

## General Terms & Conditions of Purchase of Aleris Europe

### 1. General

**1.1** These General Terms & Conditions of Purchase shall apply to all our enquiries and orders, including those in the future, and to all delivery contracts and other agreements, including those in the future, concluded with the supplier in connection with orders. Any terms and conditions issued by the Supplier are hereby declared null and void, even if they have been transmitted to us in a letter of confirmation or in any other way, or even if we accept the supplier's performance without again rejecting the supplier's said terms and conditions.

**1.2** Ancillary verbal agreements, any departure from these Terms and Agreements, and supplements or exclusions to these Terms and Conditions shall only be valid if they are in writing. This shall also apply to any annulment of this requirement of written form. .

**1.3** The interpretation of these General Terms & Conditions of Purchase shall be governed by their German version, even if the supplier has been provided with translations of these Terms & Conditions of Purchase, or even if such translations have been signed by the Parties.

**1.4** Should any provisions in these General Terms & Conditions of Purchase, or other contractual provisions, be or become ineffective, the remaining contract shall remain valid. The Parties shall have a duty to replace an ineffective provision by an effective provision which shall approach most nearly to the commercial outcome of the ineffective provision.

**1.5** Incoterms shall apply in the version in force at the time when contract is concluded, unless these General Terms & Conditions of Purchase contain different regulations.

### 2. Enquiries, offers, orders

**2.1** Our enquiries shall be non-binding. Our orders shall be binding upon ourselves only if and insofar as we have issued them in writing or confirmed them in writing.

**2.2** Should the supplier depart in his offer from our enquiry, he must expressly notify us thereof. Submission of offers shall be free of charge and non-binding upon us; no fee shall be paid for visits, production of plans, drawings and similar items without an express written agreement.

**2.3** Should he be so requested, the supplier shall have a duty to send a confirmation of order within 2 working days.

### 3. Prices, payment

**3.1** Agreed prices shall be binding. Unless otherwise agreed, these prices shall be "free point of reception", including costs of packaging, transport, insurance, customs,

taxes and other charges. Should the delivery be made pursuant to an agreement by the Parties which is not "free point of reception", the supplier must take out a transport insurance at his own cost.

**3.2** Invoices must be submitted separately from dispatch of goods, in triplicate, stating the destination, our order number, and other designations required in the order.

**3.3** In the absence of any different agreement, payments shall be due 60 days net at the end of the month following receipt of invoice and goods. Insofar as documentation, test certificates or similar papers form part of the performance, the foregoing payment deadlines shall not commence before contractual handover of the said papers to ourselves.

**3.4** We shall be entitled to make payments also by transfer or cheque.

### 4. Delivery and other performances

**4.1** Agreed deadlines and time periods shall be binding.

**4.2** Should circumstances arise to suggest that a due and proper delivery at the agreed time is at risk, the supplier must inform us thereof immediately, stating the grounds thereof. The duty to meet the agreed time of performance shall not be suspended thereby.

**4.3** Should deliveries be delayed, we shall be entitled, following written warning to the supplier, to charge a contractual fine amounting to 1%, maximum 5%, of the value of the order in question. The contractual fine shall be credited against the damages for delay payable by the supplier.

**4.4** Upon failure to meet the agreed time of performance the supplier shall be in default, even without a reminder on our part, unless the performance is lacking due to a circumstance for which the supplier is not responsible.

**4.5** Acceptance of the delayed performance without reservation shall not signify a waiver of any of our rights following failure to meet time of performance.

**4.6** The supplier may only cite lack of such documents, due for supply to ourselves, as are necessary to execute the performance if, despite a written reminder having been sent and a written deadline set, he has not received the said documents.

**4.7** Unless agreed otherwise, delivery shall be \*free point of reception\*; the supplier shall bear the risk until transfer of the goods at the destination. Payment shall be subject to the unit numbers, measurements and weights calculated in our factory.

**4.8** Unless agreed otherwise, the supplier must provide at his own cost such packaging as is suitable for delivery of the goods. Our right to issue instructions regarding the packaging to be used in case of sale by delivery to a place other than the place of performance shall not be affected hereby. We shall be entitled, as we may choose, either to return the packaging to the supplier at his expense and risk, or to dispose of the packaging at the supplier's expense; however, there shall be no duty to return or dispose of packaging. The provisions of the Packaging Code shall not be affected hereby.

**4.9** Dispatch papers, such as bills of lading, delivery notes, packaging slips, and similar documents, and – insofar as they have been contractually agreed, are prescribed by law, or are usual in the trade – factory certificates and safety datasheets, must be appended to each delivery. The order numbers and designations required in the order must be stated in each document. On the day of dispatch at latest we must be sent a notification of dispatch and delivery note (in duplicate) for each individual shipment. We must be notified of ship arrivals 48 hours prior to arrival. Should no proper dispatch papers be available for us upon arrival of goods, or should our order numbers not be correctly stated in the despatch papers, all additional costs arising therefrom shall be payable by the supplier. Section 4.10, Clause 2 shall apply accordingly.

**4.10** The supplier shall only be entitled to make part deliveries with our prior consent. Our right to require part deliveries of the supplier shall not be affected thereby.

**4.11** The supplier shall not be entitled to make his performance prior to the agreed performance time. Should delivery be made prematurely, we shall have the right to refuse acceptance of the goods, or to return them to him at his cost and risk, or to store them until the agreed delivery time. In making his performances the supplier must observe our opening times.

## **5. Declaration on origin of goods and RoHS Directive**

**5.1** Should the supplier issue declarations on the origin of his goods, he shall have a duty to enable the certificates of origin to be inspected by the customs authorities, and both to provide the information needed for this, and to append any requisite confirmations. The supplier shall have a duty to compensate any loss arising because the declared origin fails to be recognised by the authorities due to lack of certification or lack of facility for inspection.

**5.2** The supplier shall have a duty to inspect his goods deliveries to ascertain the presence of any substances prohibited under the Directive on the Restriction of Hazardous Substances (RoHS), and, should he be so

required, the supplier shall issue a written declaration of conformity, covering materials, components and other parts.

## **6. Construction, change to construction, work in our factory, construction papers, provision**

**6.1** The supplier's goods and items of delivery must be so constructed that they meet contractual agreements, legislation on technical appliances, the relevant accident-prevention regulations, regulations on industrial safety and the environment and other regulations, the relevant technical norms, and the generally recognised rules of technology as a whole. In construction the supplier must ensure that work proceeds in the most environmentally friendly way possible, with the least possible burden on resources, and avoiding emissions as far as possible. We shall be entitled, even after conclusion of contract, to require a different construction, unless the supplier cannot reasonably be expected to undertake the change which we have required, taking our interests into account.

**6.2** Persons working inside our plant in fulfilment of the supplier's duties shall be subject to our directives and to the provisions of our plant regulations, and to the accident-prevention, industrial-safety, environmental and other regulations applicable on our premises. Hazardous substances may only be used inside out plant following agreement with ourselves and must be duly and properly labelled.

**6.3** The supplier shall not use for purposes beyond the contract any construction documents with which we have supplied him for manufacture of the delivery item; he shall not duplicate them, nor make them available to Third Parties. The said design documents must be returned to us upon demand, at latest following provision of the supplier's goods and items of delivery.

**6.4** The supplier must hand over to us any plans, construction drawings, technical calculations and other papers and documents relating to the goods, insofar as we require these papers and documents for the use, maintenance or repair of the said goods, or insofar as this has been agreed by the Parties. Upon demand, the supplier must also provide us with drawings of spare parts, with sufficient information on the purchase of said spare parts. Upon handover or delivery of papers, documents and drawings, these shall become our property. The supplier must further submit all papers and documents relating to the goods for inspection, even before delivery of the said goods, insofar as this is necessary in order to monitor and check that the said goods accord with contract; any approval of such papers and documents by ourselves shall not release the supplier from his responsibility to ensure that his performances are in accordance with contract, unless we insist on the construction which we desire despite reservations which the supplier has expressed to us in writing.

**6.5** Forms, tools, master drawings etc. for which we have been charged shall become our property upon payment; they shall be stored for us free of charge by the supplier and must be surrendered to us upon demand.

**6.6** Materials which we have provided shall remain our property. Every act of processing or conversion shall be carried out for us, without binding us. Material supplied must be stored in a clearly arranged way and separately from other items, and must be clearly marked as our property; it must be adequately insured, at the supplier's cost, against fire, water and theft.

**6.7** Services performed on our plant premises shall be subject to the SGU regulations for outside firms.

## **7. Inspection of goods prior to delivery, scrutiny of supplier's quality-assurance measures, final approval**

**7.1** We shall be entitled to enter the supplier's premises at any reasonable time, following warning, and to inspect the goods, even before production is complete. Should the goods be located on the premises of a Third Party, the supplier shall take all measures to enable us to inspect the goods. Defects identified during inspection of the goods must be rectified by the supplier.

**7.2** We shall further be entitled, at any time which we may consider reasonable, to subject the supplier's quality-assurance measures and systems to a scrutiny. For this purpose the supplier shall grant us access to his premises at any reasonable time following notice, and provide us with all information relevant to the assessment of the said quality-assurance measures and systems. Any regulations in quality-assurance agreements shall not be affected hereby.

**7.3** Should a final approval be necessary under applicable statutory regulations or pursuant to agreement, a formal approval must be carried out, a memorandum of approval being drawn up.

## **8. Material defects and defects of title**

**8.1** Should the supplier deliver several products of the same kind, we shall have a duty only to examine them by random samples. Notification of defects identifiable in an ordinary examination of the goods following delivery must be made within one month following the said delivery; other defects must be notified by us within one month following their discovery. Rights relating to defects known during the final approval process shall not be excluded, even if a reservation to this effect is not declared during the approval process.

**8.2** The supplier shall have a duty to provide us with the goods free of material defects and free of any industrial property rights and other rights of Third Parties, whether in Germany or abroad.

**8.3** Should a material defect be discovered within six months following transfer of risk, it shall be assumed that the

article was already defective when risk was transferred, unless this supposition is incompatible with the type of article or defect.

**8.4** Should a complaint of defect be justified, we shall be entitled to charge a single complaint-administration fee of EUR 100.00. Further rights are hereby reserved.

**8.5** Should the supplier allow a statutorily set period of grace to expire without having delivered repaired or defect-free goods, we may rectify the defect ourselves, or cause it to be rectified by a Third Party, at the supplier's expense. Statutory regulations governing the setting of a period of grace and all statutory rights relating to defects, including recourse claims, shall not be affected hereby.

**8.6** The supplier's duty of guarantee shall not be affected by any approval which we may issue of plans, construction drawings, technical calculations, etc.

**8.7** The period of limitation for defect claims, including recourse claims, shall be three years, unless legislation stipulates longer periods of limitation. Statutory regulations governing the suspension of the limitation period for recourse claims shall not be affected hereby.

**8.8** The period of limitation for defect claims relating to items ordered as spare parts for goods purchased from the supplier shall only begin upon installation of the said spare parts; the period of limitation, however, shall end no earlier than five years following delivery of the said spare parts.

## **9. Contractual fine**

Should a contractual fine be agreed, we may require payment of the fine due even if we have not reserved this upon acceptance or fulfilment; the contractual fine, however, must be claimed no later than at the time of the final payment.

## **10. Release from liabilities under producer and product liability, industrial-liability insurance**

**10.1** The supplier must release us from any liabilities towards Third Parties under producer liability or product liability, insofar as the supplier is responsible for the product defect triggering the said liability.

**10.2** The supplier shall have a duty to maintain an industrial-liability insurance with adequate cover for personal claims and material loss.

## **11. CE label, declaration of conformity**

**11.1** The supplier shall expressly declare that the machine (parts) or plant (components) which he is to supply and put into operation, or the delivery which he is to provide, meet not only the relevant environmental regulations (REACH requirements), but also EU Machinery Directive 2006/42/EU in force for the time being, and its implementation in national law for the time being (currently the Ninth Protection of Health Act (GSG)

Order) and the norms set out therein (e.g. DIN EN 292/1+2), and that the Technical Rules on Plant Safety (TRBS) in force for the time being, and in particular those of the Low Tension Directive, the EMV Guidelines, the ATEX Guidelines and the Printing Machinery Guidelines, are followed.

**11.2** The EU Declaration of Conformity or Declaration of Manufacture must be appended by the supplier to the detailed technical machinery documentation. The CE label must also be affixed to the machine or plant.

**11.3** For machinery, plant and components for whose manufacture no national norms exist, the supplier (providing it has not been agreed otherwise prior thereto) shall provide a risk analysis at his own expense and on his own responsibility (to the exclusion of any liability on the part of Aleris Europe), whereby functional safety is secured in all circumstances of operation and in all environmental conditions.

**11.4** For such service and repair work due under guarantee as affects adherence to the requirements of the EU Directives in force for the time being, the supplier must draw up a matrix for each of these EU Directives at his own expense and on his own responsibility (to the exclusion of liability on the part of Aleris Europe).

**11.5** The foregoing documents must be appended to the supplier's invoice without fail and shall be an integral part of the contract. Payment of invoice shall only be made following execution of order and receipt of all documents and technical papers. Subsequent requirements by the Trading Standards Authority or the industrial-accident insurance corporations for approval of the machinery or plant shall be carried out by the supplier at his expense and on his own responsibility (to exclusion of liability on the part of Aleris Europe).

**11.6** Insofar as the machinery, plant or other delivery for provision by the supplier uses or requires chemicals, the foregoing provisions shall also apply – to exclusion of liability on the part of Aleris Europe, and to the liability of the supplier who is subject to the duty in question – with regard to the application and requirements of the REACH Directive in force for the time being.

**11.7** Should the provision in question be that of an incomplete machine or incomplete plant, or of machine parts or plant components, or of a delivery due from him, the procedure to be adopted shall be a corresponding one: instead of the CE label or the Declaration of Conformity, an EU Declaration of Installation must be supplied. This shall in particular comprise assembly instructions, setting out comprehensibly all information requisite for professional and expert integration into other plant (components). In this context all interface conditions must be also set out in the assembly instructions in sufficient detail; this shall comprise in particular the supplier's notice of potential interface problems. Along with these exhaustive operating instructions, moreover, a sufficiently detailed description must be supplied of the measures by which the prohibition of use in the EU Declaration of Installation for the incomplete machine (parts), plant (components) or deliveries may be removed.

## **12. Supplier's right of offset and retention, exclusion of assignment**

**12.1** The supplier shall have a right of offset only in the case of undisputed or legally settled claims. The supplier shall have a right of retention only in the case of such undisputed or legally settled claims, or claims approaching decision, arising from the same contractual relation with ourselves.

**12.2** Assignment by the supplier to Third Parties of receivables due from ourselves is hereby excluded: Section 345a of the German Commercial Code shall not be affected hereby.

## **13. Liability**

**13.1** We shall be liable without limitation for loss due to malice or gross negligence on the part of our legal representatives or managing employees, and for personal injury. In the case of malice or gross negligence on the part of simple vicarious agents, and in the case of breach, due to minor negligence, of such essential contractual duties as are so vital for attainment of the purpose of the contract that the supplier must be able to have confidence therein, we shall be liable in accordance with statutory regulations, restricted to such loss as was foreseeable to us in its type and scope at the time when the contract was concluded; in the case of arrears of payment, foreseeable loss shall include the statutory interest on arrears. Otherwise claims by the supplier for direct or indirect damages, irrespective of their legal grounds, including any claims for damages for breach of pre-contractual duties, and for prohibited actions, are hereby excluded.

**13.2** The restrictions on liability set out in this Section 12 shall also apply to any liability towards the supplier on the part of our legal representatives, managing employees and other vicarious agents.

## **14. Non-disclosure**

**14.1** The Parties shall have a duty not to disclose any confidential information which they have received from the other Party or of which they have become cognizant, not to reveal it to Third Parties (subject to Section 13.2), and only to use this said confidential information insofar as it is necessary for the due and proper management of contractual relations.

**14.2** The Parties may only disclose confidential information to their staff and advisers insofar as this is necessary for the due and proper management of contractual relations. The Parties shall have a duty to impose upon such staff and advisers the duty of non-disclosure set out in Section 31.1 and to certify this to the other Party in writing should it so desire.

**14.3** The duty of non-disclosure shall not apply to such information as was already in the public domain at the time of its transmission to the contracting partner, or has

entered the public domain following its transmission to the contracting partner without the latter's involvement.

**14.4** Disclosure of confidential information and any transmission of documents relating thereto shall not create any rights to the industrial property, expertise or copyrights of the Party so disclosing or transmitting. The Parties are in agreement that the disclosure or transmission of confidential information shall not create a right based on prior use under the terms of the Patents and Utility Models Act.

**15. Place of fulfilment, place of jurisdiction, applicable law**

**15.1** The place of fulfilment for the delivery of the goods shall be the destination stated by us. The place of fulfilment for our payments shall be the location of our branch which has concluded the contract in question.

**15.2** Should the supplier be a trader, legal entity under public law or a special public asset, Ravensburg shall be the exclusive place of jurisdiction for all disputes arising, whether directly or indirectly, from these contractual relations; in place of the said court, however, we shall be entitled to sue before any other court which is competent under statutory regulations.

**15.3** The law of the Federal Republic of Germany shall apply, to the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods.

**NOTE**

We shall save and process the supplier's data and those of any Third Parties involved, insofar as this is necessary for the due and proper management of contractual relations. This purpose of processing may also comprise the transmission of the said data to other companies in the Aleris Group.