



General Terms and Conditions of Purchase of Maschinenfabrik ALFING Kessler GmbH

2018/05/14

§ 1 General – Scope

1. Our general terms and conditions of purchase shall apply exclusively. Any conflicting, supplemental or other conditions of the contract partner (hereinafter called "Supplier") deviating from these conditions shall be excluded unless we specifically agreed to them in writing. We will not accept any deviating conditions even if we accept goods or services ("Deliveries") from a supplier without reservation, having notice of conflicting conditions of the Supplier or conditions deviating from our conditions. Our general terms and conditions shall also apply to all future business transactions with the Supplier. The purchasing terms and conditions apply at the time of the conclusion of the contract as they are shown on our homepage (<https://www.alfing-crankshafts.com/rechtliches/agb.html>).

2. Reference to the validity of statutory provisions shall be only for the purposes of clarification. Thus the statutory provisions shall apply even without any such reference unless they are directly amended or expressly excluded in these general terms and conditions of purchase.

§ 2 Orders

1. All contracts (in particular orders and order confirmations) and call-ups as well as their changes and amendments shall be in writing. Call-offs, i.e. orders within the scope of a framework contract or delivery schedule not requiring an order confirmation can also be made by e-mail. There are no ancillary verbal agreements.

2. The Supplier agrees to prompt confirmation of our orders (preferably by signing the order). If the order confirmation deviates from our order, we are only bound to it if we have accepted the deviation in writing. Acceptance of deliveries or their payment does not constitute agreement.

3. If the Supplier does not accept the order within two weeks of receipt of the order, we are entitled to withdraw the order. Unless otherwise agreed all call-ups shall become binding, if the Supplier does not disagree within two weeks of receipt of the order.

4. We shall be entitled to request changes in design and execution of the object of delivery/services, as long as they are reasonable. The impact, especially with regard to extra or reduced costs as well as delivery dates shall be agreed mutually.

5. The Supplier shall fulfil the orders himself unless we have agreed to the appointment of subcontractors (as defined in § 10(9) below).

§ 3 Delivery / packaging / delay

1. Unless otherwise agreed deliveries shall be "delivery free-of-charge" to the place stated in the order/call-up. If the place of delivery has not been specified and nothing else agreed, delivery shall be made to our site in Aalen-Wasseralfingen. The place of delivery shall also be the place of performance.

2. Each consignment shall be accompanied by a delivery note specifying our order number, items ordered and designation (drawing number and

index), unit of quantity, material number, if required the appropriate serial number, date of dispatch, type of packaging, product designation, quantity, delivery address as well as the number and date of the delivery note. Invoices shall not be accepted as delivery notes.

3. The Supplier shall not be entitled to make partial deliveries or excess deliveries unless expressly otherwise agreed. We shall not be committed to accept deliveries prior to the delivery date. If advance deliveries are accepted, we shall still only be committed to payment at the time of the originally agreed due date.

4. The Supplier shall pack the goods according to their condition, the means of transport used and the transport route so that the packaging is adequate for the transport requirements. The Supplier shall commit to use packaging material that does not have to be disposed of as hazardous waste. Unless otherwise agreed we reserve the right to return packaging material at the Supplier's expense.

5. The delivery period and/or delivery dates stated in the order are binding. The determining factor for compliance with a delivery date or period shall be the receipt of the goods at the delivery address stated on the order. In case of non-compliance with delivery/service dates and delivery/service periods the statutory provisions shall apply. We shall also be entitled to partially withdraw from the contract. In the event of a delay we shall be entitled to charge a penalty to the amount of 0.5 % (gross) of the order value per complete week of delay, up to a maximum of 5 % (gross) of the order value. The penalty shall be able to be demanded alongside the fulfilment. Any compensatory damages claims in lieu of and alongside the performance shall not be affected. The penalty shall be credited to a compensatory damages claim alongside the performance. If the Supplier fulfils its duty as such, then we shall be able to declare the reservation of the assertion of the penalty up to the maturity of the final payment.

6. If – for whatever reason – delays in delivery are to be expected, the Supplier shall promptly notify us of this fact stating the reasons and the expected duration of the delay as soon as the delay becomes apparent. Our rights in the event of delay shall remain unaffected.

7. We shall be entitled to postpone agreed delivery dates for up to a maximum of 6 months, if planned demand slows down due to strikes or other incidents. Claims of the Supplier to that effect shall be excluded.

§ 4 Other obligations of the Supplier

1. Our company is certified according to Art. 14 a Sec. 1 ZK-DVO AEO. Where required for obtaining tariff preference, the Supplier will provide us with the appropriate documents and information. Material or parts provided by us shall remain our sole property unless this conflicts with any compulsory statutory provisions (§§ 946 - 948 of the German Civil Code). The Supplier shall handle materials carefully. Processing or transformations by the Supplier

according to § 950 of the German Civil Code shall be made on our behalf.

2. In case the Supplier has to provide services on our premises, then the Supplier shall sign and comply with the "Work ordinance for external companies and subcontractors" shown on our homepage (<https://www.alfing-crankshafts.com/rechtliches/agb.html>) and amended as required from time to time.

§ 5 Passage of title

Unless otherwise agreed the title to the goods shall pass to us at the time they are handed over to us. The Supplier shall be entitled to retention of title for his delivery items until the goods have been paid for in full. However, we shall be entitled to use the goods as intended, process and deliver them without notification of retention of title. The title for castings, forgings and other tools shall pass to us on payment, even if the tools remain with the Supplier. In reference to these tools a delivery is replaced by the fact that the Supplier uses the tools correctly for performing the services according to our orders. The Supplier shall handle and maintain the tools properly and return them to us on completion of the order.

§ 6 Prices / terms of payment

1. The price agreed between us and the Supplier is a fixed price including the costs of free delivery to our works, packaging, insurance as well as any customs duty or other duties, where applicable. If exceptionally packaging material is not included in the price, any charge made shall be reimbursed to us in full upon return of the packaging.

2. A separate invoice shall be issued for each delivery. Besides our order number and order reference, invoices must also include the product designation, quantity and unit price. VAT included in the price shall be shown separately. Each invoice shall pertain to just one order transaction.

3. Payment shall be made by bank transfer or cheque. Payment shall be made net within 30 days of receipt of the invoice and goods. We shall be entitled to settle claims denominated in other currencies than the euro by payment or setoff in euro. The exchange rate depends on the market value for the place of payment at the time of payment.

4. An assignment of receivables from the contractual relationship shall require our written approval. If the Supplier assigns the claims against us to a third party contrary to sentence 1 without our approval, then the assignment shall become effective nonetheless. However, we shall be entitled to make payments with a discharging effect at our own discretion to the Supplier or the third party.

5. Defective deliveries shall entitle us to withhold payment proportionally until proper fulfilment. Furthermore we shall be entitled to make deductions or retain payment to the extent permitted by law. In case of insolvency of a party it shall be agreed according to § 94 of the German Insolvency Code that claims accrued by the other party become due upon opening of the insolvency proceedings. In the



event of a court order for preliminary insolvency proceedings the due date shall be the date of the court order.

§ 7 Warranty of Quality

1. The Supplier shall carry out an acceptance procedure and routine test at his own expense prior to fulfilment to ensure adherence to the quality specifications specifically mentioned in the order. The quality test and incoming goods inspection carried out by us shall not release the Supplier from his contractual obligations.

2. The goods supplied shall be inspected by us for quality and quantity deviations within an appropriate period of time. If acceptance has been agreed, no incoming goods inspection shall be carried out. Defects that can be identified in the course of a proper inspection may be notified up to the expiry of 5 business days from goods receipt. Hidden defects that cannot be detected immediately in a correct goods receipt inspection may be notified within 5 days of detection in the course of normal operation.

3. The limitation period for warranty-based claims shall commence with the delivery and shall end (i) as of the date on which the final customer's limitation period ends vis-à-vis our customer for warranty-based claims; (ii) after five (5) years. The earlier date shall be dispositive. The expiry of the period of limitation of claims based on a certain defect shall be suspended by our justified notification of defect until remedy of the defect. The limitation period for exchanged or replaced parts restarts. The statutory provisions for suspension and restart of the period of limitation shall also remain applicable.

4. The Supplier is committed to delivering goods free of material defects and defects of title. In particular they must be made from the most suitable and flawless material, comply with all statutory and/or official stipulations which apply at the time of the delivery and service, provide of the agreed or unless otherwise agreed commercial properties and/or be state-of-the-art at the time of fulfilment of the contract, even if this state-of-the-art technology has not been included in the technical standards and rules and regulations governing the deliveries of the Supplier at the place of fulfilment. The Supplier shall be obligated to commensurately obligate its own external suppliers (as defined in § 10(9) below) and/or subcontractors (as defined in § 10(9) below). If individual random samples of a shipment are defective, we shall be entitled to reject the entire consignment.

5. If we withdraw from the contract due to a defect in the purchased item, the Supplier shall have to reimburse the costs of the contract even in those cases where he himself is not responsible for the defect.

§ 8 Product liability

1. In the event that the Supplier is responsible for a damage caused by his delivery, he shall be committed to indemnify and hold us free and harmless of any third party claims in so far as the cause is within his domain and organisational area and he is liable

towards third parties himself.

2. Within this framework the Supplier shall also be committed to reimburse possible expenses according to §§ 683, 670 of the German Civil Code resulting from or in connection with a recall campaign carried out by us, if the claim does not already exist according to §§ 830, 840 of the German Civil Code in conjunction with §§ 426, 254 German Civil Code. If claims are raised against us by third parties due to product liability with regard to a defect caused by the Supplier or if we are obligated to announce product alerts or recall actions according to the statutory provisions applicable for the relationship to our customers, the Supplier shall indemnify and hold us harmless from all third party claims as between the parties hereto, bearing all costs incurred and for the rest support us to the best of his endeavours in defending such claims, especially by submitting any and all useful information and documents. We will notify the Supplier – as far as possible and reasonable – about the content and scope of the recall campaign to be carried out by us and offer him an opportunity to make representations.

3. The Supplier shall be committed during the entire normal life of his product to monitoring his products and promptly notify us in writing of any product hazard that become known to him.

4. The Supplier shall be committed to take out a product liability insurance to the appropriate amount; claims for damage in excess of the amount insured shall not be excluded.

5. Any additional statutory claims shall remain unaffected.

§ 9 Order documents – Confidentiality

1. We shall retain the title, industrial property rights, and copyrights for all drawings, models, samples, other documents, items and data which we make available to the Supplier. The documents, items, and data referred to shall be used exclusively for manufacturing based on our order. After termination of this contract they shall be returned to us without further request or deleted. This shall also apply in case of such documents and items developed by the Supplier with substantial participation of Maschinenfabrik Alfing Kessler GmbH or produced by the Supplier according to our specifications.

2. If the Supplier has developed and/or produced parts or other items (including software and the like) for us using our specifications or other, non-explicit technical information, he shall not be allowed to supply third parties with such parts or items without our written approval, nor use the information received from us to manufacture products for third parties.

3. The Supplier shall be committed to treat as a trade and operating secret any and all commercial and technical details which become known to him during the course of this business relationship, and any and all drawings, models, samples, documents, and data (together, "Information"). The duty to

maintain secrecy shall not apply to the extent that the Information (i) was already known to the Supplier or to the public or was generally accessible or (ii) has in retrospect been made known to it or the public or accessible to the public at no fault of the Supplier or (iii) has been legally obtained by the Supplier or (iv) was already in the possession of the Supplier. This duty to maintain secrecy shall not apply vis-à-vis financing banks, persons who are obligated by law to silence, and in the event of statutory disclosure duties.

4. The Supplier shall be obligated to commensurately obligate its employees, its own external suppliers (as defined in § 10(9) below), and/or subcontractors (as defined in § 10(9) below). The duty to maintain secrecy shall not be affected by the ending of the contractual relationships with the Supplier.

§ 10 Quality – Audits

1. The Supplier shall have to be certified (i) in the automotive area under IATF 16949 and DIN EN ISO 9001, and (ii) for other production material under DIN EN ISO 9001. The standards of the respective certification are to be complied with. The certification is to be verified to us upon demand. If a Supplier is not certified, then in principle it shall have to have implemented a quality management system based upon DIN EN ISO 9001 and shall have to comply with these standards. The quality management system is to be verified to us upon demand. We shall be able to stipulate to divergent terms with the Supplier in the individual case.

2. The Supplier shall be obligated to obligate its external suppliers (as defined in § 10(9) below) and/or subcontractors (as defined in § 10(9) below) in accordance with Sect. 1. The Supplier shall ensure that its external suppliers (as defined in § 10(9) below) and/or subcontractors (as defined in § 10(9) below) correspondingly pass on the obligations under Sect. 1. Any breach of the aforementioned duties shall furnish us the right to assert compensatory damages and the right to withdraw from the agreement. Moreover, the Supplier shall indemnify us from any and all claims of third parties, which claims are based upon the Supplier's breach of the aforementioned duties. The claim for compensatory damages/indemnification shall also encompass all of our expenses, including, but not limited to, expenses for legal defences and administration as well as any and all expenses of any necessary substitute procurement.

3. The Supplier shall comply with the generally accepted rules of technology, safety regulations and the agreed technical data for his deliveries. Prior to (i) any changes to the goods or their packaging, (ii) any changes in manufacturing processes, facilities, procedures, and/or materials (even with external suppliers (as defined in § 10(9) below)), (iii) any change in external suppliers (as defined in § 10(9) below) and/or subcontractors (as defined in § 10(9) below), (iv) any changes in review procedures and/or facilities, (v) any relocation or construction of manufacturing sites or (vi) any relocation or construction of manufacturing facilities on site, the Supplier shall be obligated to obtain our prior writ-



ten consent and to furnish the quality verifications required under this provision. Any expenses for a qualification and/or the release thereof caused by a change of this nature shall be borne by the Supplier.

4. The Supplier shall have to constantly monitor the quality of the delivery items and the manufacturing process, and shall produce test and quality records. These records shall be made available upon our demand. The contracting partners shall keep each other mutually informed as to any opportunities to improve quality.

5. The Supplier shall allow us at reasonable intervals to satisfy ourselves on site that appropriate quality assurance measures are performed in his company and of his measures for complying with deadlines and time limits. To this end the Supplier shall grant access to his premises as is appropriate and upon prior agreement of a date and during the time of the visit make available a technically qualified employee to support us. In the event of an anticipated or actual delay of the Supplier the above mentioned access rights shall apply without prior appointment. Our employees who perform the inspections are obliged to secrecy towards third parties. The examination of production processes requiring confidentiality and other trade secrets may be refused. The Supplier shall be obligated to commensurately obligate its own external suppliers (as defined in § 10(9) below) and/or subcontractors (as defined in § 10(9) below).

6. Within the scope of an inspection according to this paragraph we shall be entitled to take samples for examination in the goods receipt storage area, in the current production and the outgoing goods warehouse of the Supplier.

7. If two consecutive consignments of the Supplier do not contain goods in flawless product quality, we shall be entitled to perform inspections according to this paragraph without advanced notice promptly following the last defective consignment during normal business hours.

8. Besides information on the obligation to label chemicals and working substances a notification shall be enclosed with the consignment of chemicals and working substances as to whether particular protective measures are required according to official regulations or experience acquired for transportation, storage or processing in order to prevent personal injury, fire or explosion.

9. Insofar as the Supplier does not itself manufacture the goods and/or receives goods or services from third parties ("External Suppliers") for the manufacture thereof, and or entrusts third parties ("Subcontractors") with the fulfilment of its contractual duties, the Supplier shall be obligated to constantly monitor these goods and/or services for their quality and freedom from defects. The External Suppliers and/or Subcontractors shall be deemed vicarious agents of the Supplier. The Supplier shall ensure that the External Suppliers and/or Subcontractors are commensurately obligated.

§ 11 Third party rights

1. The Supplier shall be responsible for assuring that no third party rights are infringed in connection with his consignment.

2. If a claim is made against us by a third party in connection with the Supplier's consignment due to an infringement of the third party's rights, the Supplier shall be committed to indemnify us for these claims. The duty to indemnify shall apply to all expenses which accrue to us in connection with third party claims.

§ 12 Force majeure

Force majeure, labour disputes, strikes, military conflicts, terrorist attacks, official measures and other unpredictable, inevitable and fatal incidents shall release the contractual parties from the obligation to perform the contract for the duration of the disturbance and to the extent of their effect. This also applies if the incident occurs at a point in time at which the contractual partner concerned is in delay. The contractual partners shall be committed to promptly communicate the required information as far as reasonably possible and adapt their obligations to the changed circumstances in good faith. The party referring to the above circumstances shall provide evidence of them. If a delay of more than two months is most likely for a consignment, we shall be entitled to (partial) withdrawal from the contract without liability for damages.

§ 13 Offsetting and retention rights

The Supplier shall only be entitled to offset costs and assert the right of retention if his counterclaims are either undisputed or have been legally established as final and absolute. The assertion of a retention right also requires that the claims of the Supplier are based on the same contractual relationship.

§ 14 Parts procurement – supply readiness

The Supplier shall ensure parts procurement/supply readiness for the normal lifecycle of his goods/service, however for at least 10 years as from the date of fulfilment. Even if such an obligation for goods/services delivered to us no longer exists, the Supplier shall notify us of an intended discontinuation of his goods/services in a timely manner so that parts can still be supplied to us for storage.

§ 15 Foreign trade legislation – export controls

The Supplier shall indicate to us, with respect to the goods, any possible or existing (i) export restrictions in the country of manufacture and export; (ii) export/re-export approvals under US-American law; (iii) duties to obtain approval for dual-use goods and for armaments under European law or under applicable national regulations, and (iv) exception permits. The Supplier shall bear the expenses for any damage incurred by us due to a breach of this obligation to inform.

§ 16 Occupational health & safety and environmental protection, REACH regulation

1. The Supplier shall provide all goods and services in compliance with all appropriate statutory employment legislation and environmental protection, official and employers' liability insurance association

stipulations, complying with our safety regulations applicable at the time of the service provision and observing the environmental protection needs. If the Supplier has any objections to the type of design requested by us from the point of view of employment legislation or environmental protection law, he shall notify us promptly of this in writing. The Supplier assures environmentally responsible behaviour, compliance with the applicable environmental protection and health & safety regulations, environmentally sound waste disposal and a responsible use of resources. In addition the Contractor shall take every effort to use environmentally sound manufacturing processes and develop environmentally friendly products. If the Supplier has implemented recognised environmental protection and health & safety management systems and especially is certified according to DIN EN ISO 14001 and BS OHSAS 18001 or operates energy management according to ISO 50001, we shall take this into account when selecting the supplier. The Supplier shall commit to comply with the applicable stipulations regarding the threshold values for the radiation of radioactive substances and radioactive contamination.

2. a) For consignments to us the Supplier shall comply with all specifications as part of the main contractual obligation as well as taking all measures necessary arising from the REACH regulations (Regulation EC No. 1907/2006) as amended from time to time at the date of the consignment.

b) If the Supplier is based outside the European Union and does not import the delivery item himself, it shall be his main contractual obligation to provide us with all information required for notification, registration or maintenance of the authorization in accordance with the REACH regulations applicable at the time of the consignment and otherwise appropriately support us in notification, registration or maintenance of the authorisation. In particular he shall make available all information necessary for safe use and notification to ECHA, if required, whenever delivering products containing a concentration of more than 0.1 mass percentage (w/w) of one or more substances according to the criteria of Sec. 57 of the REACH regulations and as determined according to Sec. 59 Subsec. 1 of the REACH regulation.

c) In the event of a breach of the aforementioned obligations we shall be entitled to claim damages and withdraw from the contract. Furthermore the Supplier shall indemnify us from all third party claims arising from an infringement of the aforementioned obligations by the Supplier. The claim for damages/ indemnification shall also include all our other expenses, especially legal and administrative costs as well as all the costs of a necessary replacement purchase. If the Supplier is based outside of the European Union and a notification, registration or maintenance of authorization regarding his delivery item cannot be made by the Supplier, or cannot be made under appropriate conditions, we shall be entitled to withdraw from the contract without liability for damages.



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§ 17 Compliance

The Supplier shall be committed to observe all applicable regulations and official orders of the appropriate local law(s) (including, but not limited to, those of the exporting country, the importing country, and of the destination countries) and neither passively nor actively, directly or indirectly commit or refrain from actions which could result in particular in criminal liability for granting of an undue advantage, corruption, fraud, breach of trust, violation of competition or criminal insolvency offences. The Supplier agrees to respect our rules of business conduct with suppliers (Code of Conduct for Contractors) which may be downloaded from our homepage: <https://www.alfing-crankshafts.com/en/company/code-of-conduct/contractors.html>. In case of non-compliance we shall be entitled to withdraw from or cancel all contracts with the Supplier without prior notice and discontinue the business relationship. Furthermore we shall be entitled to claim for damages.

§ 18 Severability clause

Should any individual provision or part of a provision of these General Terms and Conditions of Purchase be or become invalid, this will not affect the validity of the other provisions. If an invalid clause or part of a clause cannot be replaced by law, the parties to the contract shall be obliged to replace the invalid provision or the invalid part of a provision by a ruling that is as close as possible in purpose to their mutual interest expressed in these conditions of purchase.

§ 19 Place of jurisdiction – Applicable law

1. If the Supplier is a merchant, the place of jurisdiction for all disputes arising from the contract shall be the site of Maschinenfabrik Alfing Kessler GmbH in Aalen-Wasseralfingen; however, we shall be entitled to sue the Supplier also at the court at his site.

2. Any and all legal relationships shall exclusively be governed by German Law under exemption of the UN Convention on Contracts for the International Sale of Goods (CISG).