

Standard Terms and Conditions of Sale ("Terms") of ALSO Deutschland GmbH

§ 1 Validity of Terms

1. These Terms apply to all orders, quotations and sales of goods and/or services by ALSO to any customer or potential customer ("customer"). These Terms shall therefore also apply to all future business relations, even if not expressly agreed upon anew. Acceptance of goods or services customer shall deem acceptance of these Terms. All other terms and conditions, in particular purchasing conditions, are expressly objected to by ALSO and they shall not even be acknowledged if ALSO does not expressly object to those terms and conditions after receipt.
2. Any deviation from these Terms shall only be effective if confirmed in writing by ALSO.

§ 2 Offer and order acceptance

1. All offers and quotations by ALSO are for information only and shall not be binding. Acceptance of orders is subject to ALSO's written order confirmation. The same shall apply to any additions or side agreements. Modification or waiver of any other provision in one instance shall not constitute modification or waiver in any other instance. In case of immediate delivery, ALSO's invoice may substitute the written confirmation.
2. Unless expressly marked as binding in writing by ALSO all drawings, designs, illustrations, features, specifications and particulars of dimensions and weights and other such information submitted by ALSO are approximate only.
3. The employees of ALSO are not entitled to amend these Terms, neither in writing nor verbally.
4. At its own discretion, ALSO shall have the right to determine, adjust or refuse a credit line at any time. If customer is exceeding his credit line upon his call, ALSO shall be freed from its obligation to deliver. However, if customer is exceeding his credit line he has the option to receive goods against cash payment.
5. As far as these Terms are incorporated later, a contract is deemed to be dissolved, if the conditions of § 2 section 1 are not existent.
6. ALSO shall have full discretion in accepting or rejecting any order.

§ 3 Prices

1. Unless otherwise specified, the prices in ALSO offers shall be valid for seven (7) calendar days from date the price is offered. The price stated in the confirmation of order from ALSO shall prevail. Price increases due to monetary fluctuations are charged to the customer for products and services not yet delivered.
2. All prices for products and services are excluding VAT, valid on the day of shipment ex warehouse Soest or in case of direct delivery from German border or German port of entry. Customer will pay any tax, packaging, environmental lump sum/fees, transport, toll, freight, copyright levies, insurance and legal charges.
3. Additional delivery cost and services shall be charged separately.
4. For orders below € 300 ALSO will invoice a surcharge. This surcharge will not apply to orders placed online.

§ 4 Delivery and Performance Period

1. ALSO will use all reasonable endeavours to deliver the goods on or before the agreed delivery date, however, ALSO does not undertake, guarantee or warrant that delivery will be made on the agreed delivery date.
2. Delays in delivery and in performance due to Force Majeure such as Acts of God and other unpredictable events, essentially complicating the delivery for ALSO or making delivery impossible and which are not due to ALSO (such as war, events similar to war, instructions by government, non-permission of export, import or transit permissions, national measures to limit trade traffic, strike, lockout and any other interruptions, traffic jams, no matter whether these events occur at ALSO, its suppliers, contractors or its subcontractors), entitle ALSO to postpone the delivery or service for the time of the disturbance plus an appropriate initial period or to withdraw from the contract entirely or partly if it has not been fulfilled.
3. If any delivery time is so extended by more than 3 months, then the customer shall be entitled after granting in written form an appropriate period of grace, at least 14 days, to withdraw from the agreement completely or partly if it has not been fulfilled. If the delivery period is extended pursuant to article 4.2 or if ALSO is released from its obligation, the customer shall not be entitled to claim any compensation. ALSO can only rely on the stated conditions if the customer has been given prompt notice of the delay.
4. If ALSO is not in compliance with the agreed delivery times and dates and if the delays are attributable to causes for which ALSO is solely responsible, customer shall be entitled to claim liquidated damages. These shall be up to 0,25 % for each complete week of delay, but not exceeding in the aggregate 5 % of the value of the delayed part of the delivery. Any other claims are excluded, unless the delay is based on gross negligence or wilful misconduct of ALSO.
5. ALSO is entitled to deliver the goods in one or more instalments. With delivery contracts each partial delivery and partial performance is deemed an independent performance. The period of delivery shall also be prolonged by the period the customer is in default on meeting his contractual obligations.
The period of delivery shall also be prolonged by the period the customer is in default on meeting his contractual obligations. At any time, ALSO reserves the right, at its option, to refuse delivery until the customer has made payment for the goods and services.
6. If the delivery date or date of performance is not shown separately on ALSO's invoice it corresponds to the invoice date.

§ 5 Default in Acceptance

1. If the customer refuses or fails to take delivery of the goods or services ordered or is in delay, ALSO shall be entitled to store the delivery items at the customer's risk and expense. For this purpose ALSO can use the services of a carrier and may also use a warehouse keeper.
2. During the period of default of acceptance, the customer shall pay ALSO compensation for storage expenses at the rate of 1 % per week of the purchasing price with a maximum of Euro 30 per week, unless customer proves a lower damage for ALSO. In case of higher storage costs, ALSO can require compensation of the actual costs by providing proof to the customer.
3. If customer continues to refuse the acceptance of delivery items after a period of grace granted, or if he declares non-acceptance of goods, ALSO can refuse to fulfil the order and request compensation for non-execution of the said order. ALSO is at its option entitled to request as compensation either a lump sum of 20 % of the agreed purchase price – unless the customer proves a minor damage - or substitution of the damage which has actually arisen for the customer.
4. Any refusal to take delivery shall not relieve customer to pay the corresponding invoice when due.

§ 6 Quantity of Delivery

1. Visible differences in quantity or damage to the goods must be immediately disclosed in writing to ALSOALSO and the carrier upon receipt of the goods, hidden differences in quantity within 4 days after receipt of the goods. Acceptance of the goods by the carrier or transport agent is deemed to be proof for quantity, error free wrapping and shipping.
2. Should ALSO inadvertently deliver goods that have not been ordered by the customer, the customer undertakes to notify ALSO in writing within 14 days of the erroneous delivery and to keep the goods ready for pick-up by a carrier or forwarding agent to be instructed by ALSO. Should the customer fail to notify ALSO of an erroneous delivery in writing or do so after the 14-day period, the delivery is deemed accepted, meaning that the customer is obliged to pay the usual, fair and reasonable purchase price for the goods to ALSO.

§ 7 Transfer of Risk

1. Risk of loss and damage shall pass to customer as soon as the shipment has been transferred to the person carrying out the transport or the shipment has left the warehouse of ALSO for the purpose of forwarding.
2. In case there is a delay in shipment not caused by us or if shipment becomes impossible, the risk shall pass to the customer upon being informed of the readiness for shipment.
3. In case ALSO takes the cost for the transportation based on agreement in individual cases, risk of loss still passes to customer at the time the products leave the ALSO's warehouse and customer shall be responsible for obtaining and paying for appropriate insurance.

§ 8 Warranty for defects / damage claims

1. Claims for defects of the customer presume that he has properly satisfied his duties for inspection and complaints owed according to § 377 HGB.
2. Insofar as a defect to the purchase object exists, the customer is entitled to demand subsequent performance. The subsequent performance is carried out at ALSO's choice, either by remedying the defects, or through delivery of a faultless object. In the event of correction of defects the necessary expenses shall only insofar be replaced to the extent that these have not been increased due to the fact that the purchased object has been taken to another location than the place of performance.
3. If the subsequent performance fails, the customer is at his choice entitled to demand cancellation or reduction.
4. ALSO is liable according to the statutory provisions insofar as the customer asserts claims for damages, which are due to wilful intent or gross negligence including wilful intent or gross negligence of representatives or vicarious agents of ALSO. Insofar as ALSO is not accused of wilful breach of contract, the liability for damages is limited to the foreseeable, typical incurring damages.
5. ALSO is liable according to the statutory provisions insofar as ALSO culpably breaches an essential contractual duty; in this case however the liability for damages is limited to the foreseeable typically incurring damages.
6. Insofar as the customer is entitled to a claim for compensation of the damages instead of performance, ALSO's liability is also limited within the framework of Par. 3 to compensation of the foreseeable, typically incurring damages.
7. Liability owing to culpable injury to life, the body or health remains unaffected; this also applies for the mandatory liability according to the Product Liability Act.
8. Insofar as not otherwise regulated above, liability is excluded.
9. The statute of limitations for claims for defects is 12 months, beginning from passing of risk.
10. The statute of limitations in the event of a delivery recourse according to §§ 478, 479 BGB remain unaffected; it is five years, beginning from delivery of the faulty object.
11. If customer in connection with possible warranty claims returns products to ALSO for defect-rectification work and no defect is found on examination, customer will reimburse ALSO all costs and expenses, including costs for packaging and freight, resulting from examination of the products.

§ 9 Joint liability

1. Further liability for damages than provided for in § 8.6, is – irrespective of the legal nature of the asserted claim – excluded. This applies in particular for claims for damages from fault upon conclusion of the contract, owing to other breaches of duty or owing to claims under tortious law for compensation of property damages according to § 823 BGB.

2. The limit according to Par. 1 shall also apply insofar as the customer requests reimbursement of fruitless expenses instead of a claim for compensation of damages, instead of performance.
3. Insofar as liability for damages towards ALSO is excluded or limited, this shall also apply with regard to the personal liability for compensation of ALSO's employees, workers, representatives and vicarious agents.

§ 10 Special provisions for Software and other digital products with temporary restricted license

1. If the right for resale refers to software or another digital product with temporary restricted right of use, ALSO's main obligation to perform is limited to the one-time procurement of the right for resale of the runtime license.
2. Upon termination of the licenses runtime, end-user's right of use terminates. The customer is obliged to explicitly notify the end-user of the temporary restriction of the right of use.
3. If not otherwise agreed in specific Service Level Agreements determining customer's rights for claims of defects, customer in case of undisputed and legally valid defects of software or a digital product during runtime of the license has the right of reduction of purchase price if (i) the defect is of relevant effect (ii) the defect is notified without delay (iii) a reasonable period of time for rectification has passed.
4. In accordance with regulations of applicable law for software and other digital products with temporary restricted licenses, ALSO for the sale of software or other digital products with temporary restricted licenses shall neither be liable for damages culpably caused by the manufacturer / publisher of software or other digital products or the manufacturer's or publisher's agent. The manufacturer / publisher is not ALSO's agent.
5. For damages caused by ALSO, ALSO is liable according to the extent described in § 8 of this General Terms and Conditions of Sale.
6. Furthermore the use of the software or other digital products is subject to the license agreement of the respective manufacturer, with which customer agrees to comply.

§ 11 Return/subsequent performance processing

1. Faulty products are to be sent or delivered by stating the model and serial number and a copy of the delivery or invoice documents with an exact description of faults to ALSO or, if agreed, to the supplier.
2. No new warranty deadlines shall come into force through the exchange of single parts, modules or whole appliances regarding the claims and rights owing to defects. This shall not include statute of limitations regarding the parts affected by the correction of defects.
3. The buyer is obliged to regular and proper data backup and must ensure that the data are secured before sending the goods. ALSO assumes no liability for loss data stocks and ensuing follow-up damages. Costs for data backup or new installation of software or the appliances itself regarding the appliances to be repaired are not assumed by ALSO.

§ 12 Retention of Title

1. ALSO shall retain title of goods until it has received payment in full of all sums due in connection with the supply of all goods and services to customer at any time. For these purposes ALSO has only received payment when irrevocably credited to its bank account. The customer grants to ALSO the following securities which ALSO on request of the customer shall release if the value exceeds the claim significantly by more than 20 %.
2. A possible proceeding shall always be carried out for ALSO as manufacturer according to § 950 BGB without ALSO binding in any way.
3. If any goods owned by ALSO are attached to, mixed with or incorporated with other goods not owned by ALSO and are not identifiable or separable from the resulting composite or mixed goods then title to the resulting composite or mixed goods shall vest in ALSO and shall be retained by ALSO as long as and on the same terms on which it would have retained title to the goods in question.
4. ALSO's co-ownership shall be in proportion to the stated values of goods of ALSO.
5. customer shall store goods owned by ALSO in such a way that they are clearly identifiable as ALSO property, shall remain records or such goods identifying them as ALSO property, of the person to whom it sells or disposes of such goods and of the payment made by such person for such goods. The customer will allow ALSO to inspect these records and the goods themselves on request.
6. The customer shall be entitled to process and sell the goods of retention in the ordinary course of business as long as he is not in default. Pledges and liens shall not be permissible.
7. The customer shall already now assign all claims including all saldo debts for open account from reselling or other legal ground (insurance, illegal action) with regard to the goods of retention completely to ALSO. ALSO shall authorize customer irrevocably to collect claims addressed to ALSO on its own account and on its own name. The authorization to collect can only be revoked if the customer is not fulfilling his obligation to pay.
8. In case of third parties access of goods of retention the customer shall indicate the ownership of ALSO and shall notify ALSO immediately.
9. If the customer is breaching contractual obligations as they are but not limited to default of payment, debt delinquency, bankruptcy, liquidation, receivership, composition with its creditors, insolvency, ALSO shall be entitled to take back the goods of retention or to request assignment of the revindication of the customer towards third parties.
10. Repossession as well as attachment of goods of retention through ALSO does not constitute reason to withdraw from the contract and to withhold delivery for any undelivered goods and stop goods in transit. The acceptance and attachment of goods of retention by ALSO shall not be deemed as termination of the contract. All said assignments are accepted by the customer and ALSO.

§ 13 Payment

1. Invoices are due without delay and payable via SEPA Direct Debit (**Single Euro Payments Area**). If SEPA Direct Debit is agreed between ALSO and customer and customer has given SEPA Direct Debit Mandate to ALSO, the following provisions shall apply: The customer usually is notified of an upcoming direct-debit by ALSO on invoicing (or, if mutually agreed between ALSO and customer, by other means of communication) at least one calendar day before due date of the direct-debit (advance notice). In individual cases, if the customer has received credit notes or has received amending documents or individual transactions have been cancelled between issuance of invoice or advance notice and due date of direct-debit, the amount debited can differ from the amount indicated on the invoice or in the advance notice. Moreover the amount debited can differ from the amount indicated on the invoice or in the advance notice, if the customer has given SEPA Direct Debit Mandate to ALSO in form of a framework mandate for several contractual relationships. In these cases, customer receives individual invoicing and advance notice for individual contractual relationship as agreed but if direct debits are due on the same date, the total cumulative amount due is debited in one transaction. The customer is obliged to ensure sufficient coverage of the account indicated in SEPA Direct Debit Mandate and is obliged to ensure that ALSO can debit amounts due. This obligation also applies in those cases if customer has not received the advance notice or not received advance notice in good time.

2. Unless agreed otherwise, all invoices become immediately due and shall be payable according to direct debit from customer's bank account by ALSO. ALSO's prices do not include any cost for delivery or freight insurance. Where ALSO organises the freight, the cost for parcel service, carrier or company vehicle will be separately charged to the customer. Upon customer's request, ALSO can insure the goods, for a reasonable charge against transport damages or loss.

3. In spite of regulations to the contrary of the customer, ALSO shall be entitled to book payments against the oldest invoices. If costs and interests have accrued, ALSO shall be entitled to book payments first against cost, then against interests and finally against the delivery of goods or services.

4. Payment shall only be considered to be made if ALSO has the amount at its disposal. Checks shall only be accepted in fulfilment and shall only be deemed as payment upon their final cashing.

5. If the customer is in default, ALSO shall be entitled to charge interest at 3 % above the European Central Bank rate from the respective date. This shall be lower if the customer proves a lower charge. Possible cash discounts deductions may only be offered if due invoices are paid on the due date. The receipt of payment at ALSO shall prevail.

6. All debts, even if not due yet, shall be immediately payable if the customer delays payment, does not fulfil essential commitments or if ALSO learns of circumstances that in its opinion impact the creditability of the customer, especially suspension of payment, pending insolvency or bankruptcy proceedings. In such cases ALSO shall be entitled to withhold deliveries still not made or perform them only against advance payment or securities.

7. The customer shall only be entitled to offset claims if they have been awarded by a competent court of jurisdiction or if they are indisputable.

§ 14 Non-Assignment

Assignment of claims against ALSO by a third party is excluded, unless ALSO has expressly consented to the assignment. Provided the claims are not generally non-assignable according to § 8 of these Terms (warranty claims), consent has to be provided by ALSO if the customer can prove essential interests prevailing over ALSO's interests in maintaining non-assignment.

§ 15 Use of Products

The products are designed for normal commercial use. Use in critical security systems, nuclear appliances, military facilities, life support applications or for the production of weapons is forbidden unless written approval is received by the manufacturer of the products.

§ 16 Intellectual Property Rights

All trademarks on the goods are and remain intellectual property of the respective manufacturers. For the use of these trademarks prior written approval of the respective manufacturer is required. All use and delivery of software is subject to the license agreement accompanying the Product.

As far as software is included within delivery it shall be transferred to the commercial customer for the purpose of one-time reselling and to the end customer for exclusive use, i.e. he may neither copy it nor transfer it to others for use. Right of multiple uses requires special written agreement. Furthermore the use of the software is subject to the license agreement of the manufacturer of the software.

ALSO disclaims any liability for the infringement of intellectual property rights in case the products are exported out of the country to which ALSO delivered the products, as ALSO may not guarantee that all rights are protected there.

§ 17 Confidentiality

During the course of the business relationship or at any time after the termination thereof, customer shall not disclose or use any business or company secrets or other confidential information relating to ALSO, its parent or affiliated companies. Customer agrees that such information will only be communicated to those members of its staff whose knowledge of such information is essential and will bind these members of its staff to confidentiality.

§ 18 Data Protection, Data Storage

1. Customer authorizes ALSO to process data about the customer received with regard to the business relationship or in connection with it, no matter whether they come from the customer or from third parties, within the context of the German law for protection of personal data. Customer data is stored pursuant to § 33 BDSG.
2. The customer agrees that ALSO may give detailed information on products, amounts, turnovers as well as name and address-information of the customer to its suppliers (sell-out-reporting) in order to fulfil its contractual duties, especially for project-deals (end-user-business supported by suppliers).
3. Moreover customer agrees that ALSO may forward the data within ALSO Group and to third parties for means of contract fulfilment and checking of payment behaviour or decisions on credit and collection. The customer agrees the data to be transferred abroad, if considered necessary by ALSO

§ 19 Export

All products, spares, technical data, software and documentation may be subject to export and import laws, rules and regulations including but not limited to those of the Federal Republic of Germany, the European Union, the United States of America and the country of import. In the event customer exports the Product outside the Federal Republic of Germany, customer shall comply with all applicable export and import rules and regulations and obtain all applicable licenses.

§ 20 Governing Law

1. All terms and legal relations between ALSO and customer shall be governed by the law of the Federal Republic of Germany. The UN Convention of Contracts for the International Sale of Goods shall not apply. If customer is trader according to the HGB (i. e. German Commercial Code), legal entity of public rights or public fund, Soest is the place of jurisdiction for disputes arising directly or indirectly from the agreement. Soest is also the place of performance or transfer assumed under packaging regulations. ALSO, however, is entitled to take proceedings against the customer in every other court of jurisdiction.
2. If any provisions of these Terms are invalid or non-enforceable it will not affect the validity of other provisions. ALSO and customer shall agree to enter negotiation with the aim of substituting or amending the ineffective or incomplete provision with a new provision that approximates the economic purpose of the intended provisions.

§ 21 Special project pricing

In case the manufacturer of the products offers special project pricing for specific end user accounts, customer has to provide ALSO within 10 days of ALSO's request with a copy of the proof of delivery (POD) of the products to the end user as well as a copy of the invoice to the end user.

The customer is obliged to observe the respective guidelines relating to project business activities. This also applies to the retention period of the files of the project business activities according to commercial and fiscal law regulations. In case the customer infringes ALSO's guideline or the guideline of the manufacturer, ALSO has the right to invoice any improperly claimed or paid amounts and ALSO and/or the manufacturer may exclude the customer from any future special project prices.

§ 22 Advertisement

The customer expressly consents to receiving advertisement from ALSO by telefax or e-mail without receiving prior request.

§ 23 Anti-Corruption

The business relation between the customer and ALSO shall be based upon objective and transparent criteria and may not be influenced unfairly by granting or acceptance of personal advantages such as inappropriate gifts or invitations. Customer therefore will not offer or grant any personal advantages to ALSO's employees, that are able or meant to influence unfairly business transactions or business decisions. Customer also will oblige its employees to not offer, grant or ask for such advantages.

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