

Our General Terms and Conditions of Purchase

General Purchase Terms and Conditions of alimex GmbH, Precision in Aluminium

Section 1 General - Scope

- (1) Our purchase terms shall apply exclusively; we do not accept any terms of the supplier that conflict with, complement or deviate from our purchase terms, unless we have explicitly agreed to their applicability in writing. Our purchase terms shall apply even if we accept the supplier's delivery without reservation despite being aware of any terms of the supplier that conflict with or deviate from our purchase terms. These terms shall also apply to all future business relationships of the parties, even if they are not explicitly agreed again.
- (2) All agreements made between us and the supplier to execute this agreement must be laid down in writing in this agreement. Verbal, deviating agreements, side agreements and commitments by representatives shall require our written confirmation in any case to become effective. Compliance with the written form requirement shall be a prerequisite for the effectiveness of verbal agreements. Any waiver of the written form requirement shall require written form as well.
- (3) Our purchase terms shall only apply vis-à-vis entrepreneurs pursuant to Section 14 BGB (German Civil Code).

Section 2 Offer - Offer Documents

- (1) The supplier shall be obliged to accept our order in writing within a time limit of two weeks. After expiry of the time limit, we shall no longer be bound to our order.
- (2) We reserve rights of ownership and copyrights to illustrations, drawings, calculations and other documents; they must not be made accessible to third parties without our explicit written consent. They are to be used exclusively for manufacture based on our order and must be returned to us without request once the order has been processed. They must be kept secret towards third parties; in this respect, the regulation of section 9 (4) shall apply as a complement.

Section 3 Prices - Payment Terms - Prohibition of Assignment

- (1) The price specified on the PO shall be binding. Unless agreed otherwise in writing, the price shall include delivery "free domicile" including packaging. Return of the packaging shall require special arrangement.
- (2) The statutory VAT shall be included in the price.
- (3) According to the stipulations on our PO, we can only process invoices indicating the order number specified thereon; the supplier shall be responsible for all consequences resulting from such obligation, unless the supplier proves that the consequences are attributable to the supplier.
- (4) Unless agreed otherwise in writing, we shall pay the purchase price with 2% cash discount within 14 days from delivery and receipt of invoice or net within 30 days after receipt of invoice.
- (5) Offset and retention rights shall be due to us to the within the limits of statutory regulations.
- (6) The supplier shall not be entitled to assign individual or all claims due to the supplier against alimex to third parties without the explicit written consent of alimex. Any passing on of the order of alimex to third parties without the prior consent of alimex shall be prohibited.

Section 4 Delivery Time

- (1) The delivery time indicated on the PO shall be binding.
- (2) The supplier shall be obliged to immediately notify us in writing if circumstances occur or become apparent to the supplier from which it can be inferred that the stipulated delivery time cannot be complied with.

(3) In case of any default of delivery, we shall be entitled to the statutory claims. After fruitless expiry of a reasonable time limit, we shall be entitled, in particular, to claim damages instead of performance and rescission. If we claim damages, the supplier shall have the right to likewise demonstrate that the breach of duty is not attributable to the supplier.

Section 5 Passing of Risks – Documents

- (1) Unless agreed otherwise in writing, delivery must be performed free domicile.
- (2) The supplier shall be obliged to exactly indicate our order number on all dispatch papers and delivery notes; otherwise, delays in processing shall not be attributable to us.

Section 6 Defect Inspection - Liability for Defects

- (1) We shall be obliged to inspect the goods for any deviations in quality and quantity within a reasonable time limit; notice shall be deemed given in due time if it is received by the supplier within a time limit of five working days from goods receipt or, for hidden defects, from discovery.
- (2) We shall be fully entitled to the statutory claims for defects; in any case, we shall be entitled, at our option, to claim rectification of defects or delivery of a new item by the supplier. The right to damages, especially the right to damages in lieu of performance, shall remain explicitly reserved.
- (3) We shall be entitled to perform rectification of defects ourselves at the supplier's expense in case of imminent danger or special urgency.
- (4) The limitation period shall be 36 months from passing of risks.

Section 7 Product Liability - Indemnity

- (1) Where the supplier is responsible for any product damage, the supplier shall be obliged to indemnify us from damages claims of third parties upon first request to the extent that the cause falls within the supplier's domain and organisational area and the supplier is personally liable in relation to third parties.
- (2) As part of the supplier's liability for damage cases within the meaning of (1), the supplier shall also be obliged to reimburse any expenses pursuant to Sections 683, 670 BGB and Sections 830, 840, 426 BGB that result from or in connection with any recall campaign implemented by us. Where possible and reasonable, we shall notify the supplier of the content and extent of the recall measures to be performed and shall provide the supplier with the opportunity to make a position statement. Any other statutory claims shall remain unaffected.

Section 8 Property Rights

- (1) The supplier shall be responsible for ensuring that no third-party rights will be infringed within the Federal Republic of Germany in connection with the supplier's delivery.
- (2) If, as a result, a third party asserts a claim against us, the supplier shall be obliged to indemnify us from such claims upon our first written request; we shall not be entitled to make any arrangements with the third party without the supplier's consent, especially to reach a settlement.
- (3) The supplier's indemnity obligation shall apply to all expenses necessarily accruing to us from or in connection with any claim asserted by a third party.
- (4) The limitation period shall be ten years from conclusion of the agreement.

Section 9 Retention of Title - Provision - Tools - Confidentiality

- (1) If we provide the supplier with tools, we retain title to them. Any processing or transformation by the supplier shall be carried out for us. If our goods subject to retention of title are processed with other objects not owed by us, we shall acquire co-ownership of the new item at the ratio between the value of our item (purchase price plus VAT) and the other processed objects at the time

of processing.

(2) If the item provided by us is inseparably mixed with other objects not owned by us, we shall acquire co-ownership of the new item at the ratio between the value of the goods subject to retention of title (purchase price plus VAT) and the other mixed objects at the time of mixing. If, as a result of such mixing, the supplier's item is to be considered as the main item, it shall be deemed agreed that the supplier shall transfer proportionate co-ownership to us; the supplier shall keep the sole or co-ownership safe for us.

(3) We retain title to tools; the supplier shall be obliged to exclusively utilise the tools to manufacture the goods ordered by us. The supplier shall be obliged to take out insurance for the tools owned by us at their replacement value against damage by fire, water and theft at the supplier's own expense while assigning to us by now all compensation claims from such insurance; we shall herewith accept the assignment. The supplier shall be obliged to timely perform any necessary maintenance and inspection work on our tools as well as all servicing and repair work at the supplier's own expense. The supplier must immediately notify us of any incidents; if the supplier culpably fails to do so, damages claims shall remain unaffected.

(4) The supplier shall be obliged to keep all illustrations, drawings, calculations and other documents and information received by the supplier strictly confidential. They may be disclosed to third parties only with our explicit consent. The confidentiality obligation shall also apply after the performance of this agreement; it shall expire if and to the extent that the manufacturing know-how contained in the ceded illustrations, drawings, calculations and other documents has become general knowledge.

(5) To the extent that the security interests due to us pursuant to (1) and/or (2) exceed the purchase price of all our goods subject to retention of title not yet paid by more than 10%, we shall be obliged, at the supplier's request, to release the security interests at our option.

Section 10 Place of Jurisdiction - Place of Performance – Applicable Law

(1) If the supplier is a merchant, our registered office shall be the place of jurisdiction; we shall be entitled, however, to also sue the supplier at the court having jurisdiction at the supplier's place of residence.

(2) Unless defined otherwise on the PO, our registered office shall be the place of performance.

(3) Relations between the contracting parties shall be exclusively governed by the legislation applicable in the Federal Republic of Germany. The application of the UN Sales Law (CISG) shall be excluded.

As of 12/10

[PDF download](#)

Our General Terms and Conditions of Sale

Terms and Conditions of Sale, Delivery and Payment

I. Scope

We shall sell and deliver exclusively under the terms specified below. If our terms deviate from those of the purchaser, the purchaser's terms shall not become part of the agreement even if we do not object to such terms. Verbal, deviating agreements, side agreements and commitments by representatives shall require our written confirmation in any case to become effective. Compliance with the written form requirement shall be a prerequisite for the effectiveness of verbal agreements.

Any waiver of the written form requirement shall require written form as well. These terms shall also apply to all future business relationships of the parties, even if they are not explicitly agreed again.

II. Offer and Prices, Freight Basis

Our offers shall be subject to change. The prices shall apply ex works/warehouse. Unless explicitly agreed otherwise in writing, they shall be basic prices exclusive of packaging, freight and VAT. In case of any alteration to or re-emergence of statements or other third-party costs included in the agreed price more than four weeks from the conclusion of the agreement, we shall be entitled to change prices to the appropriate extent. We reserve the right to increase the agreed price for any quantities not yet delivered if any circumstances occur due to any change in the raw materials and/or economic situation that result in the price for the manufacture and/or purchase of the relevant product being significantly increased compared to the date of the price agreement. In this case, the customer may cancel the customer's affected orders within four weeks after notification of the price increase.

III. Passing of Risks

The risk of destruction and/or deterioration of the goods shall pass to the orderer once the shipment has been loaded or provided to the orderer. The risk shall also pass to the orderer if the orderer is in default with accepting the goods. The goods shall always be transported at the purchaser's risk and shall also be effected free of carriage charges or FOB for sales. In such cases, the selection of the means of transport shall remain exclusively reserved to us.

IV. Warranty

The purchaser must inspect the purchase item for any defects and quantity deviations immediately after delivery and must immediately notify the seller of any detected defects and quantity deviations in text form. If the customer fails to notify the defect immediately and in due time or form, the goods shall be deemed approved in consideration of such defect. If the purchaser fails to provide alimex with the immediate opportunity to make sure of the material defect, especially fails to make the objected goods or samples thereof immediately available upon request, any rights on account of the material defect shall lapse. Where a properly given notice of defects is justified, alimex shall, at its option, deliver a replacement free of charge or have the one-time right to perform subsequent improvement. alimex shall be obliged to exercise the option ten days after receipt of the notice of defects at the latest. Otherwise, the option shall pass to the purchaser. If subsequent improvement or replacement delivery fails, the purchaser shall be entitled, at the purchaser's option, to demand rescission of the agreement (redhibition) or corresponding abatement of the agreed price (reduction). The warranty period for the purchase of new items shall be one year. After a defect has been detected, the purchaser must neither make any modifications to the delivered goods nor perform subsequent improvement in person, without alimex being in default in doing so. Otherwise, any warranty shall be excluded.

V. Limitation of Liability

alimex shall be liable for the violation of contractual and non-contractual duties, especially for impossibility, default, failure upon conclusion of the agreement and tort, also for its executive employees and other auxiliary agents, only in case of wilful intent and gross negligence, limited to the contract-typical damage foreseeable upon conclusion of the agreement. These limitations shall not apply to any culpable violation of essential contractual obligations jeopardising achievement of the contractual purpose, cases of mandatory liability pursuant to the German Product Liability Act,

damage to life, limb and health or even if and to the extent that alimex has maliciously concealed defects in the item or guaranteed their absence. This shall not affect the burden of proof rules.

VI. Delivery and Acceptance Deadlines

The delivery times indicated by us shall always apply to the time of delivery ex works/warehouse. Non-compliance with delivery dates as a result of unforeseeable events (e.g. difficulties in procuring raw and other materials) or force majeure shall not entitle the purchaser to give us notice of default or to rescind from the agreement. The delivery deadline shall be reasonably extended by the duration of the impediment. Our delivery obligation shall be subject to the proviso of proper and timely self-delivery, unless improper delayed self-delivery is attributable to us. If fulfilment becomes impossible or unreasonable for us, we shall be entitled, to rescind the agreement without any compensation duty. Any short selling shall require our explicit prior confirmation. The purchaser must call off partial performances and/or call-offs from call-off orders in good time to allow us to ensure proper fulfilment. Costs for any acceptance under special terms shall be borne by the orderer. alimex may perform partial deliveries.

VII. Rescission Right

The orderer's unconditional creditworthiness shall be a prerequisite for the delivery obligation. If we receive any information after the conclusion of the agreement that makes the granting of a credit in the amount reflected in the agreement appear to not be entirely unobjectionable, or if facts justifying doubts in this respect arise, especially any significant deterioration of the financial situation, cessation of payment, business prospects, insolvency, liquidation, transfer, etc., or if the orderer pledges or orders as a collateral for other creditors inventories, receivables or purchased goods or fails to pay invoices in spite of a reminder, we shall be entitled, to demand advance payments or a collateral or to rescind the agreement or to claim damages for non-performance. Moreover, invoice amounts not yet paid shall become immediately due, regardless of their maturity.

VIII. Retention of Title

alimex retains title to the goods until all of its receivables from the purchaser from the business relation, including receivables arising in the future, even from agreements concluded concurrently or subsequently, have been settled. This shall also apply if individual or all claims of alimex were included in a current account and the balance has been struck and acknowledged. The purchaser shall be entitled to re-alienate the goods subject to retention of title in the proper course of business only on condition that the purchaser assigns to alimex by now all receivables from consumers or third parties that accrue to the purchaser from such re-alienation and that such receivables actually effectively pass to alimex. If goods subject to retention of title are processed or, following processing or combination with objects exclusively owned by the purchaser, are re-alienated, the purchaser shall assign to alimex by now the receivables arising from such re-alienation in full. If, following processing/combination, the purchaser alienates goods subject to retention of title together with goods not owned by alimex, the purchaser shall assign to alimex at first rank by now the receivables arising from such re-alienation at the value of the goods subject to retention of title with all ancillary rights. alimex shall herewith accept the aforementioned assignments. The purchaser shall be revocably authorised to collect the assigned receivables. This shall not affect the authority of alimex to collect the receivables itself; alimex undertakes, however, to not collect the receivables as long as payment and other obligations are properly met by the purchaser. alimex may demand that the purchaser notifies it of the assigned receivables and their debtors, provides all information required for the collection, hands out the associated documents and notifies the debtors of the assignment.

Any treatment or processing of the goods subject to retention of title shall be effected by the purchaser for alimex, without this resulting in any obligations for alimex. If goods subject to retention of title are processed, combined, mixed or blended with other goods not owned by alimex, the resulting co-ownership share in the new item shall be due to alimex at the ratio between the value of the goods subject to retention of title and the remaining processed goods at the time of processing, combination, mixing or blending. The contracting partners are in agreement that in cases where the purchaser acquires sole ownership of the new item, the purchaser shall grant alimex co-ownership of the new item at the ratio of the value of the processed or combined, mixed or blended goods subject to retention of title and shall store them free of charge for alimex. If alimex substantiates liability under a bill of exchange in connection with the payment of the purchase price by the purchaser, the retention of title and its underlying receivable from goods deliveries shall not expire before the purchaser as drawee honours the bill of exchange. If the value of the existing collaterals exceeds the receivables to be collateralised by more than 20%, alimex shall be obliged to release them upon the purchaser's request. Only alimex shall be entitled to select the collaterals to be released. alimex shall be entitled at any time to demand surrender of the objects owned by it, especially to assert the right of segregation or assignment of the claim for consideration in insolvency proceedings, if settlement of its receivables by the purchaser is jeopardised, especially if insolvency proceedings are initiated in relation to the purchaser's assets or the purchaser's financial situation deteriorates significantly. Assertion of the retention of title as well as take-back and seizures of the delivery items by alimex shall not be deemed rescission of the agreement. If goods subject to retention of title are seized or confiscated or other cases of dispositions or third-party interferences with the rights of alimex occur, the purchaser must notify alimex without delay and make all necessary efforts in coordination with alimex to avert the risk. If goods subject to retention of title require protection, the purchaser must assign any claims against third parties to alimex at the request of alimex. The purchaser shall be obliged to compensate any and all damage and costs, including court costs and lawyers' fees, incurred by alimex due to intervention measures against third-party accesses.

IX. Payment Terms

The purchaser must neither withhold nor offset the payment against counter-claims, unless alimex has acknowledged these counter-claims or a legally effective title exists. Unless agreed otherwise, invoices shall be due within 30 days from the invoice date. If payment is not effected in good time, alimex will charge default interest of 8% above the basic rate of interest from maturity. Bills of exchange may be accepted only subject to the existing discounting options. Discount charges and stamp duties shall be at the purchaser's expense.

X. Place of Performance and Jurisdiction

The place of performance for all obligations from agreements with alimex shall be Willich. Where legally permissible, the parties agree on the registered office of alimex as place of exclusive jurisdiction. alimex shall also be entitled to sue the contracting partner at the latter's registered office. The contractual relationship shall be exclusively governed by German law. The applicability of the CISG shall be excluded. These terms exist in the German and in the English language. In case of any deviation, the German version shall apply.

As of 04/2014

[PDF download](#)

