

General terms of sale for selling raw materials, scraps, recyclables, declassified steel products, wastes and similar materials of ALBA Metall Süd GmbH

A. General provisions

I. Applicability

1. The general terms of sale ("GTS Raw Materials") of ALBA Metall Süd GmbH ("ALBA") below apply exclusively; ALBA does not accept any customer terms that conflict with or diverge from these GTS Raw Materials – save ALBA explicitly accepts the applicability of divergent terms in writing. These GTS Raw Materials also apply even if ALBA is aware of customer terms that conflict with or diverge from these GTS Raw Materials and nevertheless executes delivery or renders a service to the customer without reservation.
2. These GTS Raw Materials only apply to companies in the sense of § 14 of the German Civil Code (BGB) and to legal entities under public law and special public funds.
3. These GTS Raw Materials apply for the complete future business relationship with the customer and replace any contrary, earlier GTS Raw Materials or general terms of business of ALBA.
4. Any individual agreements reached with the customer from case to case (including side agreements, additions and changes) have priority over these GTS Raw Materials. The content of such agreements must be set forth in a written contract or in written confirmation from ALBA.
5. Declarations and notifications relevant in law that the customer must make to ALBA after conclusion of the contract (e.g. deadlines, notifications of defects, declarations on rescission or reduction of the price) must be made in writing to be effective.

II. Conclusion of contract

1. Offers from ALBA are subject to confirmation and non-binding.
2. The ordering of goods by customers is deemed a binding offer of contract. Save not otherwise stipulated in the order, ALBA is entitled to accept this offer of contract within five work days of its receipt.
3. Acceptance may be declared either by acknowledgement of the order (orally or written) or by delivery of the goods to the customer.

III. Terms of payment

1. The prices of ALBA "ex store" plus value added tax shall apply.
2. A prompt payment discount may only be deducted if an explicit written agreement has been reached to this effect.
3. Sums invoiced by ALBA or credit notes received by ALBA are payable immediately without deduction. If settlement by way of credit notes has been agreed, the customer is obligated to issue same immediately after receiving the delivery.
4. In case of invoices from goods and services being paid via SEPA Core Direct Debit or SEPA Business to Business Direct Debit, the customer will receive a pre-notification regarding the direct debit at the latest one day before the due date. Such pre-notification may be made on the invoice to be debited.
5. In case of a payment default of the customer in respect of more than one obligation, all obligations shall automatically become due and payable.
6. In the event of default of payment evidently due to financial collapse on behalf of the customer ALBA is entitled to rescind the contract without notice.

IV. Collateral

ALBA is entitled to collateral of normal type and scope for receivables even if they are conditional and limited.

V. Data privacy

The customer is agreed that ALBA shall collect person-related data by way of presentation of identification documents for the purposes of invoicing or issuing of credit notes and in the case of cash payments and store same in accordance with the provisions of the German Federal Data Protection Act.

VI. Intra-group netting

1. The customer is agreed that receivables that ALBA and other ALBA Group companies (cf. point 5 below) become entitled to from it appertain to all ALBA Group companies as joint and several creditors; these receivables may therefore be set off against payables of every ALBA Group company due to the customer.
2. Extending beyond point 1 above, receivables due to the customer from ALBA Group companies may be set off against receivables due to ALBA Group companies from other companies in the group to which the customer belongs.
3. The above provisions also apply if on the one hand cash payment and on the other submission of bills of exchange have been agreed and if the reciprocal claims are due on different dates. In such a case accounting shall be effected on the value date.
4. In the case of a plurality of receivables the customer shall waive its right to object to ALBA's stipulation of the receivables to be netted (§ 396, par. 1, clause 2, BGB).
5. The ALBA Group companies are all companies affiliated to ALBA Group plc & Co. KG in terms of § 15 of the German Stock Corporation Act (AktG), a list of which may be requested from ALBA.

VII. Retention of title

1. The following provisions of this paragraph only apply for transactions, which according to their content ALBA receives payment from the customer for the delivery and/or provision of materials which are the subject of the contract. This also applies if the price structure develops such that only during the term of the contract ALBA receives payment for the delivery and/or provision of materials.

2. The following agreed retention of title serves to secure all respectively existing current and future outstanding accounts of ALBA against the customer from the supply relationship existing between the parties with regard to the materials which are the subject of the contract (including balance claims from one of these current accounts restricted to these delivery relationships) (in the following referred to as "secured claims").
3. Goods of ALBA delivered to the customer shall remain the property of RDP until complete payment of all secured claims. No withdrawal from contract is required in order to exercise any retention of title, unless the customer is a consumer.
4. The purchaser is entitled to process and to sell the retained goods until the occurrence of the utilization event (paragraph 8) in proper business transactions.
5. If the reserved goods are processed by the customer, it is agreed that processing takes place in the name of and for the account of ALBA as manufacturer and ALBA shall directly purchase the property or – if processing takes place from materials of several owners or the value of the processed object is higher than the value of the reserved goods – the joint title (co-ownership) of the newly created object. In the case that no such acquisition of ownership should occur at ALBA, the customer already now assigns his future property or - in the above-mentioned relationship – his joint title of the newly created object as security to ALBA. If the reserved goods are combined or inseparably mixed with other objects to form a uniform object and if one of the other objects is to be regarded as the main object, the purchaser shall transfer to ALBA proportionately the joint title of the uniform object in the relationship mentioned in clause 1. Paragraph 3 shall apply accordingly.
6. In the case of further sale of the reserved goods, the customer already now assigns by way of security any claims arising against the customer – in the case of joint ownership by ALBA of the reserved goods according to the joint ownership share – to ALBA who is accepting the assignment. The same applies for all other outstanding accounts which take the place of the reserved goods or otherwise arise from the reserved goods, as e.g. insurance claims or claims from unlawful acts during loss or destruction. ALBA authorises the customer to include the outstanding accounts in their own name in a revocable manner. ALBA is allowed to revoke this authorisation for direct debiting only in the case of utilisation.
7. The goods included in the retention of title may neither be pledged to third parties nor be assigned as security before complete payment of the secured outstanding accounts has been made. If third parties have a claim to the reserved goods, in particular by seizure, the customer will immediately refer them to the fact that this is property of ALBA and inform ALBA about this in writing, in order that they enforce their rights to title. In so far as the third party is not in a position to reimburse ALBA with the legal costs arising or out of court costs in this connection, the customer shall become liable for this.
8. ALBA will release the reserved goods as well as any object or outstanding accounts to take their place upon demand according to their choice, insofar as their value exceeds the amount of the secured outstanding accounts by more than 10 %.
9. If ALBA withdraws from the contract in the case of behaviour by the customer which is contrary to contract – in particular delayed payments – (in the event of utilization), ALBA is entitled to demand the reserved goods be reclaimed.

B. Execution of delivery

I. Delivery periods, delivery dates

1. Dates or periods for delivery of goods and services are only binding after written confirmation by ALBA. All delivery periods and dates are subject to the proviso of no unforeseeable production disturbances and timely delivery of ALBA with the necessary primary materials and, insofar as small completion quantities from purchases have been agreed or are customary in the trade, subject to the proviso of deliverability and timely delivery of ALBA itself.
2. If the customer does not fulfil its contractual duties, e.g. opening of a letter of credit, presentation of local or foreign certificates, rendering of advance payment or the like, on time, ALBA is entitled to defer the delivery periods and dates reasonably according to the needs of its production operations.
3. The time of despatch ex works/store is decisive for observation of delivery periods and dates.
4. ALBA shall not be responsible for delays in deliveries and services due to force majeure and due to events that significantly complicate delivery for ALBA or render same impossible – this includes particularly industrial disputes, official orders, transport delays, machine breakage and other circumstances for which neither party is responsible, even if they occur at a supplier or sub-supplier of ALBA – even if binding periods and dates have been agreed. These circumstances entitle ALBA at its free discretion to defer the delivery or service for the duration of the impediment plus a reasonable start-up time thereafter or to withdraw from the contract in whole or in part regarding the part not yet fulfilled. ALBA may only invoke the aforementioned circumstances if it has informed the customer immediately of these circumstances.
5. If the impediment in the sense of point 4 lasts longer than 3 months, the customer is entitled after setting a reasonable period of grace to withdraw from that part of the contract not yet fulfilled. If the delivery or service period is extended or if ALBA is released from its delivery or service obligation, the customer cannot derive any claims for compensation from this.
6. If the delivery periods are not kept, the customer is only entitled to the rights from § 281 and § 323 of the BGB if it has set ALBA a reasonable deadline for delivery combined – and insofar deviating from § 281 and § 323 of the BGB – with the declaration that it shall reject acceptance of the delivery/service after expiry of the deadline; the right to fulfilment is precluded after fruitless expiry of the deadline.

7. The customer must send a written reminder when default of delivery begins.
8. ALBA is entitled at all times to partial delivery of products, work and services in a reasonable scope.

II. Dimensions, weights, quality

Deviations in dimensions, weights and quality are permissible according to DIN or standard practice. The weights are determined on the calibrated scales of ALBA or authorised third parties and are decisive for invoicing. If individual weighing is not normal practice, the respective total weight of the shipment shall apply. Differences to the arithmetic individual weights shall be distributed among them proportionately.

III. Despatch, packaging and passage of risk

1. The delivery is effected ex store of ALBA or authorised third party. Same is also the place of performance. At the request and expense of the customer the goods shall be sent to another destination (sale to destination). If not otherwise agreed, ALBA is entitled to determine the type of shipment (in particular transport company, means of shipment, packaging) itself. Any resultant costs shall be borne by the customer.
2. The risk passes to the customer on delivery of the goods to the forwarder or carrier, at the latest, however, on leaving the works or store.
3. At the request of the customer ALBA shall take out shipping insurance or other suitable insurance cover for the account of the customer in order to insure the contractual performance as far as possible.

IV. Claims for defects

1. The goods are contractual if they at the time of the passing of risk do not deviate from the agreed specification or only do so inconsiderably. The contractuality and freedom of defects of the goods is determined exclusively by the explicit agreements on quality and quantity of the ordered goods. Liability for a particular purpose or a particular suitability is only accepted if this has been explicitly agreed; for the rest the risk of suitability and use lies solely with the customer. ALBA is not liable for deterioration or loss or improper treatment of the goods after the passage of risk.
2. The contents of the agreed specification and any explicitly agreed purpose do not imply a guarantee; the granting of a guarantee requires a written agreement.
3. If the delivery or service is defective, ALBA is entitled at its free discretion to eliminate the defects or to effect a replacement delivery. ALBA may refuse cure if it is only possible with disproportionate costs. If elimination of the defects or the replacement delivery is delayed for reasons for which ALBA is responsible or if the elimination of the defects or replacement delivery fails for good for some other reason, the customer is entitled to the normal statutory warranty rights. The customer is only entitled to compensation for damages or reimbursement of expenses in accordance with section C.
4. The customer only has a right to claims for defects if the customer notifies ALBA in writing of a defect without delay, at the latest, however, within 5 workdays. Defects that cannot be detected immediately after the delivery or service in spite of careful inspection are to be reported to ALBA immediately after they are discovered, at the latest, however, one month after delivery. Once an agreed acceptance inspection has been carried out, it is not possible to claim for defects that could have been established at this acceptance inspection.
5. In the event of a claim the customer must grant ALBA the opportunity to inspect the goods concerned without delay; on request the goods concerned or a sample thereof are to be made available at the expense of ALBA. In the case of unjustified claims ALBA may charge the customer the freight and handling costs as well as the inspection costs.
6. In the case of goods that were delivered as declassified material – e.g. so-called II-a material – the customer is not entitled to any claims for defects regarding the specified defects and those it must usually expect as likely.
7. The limitation period in the case of defective delivery ends – except in the case of intent – after expiry of one year after delivery. The statutory limitation periods for goods that in accordance with their normal use were used for a building structure and which caused defectiveness of such a structure remain unaffected by this. Improvements or replacement delivery do not let the limitation period start anew.
8. Recourse claims by the customer in terms of § 478 of the BGB against ALBA are restricted to the statutory scope of the claims for defects of third parties made against the customer and require that the customer has in its relationship with ALBA fulfilled its obligation to give notice of defects in terms of § 377 of the German Commercial Code (HGB).

C. General limitations of liability

1. If not arranged otherwise in these terms, ALBA is liable without restriction:
 - a) for every intentional or grossly negligent cause of damage by ALBA, one of its legal representatives, proxies or vicarious agents;
 - b) for intentional or negligent harm to life, body or health; and
 - c) for claims in terms of product liability law or if ALBA has maliciously concealed the defectiveness of an object or has granted an explicit guarantee for the quality of an object.
2. For the rest ALBA is only liable in cases of simple negligence for breach of elementary contractual duties and restricted to the typically foreseeable loss. Elementary contractual duties in the sense of this section C are contractual duties whose fulfilment make proper performance of the contract possible in the first place and on whose fulfilment the other party to the contract regularly relies and may rely. The parties to the contract agree that the typically foreseeable loss is limited to a maximum of

€ 5,000,000.00 for personal injuries and damage to property and to a maximum of € 250,000.00 for other pecuniary losses.

3. Further liability of ALBA for compensation for damages beyond that provided for in the above points is – regardless of the legal nature of the claim made – precluded.

D. Miscellaneous

I. Proof of export

If a customer located outside the Federal Republic of Germany (foreign-territory buyer) or its authorised agent collects goods and transports or ships them to the foreign territory, the customer must produce the proof of export necessary for tax purposes to ALBA. If this proof is not produced, the customer must pay the value added tax on the invoice sum applicable for deliveries within the Federal Republic of Germany.

II. Secrecy

1. The customer is obligated to treat all not obvious commercial and technical information and knowledge that becomes known from the business relationship between ALBA and the customer as business secret.
2. The customer may only advertise with the joint business relationship after receiving the prior written consent of ALBA.

III. Netting, rights of retention

The customer may only net with undisputed or legally established claims; it is only entitled to rights of retention if they are based on the same contractual relationship.

IV. Legal succession / Change of control / Subcontractors

1. ALBA is entitled to transfer the respective agreement without special approval by the customer to a subsidiary or associate company of the ALBA Group plc & Co. KG (the "ALBA Group of Companies"), insofar as this is a certified specialised waste management company.
2. ALBA is also entitled to assign its claims arising from the business relationship to a third party.
3. ALBA is entitled to have its services rendered entirely or in part by suitable subcontractors. References to ALBA in this GTP Raw Materials likewise refer to these third parties correspondingly.

V. Amendments to GTS Raw Materials

Amendments to these GTS Raw Materials will be made known to the customer in writing or by email and are considered as approved if the customer does not object to the amended GTS Raw Materials within six weeks after announcement in writing or by email. The customer will be made aware of this separately during the announcement of these changes. In case of a timely objection, the validity of the originally included GTS Raw Materials shall continue.

VI. Applicable law/Language of contract

The law of the Federal Republic of Germany shall apply exclusively. The UN Convention on Contracts for the International Sale of Goods is precluded. The contractual and business language is German.

VII. Supplementary applicability of other provisions

For the sale of non-ferrous metals, the provisions of the German metal trade, published by the Verein Deutscher Metallhändler e.V., as amended, shall apply additionally.

VIII. Place of jurisdiction

The exclusive place of jurisdiction is the registered seat of ALBA. ALBA is, however, also entitled to sue for claims against the customer before the courts with general and special jurisdiction for the customer.

IX. Severability clause

Should one or more provisions of these GTS Raw Materials be or become ineffective or unenforceable, this shall not affect the validity of the remainder of these GTS Raw Materials. The parties undertake to replace ineffective or unenforceable provisions of these GTS Raw Materials immediately with effective provisions coming as close as possible to the commercial objective of the ineffective provisions. The provisions according to sentences 1 and 2 shall apply analogously should there be omissions in these GTS Raw Materials.