

# Terms and Conditions for Sale and Delivery

## of Alineason Materials Technology GmbH (status as of 01.10.2014)

### § 1 General; Scope of Validity

1. The following Terms and Conditions shall apply to all commercial transactions between Alineason Materials Technology GmbH, Lyoner Strasse 14, 60528 Frankfurt am Main, Germany (hereinafter "the vendor") and its customers. They shall also apply to any future transactions that may be concluded without express reference to these Terms and Conditions. These Terms and Conditions apply only if the customer is a business or commercial customer (Section 14 of the German Civil Code), a legal entity under public law, or a special asset body under public law.
2. Differing customer's Terms and Conditions shall not apply unless this has been confirmed in writing by the vendor. Individual agreements with the customer (including ancillary agreements, supplements and amendments) shall take precedence over these Terms and Conditions in all cases. Only a written contract or a confirmation in writing shall be binding regarding the contents of such agreements. Statements and notices of legal relevance to be issued by the customer toward the vendor (e.g. setting deadlines, reminders, declarations of cancellation) need to be at least in text form in order to be effective.
3. The vendor's vicarious agents and legal representatives are not authorised to conclude additional verbal agreements. In the event that they should conclude additional verbal agreements, or make assurances that exceed the written sales contract, such agreements or assurances always need to be confirmed in writing by the vendor in order to be effective.
4. The contractual relationship between vendor and customer shall be governed by the laws of the Federal Republic of Germany. The UN Convention on the International Sale of Goods shall not be applicable.
5. For deliveries, payments and any disputes arising between the parties in connection with the contracts concluded between them, the place of performance and place of jurisdiction shall be the vendor's registered official address. The vendor shall also be entitled to sue the customer at his registered official address.

### § 2 Quotation; Conclusion of Contract

1. Alineason Materials Technology GmbH distributes a range of products that are used, in particular, for research, development and production. The products primarily consist of technical materials, e.g. crystals, metals, semiconductors, ceramics in different shapes, and of packing and handling accessories.
2. Offers are always non-binding and without obligation. This also applies in the event that the vendor has provided the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), or other product specifications or information – electronic formats included – for which the vendor shall reserve property and copy rights.
3. Minimum order quantities apply for many of the offered products. The vendor shall bring these quantities to the customer's attention ahead of ordering.
4. If the vendor submits a written offer to a customer, the vendor shall be committed to this offer for a period of two weeks following the submission, unless agreed otherwise. In individual cases, a longer commitment period can be agreed upon; however, not longer than three months following the submission of the offer.
5. In each case, the sales contract and any other agreements shall only become effective by the vendor's written confirmation of the customer's order. Information related to the offer, e.g. illustrations, drawings, specifications of weights and dimensions, shall only be considered approximate, unless explicitly defined otherwise.

### § 3 Delivery Period; Delayed Delivery

1. The delivery period shall be agreed upon individually, or shall be stated by the vendor at the time of acceptance of the order. The vendor's compliance with the delivery period shall be contingent upon the customer's compliance with contractual obligations.
2. Delivery periods indicated by the vendor shall not be binding, even if they are communicated in writing. If specific delivery deadlines are missed, the customer shall still be obligated to set a further reasonable delivery deadline, and to declare that he will refuse the delivery after this further deadline has elapsed. This shall not apply if the vendor has explicitly declared the period or deadline as a "binding delivery date" in writing.
3. If the vendor is unable to meet a binding delivery date due to reasons for which the vendor is not responsible (unavailability of delivery), the vendor shall inform the customer immediately of such unavailability and, concurrently, of the expected new delivery date. If the delivery is still unavailable within the new delivery date, the vendor shall be entitled to withdraw from contract; in this case, the vendor shall reimburse the customer immediately for a corresponding payment made. In particular, such unavailability of delivery may be due to non-timely delivery to the vendor by the vendor's suppliers, if the vendor has concluded a congruent covering transaction. The statutory rights for recession and cancellation and the statutory provisions for settlement of the contract in the event of exclusion of the vendor's contractual obligation shall remain unaffected. The customer's rights for recession and cancellation according to Section 8 of these Terms and Conditions shall also remain unaffected.
4. The vendor shall be entitled to perform reasonable partial deliveries.

5. The occurrence of delayed delivery on the part of the vendor shall be determined according to statutory provisions. However, a reminder in writing by the customer shall be required in every case.

### § 4 Transfer of Risk; Make-and-Hold Orders

1. In the event of cash transactions, the risk shall be transferred to the customer no later than with the hand-over of the goods. In the event of delivery by carrier, the risk shall be transferred to the customer no later than with the dispatch of the delivered goods, even in the event of partial shipments, and even if the vendor has assumed additional obligations (e.g. cost of shipment, delivery).
2. Upon request by the customer, the vendor shall insure the shipment, at the customer's expense, against theft, breakage, damage in transit, fire and water damage and other insurable risks. If the dispatch is delayed due to circumstances for which the customer is responsible, the risk is transferred to the customer at the date of readiness for dispatch. However, the vendor shall be obliged to procure any required insurance at the request and expense of the customer.
3. Unless the customer has specified the mode of shipment, the vendor shall be entitled to choose the mode and route of shipment at the vendor's discretion, without being obliged to choose the least expensive mode of shipment.
4. If a make-and-hold shipment has been agreed, the customer shall be obliged to call up the purchased goods within a time period to be agreed separately between the parties for each case. If the customer exceeds the announced date for calling up the goods for more than 2 weeks, the goods shall be stored at the customer's expense and risk. The same shall apply for delays of dispatch upon the customer's request, or due to a customer's fault.
5. If the customer does not call up the goods by the specified deadline, the customer shall be in default of acceptance after expiry of a further deadline of 2 weeks, set in writing. In this case, the vendor shall be entitled to dispose of the deliverable goods otherwise, and to supply the customer within a reasonably extended period. In addition, the vendor shall be entitled to demand acceptance of the goods 3 months after the agreed date for calling up the goods.

### § 5 Prices; Terms of Payment

1. Unless the prices have been specifically agreed by contract, the vendor's current prices at the time of conclusion of contract shall apply. These prices can be viewed at the vendor's premises. All prices are exclusive of VAT.
2. Unless specifically agreed otherwise, prices apply ex works, including packaging, excluding shipping costs. Any customs duties, fees, taxes and other public charges shall be borne by the customer. In accordance with the German Packaging Ordinance, the vendor shall not take back transport packaging or other packaging; such packaging becomes the customer's property.
3. With EU customers, unless explicitly agreed otherwise, the purchase price shall be due and payable within 14 days after invoicing and delivery, respectively, acceptance of the goods. If the order value exceeds 10,000 euros, the vendor shall be entitled to request a down-payment before delivery, particularly with new customers. With non-EU customers, unless explicitly agreed otherwise, delivery shall be exclusively against advance payment.
4. The customer shall be put in default of payment through a reminder issued by the vendor, or, in the event of an agreed date of payment, through non-payment by the agreed date. For the duration of default of payment, interest shall be charged on the purchase price at an annual rate of 8 percentage points above the current base rate. The vendor shall initially remind the customer of the default in payment (by email, fax or letter) without any dunning charges to the customer. If the customer continues in default of payment, another reminder will be issued by post or fax; the customer shall be obliged to reimburse the related costs of 5 euros to the vendor. The vendor reserves the right to assert further claims for damages due to the default.
5. Cheques shall only be accepted by the vendor on account of performance. In the event of payment by cheque, not the receipt of the cheque by the vendor, but only the crediting of the amount of the cheque on the vendor's bank account shall be deemed as payment.
6. If the fulfillment of payment obligations is endangered due to a significant deterioration of the customer's financial standing that has only become known after conclusion of contract, the vendor shall be entitled to demand advance payment, and to retain not yet delivered goods. The vendor shall be entitled to the same rights if the customer is in default of payment of invoices that are based on the same legal relationship.

### § 6 Right of Retention

The customer shall not be entitled to exercise a right of retention that is not based on the same contractual relationship.

## § 7 Retention of Title

1. The vendor shall retain ownership of the goods until complete payment of the purchase price. The following provisions only apply to commercial transactions: The customer may neither pledge the goods nor offer them as security. The customer shall be obliged to inform the vendor immediately of any seizure or confiscation of goods by third parties.
2. In the event that the customer acts in breach of contract and, in particular, in the event of non-payment of the due purchase price, the vendor shall be entitled, according to statutory provisions, to withdraw from the contract and to demand the return of the goods on the basis of the retention of title and the cancellation. If the customer does not pay the due purchase price, the vendor shall only be entitled to claim these rights after a reasonable period of grace has been set for the customer, to no avail, or if the setting of such a grace period can be dispensed with according to statutory provisions.
3. The customer shall be entitled to sell and/or process the goods under retention of title in the normal course of business. In this event, the following supplementary conditions shall apply:
  - a) The retention of title shall extend to all products resulting from the processing, mixing or combining of the delivered goods at their full value, and the vendor shall be considered as the manufacturer. If third parties retain their title to goods used in conjunction with the processing, mixing or combining of the delivered goods, the vendor shall acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. In all other respects, the provisions applicable to the goods under retention of title shall apply to the resulting products.
  - b) Pursuant to the preceding paragraph, the customer already assigns claims against third parties resulting from the sale of the goods or the products, entirely or to the proportional amount of any co-ownership, to the vendor as security; the vendor accepts this assignment. The obligations of the customer stated in paragraph 1 above shall also apply with regard to the assigned claims.
  - c) The customer remains authorized, parallel to the vendor, to collect the claims. The vendor undertakes not to collect the claims as long as the customer meets his payment obligations towards the vendor, is not in default of payment, if no application for commencement of insolvency proceedings has been filed, and if the customer's financial standing is not impaired in any other way. In such an event, however, the vendor shall be entitled to demand of the customer to reveal the assigned claims and their debtors, to provide all information necessary for collection, to hand over the relevant documents and to inform the debtors (third parties) of the assignment.
  - d) In the event that the realisable value of the securities exceeds the vendor's claims by more than 10%, the vendor shall release securities at the request and discretion of the customer.

## § 8 Liability for Defects of Material and Title; Obligation of Notification; Limitation Period

1. The customer's rights in the event of defects of material and title (including incorrect or short delivery, incorrect assembly or faulty assembly instructions) shall be governed by statutory provisions, unless provided otherwise below. However, this shall not affect the special statutory provisions for the final delivery of goods to a consumer (Supplier recourse according to Section 478, 479 German Civil Code).
2. The primary basis of the vendor's liability for defects shall be the agreement concerning the quality of the goods. The agreement concerning the quality of the goods consists of product descriptions designated for this purpose, that have either been provided to the customer ahead of the order, or have been included in the contract, along with these Terms and Conditions. For customer-specific products, excess or short deliveries of up to 10 % are deemed in conformity with the contract.
3. In the event of a defect, the vendor is entitled to supply supplementary performance. In the event of failure of the supplementary performance, the customer is entitled to reduce the purchase price, or to withdraw from the contract. The vendor is not obliged to supplementary performance in the event that interventions or modifications have been performed on the goods without the vendor's approval, unless the customer proves that the defect has not been caused by these interventions and modifications. In the event of refusal of the supplementary performance, its failure, or unreasonableness to the customer, the customer shall be entitled to withdrawal from contract or a reduction of the purchase price. In the event of a minor defect, no right of withdrawal shall apply. Customer claims for damages or compensation for wasted expenditure shall only apply in accordance with Section 10 of these Terms, and shall otherwise be excluded.
4. The warranty period for new goods is one year. The vendor shall only be liable for damages incurred to the object of contract itself. The above restrictions of warranty rights shall not apply in the event of intent, gross negligence, and injury to life, body and health. Even in the event of fraudulent concealment of a defect, or in the event of assumption of a guarantee concerning the quality of the object of purchase at the time of transfer of risk under the terms of Section 444 of the German Civil Code (declaration by the vendor that the object of purchase has a specific attribute at the time of transfer of risk, and that the vendor intends, regardless of culpability, to stand for all consequences of its absence), the customer's rights will be governed exclusively by statutory provisions.
5. The customer must inspect the goods immediately upon receipt for obvious defects, shortfalls in quantities or wrong deliveries, and must notify the vendor of such defects. The time limit for notification is 7 days. The determinant date shall

be the receipt of a notification in writing (also by telefax) by the vendor. For transactions with merchants, Section 377 of the German Commercial Code (HGB) shall additionally apply.

6. If the end buyer in the supply chain of the object of purchase is a consumer, the customer – under the further terms of Section 377 of the German Commercial Code – is entitled to recourse according to statutory provisions (Section 478, 479 of the German Civil Code). In the event of recourse, the customer must immediately inform the vendor and select, if possible, the most economical way for rectification of the defect.

## § 9 Limitation of Liability

1. Outside the liability for defects of material and title, the vendor shall be subject to unlimited liability insofar as the cause for damage is due to intent or gross negligence. The vendor shall also be liable for slightly negligent breach of fundamental obligations (through which the purpose of the contract is endangered) and for breach of material contractual obligations (obligations that are essential for due performance of the contract, and the compliance of which the customer regularly relies upon), however, limited to the foreseeable damage that is typical for the contract. The vendor shall not be liable for slightly negligent breach of other than the aforementioned obligations.
2. In the event of minor negligence, the vendor shall be liable for damages caused by delay only up to the amount of 5 % of the agreed purchase price. The same shall apply to slightly negligent breach of fundamental contractual obligations by the vendor.
3. The above limitations of liability do not apply in the event of damage to life, body or health, for defects covered by a guarantee regarding product quality, or for defects concealed with malicious intent. Liability under the German Product Liability Act remains unaffected.
4. Insofar as the vendor's liability is excluded or limited, this shall also apply to the personal liability of the vendor's employees, representatives and vicarious agents.
5. All claims for damage compensation against the vendor, irrespective of legal ground, shall become time-barred after no longer than one year from delivery of the goods to the buyer; in the event of tortious liability, from the time of knowledge, or grossly negligent ignorance, of the circumstances giving rise to the claim and of the identity of the liable party. The provisions of this paragraph do not apply in the event of liability due to intent, and in the cases mentioned in paragraph 3; in such event, the statutory provisions apply. Any shorter statutory limitation periods shall take precedence.
6. If the end buyer of the goods is a consumer, the limitation period of an eventual right of recourse of the customer against the vendor shall be governed by statutory provisions.

## § 10 Samples

Upon request, the vendor shall deliver a sample of the enquired product to the buyer for inspection before conclusion of a sales contract. Samples shall always be invoiced, and can be returned within 10 days. The samples shall be credited after being returned, freight prepaid, in the original packaging and in undamaged condition, or in the event of conclusion of contract. In cross-border transactions, no return shipments of samples shall be accepted.

## § 11 Data Protection

For the purpose of performance of contracts, enquiries and offers on behalf of the customer or third parties entrusted by the customer in their name, the vendor shall be entitled to store and process data electronically. The vendor shall also be entitled to pass on data to third parties, in particular, to credit institutions and contractors in the performance of contract. The provisions of the German Data Protection Act (BDSG) shall be observed.

## § 12 Severability

Should any provision of these Terms and Conditions be ineffective, the remaining provisions shall remain unaffected. The invalid provision shall be deemed replaced by a provision that is legally effective and comes closest to the economic intent and purpose of the ineffective provision. The same applies to any unintentional omission.