above Section 9.1 to Section 9.3 do not apply to claims based on the German Product Liability Act, in the event of the loss of life, physical injury or detrimental effects on health, in the event of the provision of a guarantee or in the case of violating key contractual obligations, i.e. those that need to be honoured to facilitate the proper execution of the contract and which the Customer can normally expect to be honoured. In addition, the restrictions laid down in Section 9.1 to 9.3 do not apply in the case of liability for intent and (with the exception of Section 9.2) to gross negligence.

9.5 The Customer may only withdraw or terminate regarding violation of an obligation that does not constitute a defect if ALAC is responsible for violating the obligation. A free right of termination on the part of the Customer (in particular in accordance with Sections 651, 649 BGB) is excluded.

9.6 In other respects, the statutory preconditions and legal consequences apply.

Section 10 Statute of limitations

10.1 The claim for subsequent performance shall fall under the statute of limitations 12 months following the passing of risk or, where applicable, following acceptance of the delivery item. The statute of limitations shall only start afresh in the event of replacement of the faulty item. In the event of subsequent improvement, the starting afresh of the statute of limitations shall be excluded insofar as it is proven not to involve the consequences of the subsequent performance.

10.2 The claims for reducing the remuneration and exercising the right of withdrawal are excluded provided the claim for performance or subsequent performance has fallen under the statute of limitations. In accordance with Sections 478, 479 BGB, recourse on the part of the Supplier shall not affect the statute of limitations. It shall expire at the earliest two months following the time at which the Customer has honoured the consumer's claims.

10.3 The statute of limitations of 12 months in accordance with the above Section 10.1 also applies to all claims for damages against ALAC associated with a defect. An exclusion period of 18 months shall apply insofar as claims for damages are asserted that are not associated with a defect. The period shall commence when knowledge is gained of the damage and the party responsible for the damage.

10.4 The statute of limitations of 12 months in accordance with the above Sections 10.1 and 10.3 do not apply in the event of intent or fraudulent concealment of a defect. Furthermore, it shall not apply to claims for damages regarding the loss of life, physical injury or detrimental effects on health and in the event of claims in accordance with the German Product Liability Act. The statutory limitation periods shall apply in such cases.

10.5 In the event of subsequent performance based on goodwill alone, this shall be provided without any acknowledgement of a legal obligation and is not associated with the starting afresh of the limitation period.

Section 11 Software

If software is part of the delivery scope, the Customer is granted a non-exclusive right to use the supplied software to an extent determined as per agreement. It is surrendered for use on the designated delivery item. Using the software on more than one system is prohibited. The Customer may only duplicate, revise, translate or convert the software from the object code into the source code. The Customer undertakes not to remove manufacturer's details or to amend these without prior, express, written approval by ALAC. All other rights to the software and the documentation, including the copies, shall be held by ALAC. Issuing sub-licenses is not permitted!

Section 12 Secrecy

All business or technical information made available by ALAC (e.g. software and documents etc.) are to be kept secret in dealings with third parties and shall remain the exclusive property of ALAC as long and insofar as it is not proven to be in the public domain or was determined by ALAC for forwarding by the Customer. ALAC reserves all rights to such information, in particular copyrights and other ancillary copyrights. The Customer shall store and safeguard this information so that access to it by third parties is ruled out. The duplication and/or commercial use of such information is subject to written approval by ALAC. Such information may only be made available to persons employed at the Customer's enterprise insofar as it is required to use the product. In the event of forwarding information to its employees, the Customer shall ensure that its employees are similarly placed under obligation to maintain secrecy regarding this information. Such information may only be made available to persons employed at the Customer's enterprise insofar as it is required to use the product. In the event of forwarding information to its employees, the Customer shall ensure that its employees are similarly placed under obligation to maintain secrecy regarding this information.

Section 13 Proprietary rights

13.1 In accordance with this Section 13, ALAC shall ensure that the delivery item is free of third party commercial proprietary rights or copyrights. However, ALAC shall only be liable for claims that arise from the violation of third party proprietary rights and copyrights, in the case of use of the delivery items as per agreement, of which at least one from the proprietary right family is published either in Germany or by the European Patent Office. Each contracting party shall inform the other contracting party without undue delay in writing if action is taken against them because of the infringement upon such rights.

13.2 The Customer's claims are excluded insofar as the proprietary right infringement is caused by special requirements of the Customer, an application not foreseen by ALAC or is caused by the fact that the delivery is amended by the Customer or is used in conjunction with products not supplied by ALAC.

13.3 In the event that the delivery item violates a third party proprietary right or copyright, ALAC shall, at its own discretion and cost, amend or replace the delivery item such that third party rights are no longer violated, the delivery item however continues to provide the functions as per agreement or the Customer is granted the right of use by way of entering into a licensing contract. If ALAC fails to achieve this within a reasonable period, the Customer shall be entitled to withdraw from the contract or appropriately reduce the purchase price. The Principal's potential claims for damage are subject to the limitations of Section 9 of these general terms and conditions of sale.

13.4 In the event of rights infringements on the part of products of other manufacturers supplied by ALAC, ALAC shall, at its own discretion, assert its claims against the manufacturers and suppliers on the Customer's account or assign them to the Customer. In such cases, claims against ALAC shall only apply in accordance with this Section 13 if the assertion in court of the above-mentioned claims against the manufacturers and suppliers was unsuccessful or, for example, has no prospects of success due to insolvency.

Section 14 Place of jurisdiction / place of performance / applicable law

14.1 ALAC's registered office is deemed the exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contract. However, ALAC is entitled to bring legal action against the Customer at the court with competence for the Customer's registered office.

14.2 Kirchhundem is deemed the place of performance for all deliveries and payments.

14.3 German is deemed the contract language. Solely the law of the Federal Republic of Germany by way of exclusion of the Vienna Convention on Contracts for the International Sale of Goods dated 11.04.1980 (CISG) shall apply to statements and concluded contracts that are contracted out by way of taking these conditions as a basis.

14.4 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 sale had they been aware of the omission in the provisions.