

Alber GmbH – Purchasing Conditions

Purchasing Conditions, June 2016

Alber GmbH
Vor dem Weißen Stein
72461 Albstadt

1. General

a) The following General Purchasing Conditions (“GPC”) exclusively apply to all purchases by ALBER GmbH. They apply to the same extent for the purchase of production materials (for the purpose of ALBER’s own serial production, particularly raw materials, materials, construction groups, parts comprehensively) as for the purchase of replacement parts, tools or machines as well as other products of every kind (jointly referred to as the “products”), insofar as the applicability of one of the following provisions of these Purchasing Conditions is not expressly restricted to individual or certain kinds of purchase items. The supplier accepts these GPC through supplying its products.

b) General Terms & Conditions or other deviating conditions of the supplier do not apply unless they have been expressly recognised by ALBER in writing. These GPC also apply in all cases where ALBER accepts the supplier’s deliveries without objecting to its conditions which deviate from these GPC (regardless of whether they are known to ALBER or not). All references by the supplier to the application of its General Terms & Conditions are hereby expressly objected to.

c) These GPC also apply for all future transactions with the supplier.

d) The provisions of these GPC apply in addition to any and all other agreements which the parties enter into in addition, e.g. supply agreement, quality assurance agreement (QAA). In the event of a contradiction between the supply agreement, the QAA or other agreements („agreements”) and these GPC, the provisions entered into in the agreements shall prevail, insofar as they correspond to the requirements laid down by number 1b) sentence 1 hereof.

2. Offer, order

a) Enquiries made by ALBER of the supplier about the latter’s products and the conditions of its delivery or requests by ALBER regarding the making of an offer do not bind ALBER in any way.

b) Orders placed by ALBER are only valid and binding if they are made in writing. Signature by ALBER is not necessary. The written form is complied with if transmission is done by means of fax, email or another electronic system.

c) A valid and binding contract between ALBER and the supplier including these GPC comes into existence as a result of

- (i) the written order placed with the supplier by ALBER, and
- (ii) express written acceptance (order confirmation) by the supplier, which must be received by ALBER within five working days after the date of the order, or
- (iii) commencement of delivery by the supplier of the products ordered.

d) ALBER can request changes to the products (particularly also with regard to the product’s construction and design) from the supplier even after the confirmation of the order by the supplier. In such case, the supplier shall inform ALBER without undue delay about the ramifications of that change request, particularly with regard to the additional or reduced costs, as well as the delivery date, and the parties shall agree on a reasonable contract adjustment insofar as necessary.

3. Prices, payment terms

a) The price shown in an order is binding. In the absence of agreement to the contrary, the price is understood to be “DDP” pursuant to Incoterms 2010, including packaging.

b) If ALBER has to bear the freight costs in whole or in part pursuant to the agreed delivery terms, then the least expensive freight tariffs are to be chosen by the supplier or ALBER’s shipping instructions are to be complied with.

c) The invoice is to be sent without undue delay after delivery by separate mail to ALBER’s postal address, or electronically by email. If these prerequisites are not fulfilled, then ALBER is not responsible for the delays arising therefrom in connection with the processing of the invoice and in connection with settlement.

d) The payment of the invoice is made within 30 days after delivery and invoice receipt with 3% discount, at the latest within 60 days after delivery and invoice receipt strictly net.

4. Delivery dates, default in delay

a) The delivery dates agreed upon with the supplier are binding. For compliance with the delivery period, depending on the delivery term agreed upon, receipt of the products at the destination named by ALBER or the timely making available of the products for collection from the supplier’s supply plant is authoritative.

b) Early deliveries are accepted by ALBER only after written agreement. In the event of early delivery, ALBER shall be entitled to use the agreed delivery date as the basis for the calculation of the payment date.

c) If the supplier recognises that a delivery date agreed upon with ALBER or an agreed delivery quantity cannot be complied with, irrespective of numbers 4 a) – b) above, then it is obliged to inform ALBER about this without undue delay, naming the reasons, the probable duration of the delay and the impacts, with the measures suitable for their avoidance.

d) The supplier has to bear at its own expense all of the special journeys which the supplier decides to make.

5. Force majeure

a) Disruptions to the supply relationship due to events which are unforeseeable and unavoidable and are outside the supplier’s sphere of influence and for which the supplier is not responsible, such as force majeure, war or natural catastrophes, release the supplier from its performance obligations for the duration of that disruption and in the scope of its effect.

b) Agreed time periods are prolonged by the duration of such a disruption; ALBER must be informed without undue delay in an appropriate form about the occurrence of such a disruption.

c) If the end of such a disruption is not foreseeable or if the disruption lasts for more than two months, then each party has the right to rescind the contract affected (or its as yet unfulfilled products) or to declare termination without notice.

6. Dispatch, transfer of risk

a) Dispatch is to be announced at the latest upon departure of the goods. The shipping address, the order number including item number and goods tags of ALBER must be given in dispatch announcements, bills of consignment and package addresses.

b) For the prevention of transport damage due to lack of or inappropriate load-securing, the supplier has to have the load items secured by the collecting freight carrier. The supplier is liable for all damage and costs which arise as a result of flawed compliance with or failure to comply with ALBER’s stipulations.

7. Quality and documentation

a) The supplier is obliged to comply with the recognised state-of-the-art technology and the respectively-applicable safety provisions for its deliveries. Insofar as the supplier has received from ALBER drawings, templates, samples or other stipulations or documents, it will comply with them in terms of the design and the quality characteristics of the delivery item. Changes to the delivery item, an already-approved production process and/or its relocation to another location require a timely written announcement by the supplier and the prior written consent of ALBER in written form.

b) The supplier will provide ALBER with a copy of the respectively current quality management certificate and send ALBER a new certificate without request after the expiry of the certificate’s validity date. In the event of disqualification, ALBER is to be informed of the same without undue delay.

8. Hazardous substances

a) For goods and materials as well as for processes which must undergo special treatment due to legislation, other provisions, or due to their composition and their effect on the environment, inter alia with regard to transport, packaging, labelling, storage, handling, manufacture and disposal, it is mandatory for the supplier to comply with the statutory provisions.

b) The supplier is liable to ALBER for all damage and loss arising out of culpable non-compliance with the statutory provisions which exist in this respect.

c) The supplier will ensure that the requirements of the EU Chemical Regulation REACH (Regulation (EC) nr. 1907/2006, in its respectively most current version) – hereinafter referred to as “REACH” – are complied with, particularly that pre-registration as well as registration each take place in a timely manner. ALBER is not obliged to carry out the (pre-)registration. The supplier is aware that the products cannot be used if the REACH requirements are not completely and duly fulfilled.

d) The supplier hereby undertakes to comply with all of the other statutory requirements, such as RoHS, BattG, etc., pertaining to the products supplied.

9. Packaging

a) The supplier is obliged to comply with the requirements arising out of the respectively-applicable Packaging Ordinance.

b) The supplier hereby undertakes to send the goods manufactured or processed by it only in packaging whose type, form and size is environmentally friendly. ALBER hereby undertakes to treat reusable packaging recognised by it properly and to make it available without charge to the supplier in the best possible condition.

10. Quality defects

a) In the event of defective delivery, the statutory provisions apply, insofar as nothing to the contrary arises from the following provisions (particularly for production materials).

b) ALBER checks the products supplied by the supplier for production purposes (production materials) upon arrival for conformity of the goods ordered and the goods supplied, for any quantity deviations, as well as for externally-recognisable damage, insofar as and as soon as this is feasible in accordance with the normal course of business. Defects discovered during this inspection are to be notified to the supplier by ALBER without undue delay. The supplier otherwise waives a more extensive incoming-goods check by ALBER. Other defects which are discovered by ALBER only during the processing or the intended use of the goods supplied are to be notified to the supplier by ALBER without undue delay after the discovery of the defect. In this respect, the supplier hereby waives the defence of late complaints about defects.

c) Upon the discovery of defects, ALBER will draw up a defect ticket and will return it to the supplier together with the non-conforming goods with debit (i.e. the value of the returned goods will be invoiced for). If necessary, coordination will be done in this respect with the supplier con-

cerning the modalities of the return of the products and/or sorting process or reworking. This process serves a swift and simple complaints handling; the supplier’s right to subsequent performance remains unaffected hereby. The supplier can, after approval by ALBER, rework the defective delivery/goods or rectify the defect and redeliver the now flawless goods and invoice for the agreed goods value. The maximum time period for the subsequent performance or the supply of reworked goods is limited to 3 months. Reworked goods or subsequent-performance deliveries must be clearly labelled as such by the supplier.

d) If the subsequent performance fails, if it is unreasonable for ALBER or if the Supplier does not commence it without undue delay, then ALBER can rescind the contract/order without setting a further deadline, as well as return the products at the supplier’s risk and expense. In these and other, urgent cases, particularly in order to obviate acute danger or to prevent greater damage, if it is no longer possible to notify the supplier about a defect and to set the supplier a period for rectification, even a short period, then ALBER can undertake the defect rectification itself or have this done by a third party at the supplier’s expense.

e) More extensive claims, particularly compensation or under supplier guarantees, remain unaffected.

11. Product liability and recall

a) Insofar as the supplier has caused a product defect and/or (depending on the underlying claim basis) is responsible for it, the supplier is obliged upon first demand by ALBER to pay compensation or to indemnify ALBER against all third-party claims, provided that the cause of the claim lies within the supplier’s control and organisation and the supplier would itself be liable to third parties.

b) In product liability cases pursuant to number 11 a) hereof, the supplier will provide ALBER with all of the necessary information and every support in order to defend against the claims, within the framework of what is reasonable.

c) Insofar as a recall action is necessary for the fulfilment of a law, an ordinance, decree or another state requirement or as a safety measure for the prevention of personal injury or death, or in the event of other field or service actions, the costs, including inter alia work, transport and evidence costs, are allocated on the basis of the contributory negligence/contributory cause to be attributed to ALBER and/or to the supplier (§ 254 of the German Civil Code (BGB)). ALBER will inform the supplier – insofar as possible and reasonable – of the contents and the scope of the recall actions or other field or service actions to be carried out, and will give the supplier the opportunity to make a statement in this respect. All other statutory claims remain unaffected hereby.

d) The supplier is obliged to take out and to maintain sufficient product liability insurance in order to cover product liability risks, including recall risks. ALBER accordingly recommends that the supplier take out special third-party insurance for installation and disassembly costs as well as recall costs, whose coverage sum should be at least EUR 250,000. Taking out and the existence of corresponding insurance is to be proven to ALBER upon request.

12. Proprietary rights

a) The supplier is to ensure that ALBER or ALBER’s customers do not infringe the intellectual property rights of any third parties through the purchase, possession, offer, use, processing or onward sale of the products, particularly no trademark rights, company-name rights, name rights, patent rights, utility model rights, registered design rights, get-up rights, design rights or copyright of third parties (including corresponding proprietary-right applications) (“proprietary rights”) of the supplier. If the supplier breaches this obligation culpably, then it is to indemnify ALBER and its customers upon first demand by ALBER against any third-party claims arising out of such actual or alleged proprietary-right infringements, and is to bear all of the costs and expenditure which ALBER incurs in this context, particularly legal pursuit and defence costs, and costs which result from compliance with a potential cease-and-desist obligation.

b) Number 12 a) hereof does not apply if the delivery item was produced in accordance with drawings, models or other detailed information from ALBER and the supplier was not aware and should not have known that third-party proprietary rights were being infringed thereby.

c) The parties are obliged to inform each other without undue delay about infringement risks and alleged infringement cases which become known, and will amicably counteract corresponding infringement claims within the framework of what is reasonable.

13. Retention of title, production means

a) Upon full payment of the purchase price for the products, ownership thereof is transferred to ALBER.

b) The supplier is obliged to insure ALBER’s property for goods and tools which are made available at replacement value, at its expense, at least against fire, water and theft, and to maintain that insurance. The supplier will prove the existence of corresponding insurance to ALBER upon request. The supplier will carry out any necessary maintenance work at the usual intervals at its own expense. It is obliged to notify ALBER without undue delay about damage, malfunctions or breakdowns.

14. Confidentiality

a) The supplier hereby undertakes to treat as confidential all confidential information which it receives directly or indirectly from the respective other contract partner. Orders and all associated commercial and technical details are also to be treated as confidential information. In particular, all illustrations, drawings, calculations, quality guidelines, templates, samples and similar items are to be kept confidential. Copying and passing on confidential information is only

permissible within the framework of business necessity. They may only be disclosed to third parties after obtaining ALBER’s prior consent in written form.

- b) The foregoing obligations do not apply to confidential information where the supplier can prove that it
- (i) was already generally accessible at the time of its provision, or has become generally accessible since then without fault on the part of the supplier;
- (ii) was already in the supplier’s possession at the time of its provision;
- (iii) was made accessible to the supplier by a third party without a confidentiality and non-usage obligation, provided that these third parties have not received the information directly or indirectly from suppliers;
- (iv) is to be provided to authorities due to statutory provisions.

c) The supplier hereby undertakes to obligate sub-suppliers to preserve confidentiality in the same scope. The supplier may only use the confidential information disclosed to it by ALBER for the intended purposes.

d) The confidentiality obligation shall continue to apply after the supply relationship has ended. The supplier hereby undertakes after the cessation of the supply relationship to return to ALBER all of the confidential information received, insofar as it has physical form or is deposited on electronic storage media. The fulfilment of the obligations arising out of the last two sentences must be confirmed by the supplier in writing to ALBER upon ALBER’s request.

15. Supply of replacement parts

The supplier hereby undertakes to guarantee the supply of replacement parts for the intended service life of the end products for which the products are supposed to be used. The minimum time period is 7 years after the end of the serial production of the products. The supplier is to give ALBER the opportunity to place a final order for the all-time demand in a timely manner before the expiry of the minimum time period.

16. Cancellation of orders/contracts

a) If a contract partner unjustifiably stops its payments or if an application for the initiation of insolvency proceedings is filed with regard to its assets, then the other party is entitled to rescind the contract with regard to the parts of the contract which have not yet been performed.

b) Each party has the right to terminate a contract without notice at any time for an important reason. An important reason exists in the following cases in particular:

- (i) initiation of insolvency proceedings concerning a party’s assets, or refusal to initiate insolvency proceedings, due to lack of sufficient assets, or liquidation of one of the parties,
- (ii) breach of fundamental contract obligations; in the event of a breach which can be rectified, only after the innocent party has asked the other party in writing to rectify the breach, has warned it about the imminent termination for an important reason, and has set a reasonable supplementary period for performance of at least four weeks, which has fruitlessly expired.

17. Other provisions

a) Should one of the foregoing provisions be or become invalid or unfeasible, then this shall not affect the legal validity of the other provisions. The invalid or unfeasible provision shall be deemed to be replaced with one which, within the framework of what is legally possible, comes closest to what the contract partners wanted according to the original sense and purpose of the invalid or unfeasible provision. The same applies for any unintended lacunae in the contract.

b) The supplier may not wholly or partially assign or transfer any order or the contract without ALBER’s prior written consent.

18. Place of performance, applicable law, legal venue

a) The place of performance for the supplier’s delivery obligation is the place of receipt or use respectively named by ALBER. The place of performance for ALBER’s payment obligations is ALBER’s headquarters.

b) Only the law of the Federal Republic of Germany shall apply. The application of the CISG is hereby excluded.

c) The legal venue for all disputes arising out of the business relationship between the contract partners is Albstadt. Moreover, ALBER is entitled to the right also to sue the supplier at its general legal venue, according to its choice.