



# alkaSOL - GENERAL TERMS AND CONDITIONS FOR DELIVERIES AND SERVICES (GTC)

## 1. Article 1 General / Scope

- a. These General Terms and Conditions for Deliveries and Services (hereinafter: GTC) shall apply to all business transactions between alkaSOL GmbH, Wallersdorfer Strasse 4, 94522 Haidlfing, Germany or any other (foreign) company for subsidiary of alkaSOL Group (hereinafter: alkaSOL) and the Buyer regarding the sale of all products manufactured by or for alkaSOL and all services provided by BISOL. These GTC shall apply exclusively and even if these terms are not expressly referenced in subsequently concluded contracts.
- b. Any terms of the Buyer, which oppose or supplement these GTC shall not become part of the contract, unless alkaSOL has given express consent to their validity in writing.
- c. These GTC shall also apply if alkaSOL completes the delivery without attaching these GTC or does not attach these GTC to future transactions in specific cases.
- d. Additional or deviating agreements regarding these GTC concluded between alkaSOL and the Buyer for the implementation of a contract must be made in writing. This also applies to the cancellation of the written form requirement. Rights to which alkaSOL is entitled beyond these GTC pursuant to statutory provisions shall not be affected.

## 2. Article 2 Offer and conclusion of a contract

- a. alkaSOL offers and prices are subject to change and are not binding unless they are expressly indicated as binding. alkaSOL has the exclusive right to modify the products and services.
- b. Orders by the Buyer constitute binding offers for conclusion of a contract. alkaSOL's written confirmation of the order or, in case of an immediate implementation of the order, the delivery of the ordered products at the indicated final invoice price shall be authoritative for the contents and establishment of the contract. Where the Buyer provides justified objections to the contents of the order confirmation or the delivered products, he must immediately forward such objections. Otherwise the contract shall be established subject to and pursuant to the contents of the order confirmation or delivery.
- c. Any contracts, amendments, supplements and modifications of the contracts are only valid if mutually agreed upon in writing. Any subsequent request for modification requires alkaSOL's specific written confirmation and entitles alkaSOL to amend the price and extend the agreed time limits.

## 3. Article 3

- a. Where the contract refers to products or services that are subject to further technical development, alkaSOL is entitled to make deliveries in accordance with the most recent product or service data sheet. The Buyer is required to advise alkaSOL explicitly if he is interested solely in the ordered model and that any deviation from this model shall not be accepted.
- b. Technical and design deviations from descriptions and information in brochures, offers and written documents, as well as changes to performance, design and material in line with technical progress shall remain the exclusive right of alkaSOL; the Buyer may not derive any rights in this regard. Information regarding the condition of alkaSOL's products (technical data, measurements, color etc.) is merely approximate, and is not indicative of a guaranteed configuration unless alkaSOL expressly guarantees such in writing.
- c. Samples of products sold by alkaSOL are deemed test samples and do not establish any guarantees with regard to the condition of the products, unless accompanied by an express written guarantee. The applicable tolerance ranges must be observed.



#### 4. Article 4 Description of products and services

- a. The prices agreed to in writing or listed in alkaSOL's order confirmation shall be authoritative. All prices are based on the general price list of alkaSOL, which is in force on the day of entering into the contract. In the absence of a different agreement, prices are quoted Ex Works (EXW) in accordance with Incoterms 2010 and include standard packaging. Costs for transport, special packaging, postage, freight, insurance, customs duties and similar are not included and shall always be the responsibility of the Buyer. Statutory VAT and other statutory taxes for Germany and abroad are listed separately on the invoice at the amounts that apply on the date the invoice is issued.
- b. In the event that non-foreseeable costs increase in relation to total costs between the time the contract is concluded and the order is implemented, and which are not alkaSOL's responsibility, including, but not limited to cost increases due to changes to legislation, changes in manufacturing costs or wages (e.g. tariff agreements), commodity prices, technical standards and regulations or changes to material prices ("cost elements"), alkaSOL is entitled to make reasonable changes to the prices in line with the changed circumstances. Where such increase exceeds 10% of the agreed price, the Buyer shall be entitled to withdraw from the contract. In case the prices demanded by the client turn out to be below the production costs of alkaSOL or if the products are sold under special conditions (e.g. clearing inventories, selling project products or selling products with unessential visual defects), warranty conditions and general terms shall not apply in full for all such deliveries. In such a case and upon the Buyer's request, alkaSOL will submit evidence on the cost elements.
- c. In case the Buyer and alkaSOL agree in a written form that the products are purchased according to the actual (flash test) and not according to nominal power output, the difference between the power stated in the contract and the actual measured power will be notified by the issuing of the invoice. The invoice will include the balance payment.

#### 5. Article 5 Payment terms

- a. Payments will be made according to contractual provisions or payment conditions defined in the issued invoice or pro-forma invoice. The invoice will not be dated before the date of shipment. All payments shall be made in Euro (EUR), unless expressly agreed differently. In case of a partial delivery, the Buyer will make payments for such partial deliveries prior to the shipment or according to contractual provisions.
- b. In the absence of an express differing agreement (e.g. payment conditions on the invoice or pro-forma invoice), the Buyer is required to submit a down-payment equivalent to 10% of the entire contract amount plus applicable statutory VAT. The down-payment is due for payment following the delivery of the order confirmation, and must be paid within 7 working days following receipt of the relevant pro-forma invoice. The remaining 90% of the purchase price must be paid one week prior to the defined delivery date, unless other arrangements have been made in writing. The date on which alkaSOL receives the payment shall be authoritative in this regard. In case the customer annuls his order or doesn't pay the remaining amount, any advance payments or partial payments shall not be returned (withdrawal money).
- c. In case of a late payment, the amount recoverable by alkaSOL will automatically and without prior notice be increased by legal default interests. The Buyer is obliged to pay the costs of reminders. alkaSOL shall have the right to claim reasonable damages for all relevant recovering fees incurred due to late payment (including in-house counsel fees). The day of the payment is the day when the payment arrives to alkaSOL's bank account.
- d. Any disagreements regarding invoices or claims (e.g. issues regarding credit notes or other administrative issues) do not allow the Buyer to postpone the ultimate payment date for the accepted part of the invoice.
- e. Drafts and cheques shall only be accepted on the basis of an express written agreement and only as an undertaking to pay. Discount charges and other costs for drafts and cheques are the Buyer's responsibility. alkaSOL's rights from Article 9 will remain until such time as all draft and cheque receivables have been paid.



- f. alkaSOL is entitled to offset the Buyer's payments against the Buyer's oldest debts. Where costs and interest have already accrued, alkaSOL is also entitled to initially apply the payment against such costs, then against the interest and finally against the main amount receivable.
- g. Offsets of counterclaims of the Buyer have to be mutually agreed on in writing.

6. Article 6 Delivery

- a. Delivery times and delivery dates must be agreed in writing. Delivery times and delivery dates shall be non-binding unless they are expressly noted as binding. Fixed dates must be expressly agreed to as such. Timely delivery on the part of alkaSOL shall be contingent on the clarification of all business related and technical issues between the Buyer and alkaSOL, and the Buyer having complied with all of his obligations, such as the provision of all required permits, documents, approvals or payments. The delivery period is deemed as being adhered to if the products have left the plant at the end of the period or alkaSOL has provided notification that the products are ready for shipment. alkaSOL reserves the right, without compensation to the Buyer, to review the quantities to be delivered according to the quantities available to alkaSOL at the respective delivery times.
- b. Regardless of his rights from the Buyer's delay, alkaSOL may request from the Buyer an extension of delivery times or the postponement of delivery dates by the time period by which the Buyer falls to adhere to his contractual obligations.
- c. Where alkaSOL is unable to render timely performance, he will promptly notify the Buyer. The Buyer is not entitled to claim damages or claim compensation in case alkaSOL is in delay with delivery, except in case where the Buyer proves that the delay was intentional or due to gross negligence of alkaSOL.
- d. alkaSOL will provide appropriate packaging, according to the standard conditions of road transportation. The Buyer is obliged to organize any return of packaging (if required) to alkaSOL at his own expense.
- e. alkaSOL's obligations with respect to the delivery will be deemed to have been fulfilled by the delivery of the quantity of products meeting the agreed specifications. Slight variations of the quantity stipulated in the contract are deemed acceptable. alkaSOL is entitled to make partial deliveries. alkaSOL also reserves the right, without refund to the Buyer, to ship different classes) as specified in the contract. The total actual power of delivered products shall be changed accordingly and according to the stipulated price per unit of power the recalculation of the delivered products shall be performed.
- f. Any divergence from the agreed specifications in line with the industry standards will be deemed accepted by the Buyer without any liability whatsoever being incurred by alkaSOL.
- g. Noticed defects in packaging and defects in products or services and/or a difference in quantity of products must be marked on the CMR form. The form has to be signed by the carrier.
- h. alkaSOL shall not be liable for the impossibility of deliveries or delivery delays caused by Force Majeure (any event that is outside of alkaSOL's control, and which causes alkaSOL's fault or partial failure to comply with his obligation) or other events that were not foreseeable at the time the contract was concluded and cannot be controlled by alkaSOL (e.g. business disruptions of all kinds, difficulties in obtaining materials or energy, transport delays, strikes, legal lock-outs, lack of labor, energy or raw materials, official measures or missing, incorrect or non-timely deliveries from the Supplier's upstream suppliers). Insofar as such events make delivery or performance very difficult or impossible for alkaSOL, and the hindrance is not merely temporary, alkaSOL is entitled to withdraw from the contract or to suspend the performance of the contract. In the case of temporary hindrances, times for deliveries and performance will be extended or delivery or performance dates will be postponed by the time of the hindrance, plus a start-up period. Events of Force Majeure or other events that were not foreseeable at the time the contract was concluded shall not give rise to any compensation or penalty from alkaSOL.
- i. alkaSOL is entitled to suspend any delivery under an agreed purchase order, if the Buyer is reasonably expected not to be able to fulfill its obligation - e.g. pay for the ordered products or services. In case of a delivery suspension, any agreed delivery date will be postponed according to the time of the delivery suspension. If the delivery suspension lasts for more than thirty (30) days and the Buyer does not provide alkaSOL with adequate security, alkaSOL is entitled to terminate the contract. The Buyer will pay any storage costs incurred by alkaSOL during the delivery suspension period, which shall amount to 1 % of the total price of the contract for every month started.



- j. If dispatch or delivery is delayed at the Buyer's request or because of the Buyer and after notice was given by alkaSOL of the readiness to dispatch, the Buyer may be charged storage costs for every month started, to the amount of 1 % of the total price of the contract with a minimum of 500 EUR for every month started.

7. Article 7 Place of fulfillment and transfer of risk

- a. In the absence of a different agreement, the delivery of products will be made Ex Works Producer (EXW), according to the Incoterms 2010. The delivery of services will be made according to the contract.
- b. The risk of incidental loss and deterioration of the products shall be transferred to the Buyer where he picks up or takes over the products or services (works take over), as soon as the products have left production plant. The same shall apply in case of shipments - as soon as the products have been delivered to the transporter or transferred to the person designated to carry out the shipment. This also applies in case the shipment has been arranged for the Buyer or in case of partial deliveries, or if shipments are free of charge with regard to freight and costs.
- c. Where the shipment is delayed due to circumstances that are the Buyer's responsibility, the risk of incidental loss and deterioration of the products shall be transferred to the Buyer from the day alkaSOL is ready to ship the products.

8. Article 8 Shipment and delay in acceptance

- a. Insofar as alkaSOL is expressly responsible for organizing shipments as per contract, the selection of the transporter, carrier and all other persons designated for the shipment will be at alkaSOL's discretion, unless alkaSOL has been provided with the Buyer's written requirements. Organizing shipments does not affect the transfer of risk as determined by this GTC.
- b. alkaSOL selects the shipping type, shipping route or the carrier, alkaSOL shall only be liable for intentional or grossly negligent action with regard to the respective selection.
- c. Insofar as the Buyer does not accept the products at the latest within two weeks following the calendar week in which acceptance is to take place as per the delivery schedule, or following the agreed delivery date, alkaSOL shall be entitled to deliver the products to the Buyer and invoice the latter for these costs, in addition to his statutory and contractual rights. In addition, alkaSOL is entitled to transport and store the products in interim storage, at the cost and risk of the Buyer.

9. Article 9 Retention of title

- a. The delivered products shall remain the exclusive property of alkaSOL until such time as all claims to which alkaSOL is entitled against the Buyer as a result of the business relationship have been paid in full (invoices, interest for late payment and any other payments including cheques and draft claims).
- b. The Buyer is required to treat the products which are subject to retention of title with professional care for the duration of the retention period. The Buyer has no right to alter, modify or otherwise amend the labeling on the packaging and products and in general not to modify the means of identification of the products. If the Buyer has not identified the products separately, alkaSOL shall have the right, to repossess any products of the same type and of the same quality still found to be in the inventory up to the value of the products for which payment has not been received, or to require the reimbursement of its products and to cancel any future delivery.



- c. For the duration of the retention period, the Buyer will be required to provide sufficient insurance for the products at his own cost, at the replacement value. The Buyer hereby assigns to alkaSOL all damage compensation claims from this insurance and will immediately notify the insurance company of the assignment. alkaSOL's subsequent claims shall not be affected.
- d. If the Buyer in the course of his normal business activities transforms incorporates or assembles the products, alkaSOL shall be deemed to become the owner of such products. The products resulting from the transformation, incorporation or assembly shall thus automatically be transferred by the Buyer to alkaSOL as a guarantee for the original claim of alkaSOL.
- e. Products subject to retention of title may only be sold by the Buyer in line with ordinary business operations if he provides an adequate security to alkaSOL (e.g. bank guarantee) and provides alkaSOL with all the information regarding the new buyer and the location of the installation of the products. The Buyer is not entitled to pledge, transfer as security or take other measures that would endanger alkaSOL's ownership with regard to the products that are subject to retention of title.
- f. The Buyer hereby assigns the claims from the resale of the products, complete with all ancillary rights, to alkaSOL in proportion to the corresponding co-ownership share if alkaSOL also owns a portion of the delivered products subject to retention of title - and regardless of whether the products subject to retention of title are sold without or after further processing.
- g. In the event the Buyer is in payment default, bankrupt or otherwise insolvent or in the event of a winding up of the Buyer, alkaSOL shall be entitled to withdraw from the contract and claim damages, without prejudice to alkaSOL's other rights. The Buyer must permit alkaSOL or a third party designated by alkaSOL immediate access to the products subject to retention of title, and hand them over.
  
- h. The Buyer will inform BISOL without delay regarding any obligation to register retention of title in an official register or any other formal obligation necessary to be valid in the country where the products will be delivered. The Buyer will at his own costs fully cooperate, assist and give all consents to alkaSOL regarding any formal obligation necessary to achieve a valid retention of title. In cases where products are delivered to different legal jurisdictions, in which the provision regarding retention of title pursuant to this article does not have the same securitizing effect as in the Federal Republic of Germany, the Buyer shall grant alkaSOL a corresponding lien at alkaSOL's request.

10. Article 10                      Claims for defects and limitation of liability

- a. The information contained in the current version of the product data sheet and offers define the specifications and properties of the delivered products. The description of the products and potential explanations in this regard form a part of the agreements on the approximate factual nature and not of guarantees or promises, unless they are expressly described otherwise. alkaSOL does not assume any guarantee for the condition or shelf life of the products, unless expressly agreed to in writing.
- b. The delivered products and services must be carefully inspected immediately following the delivery to the Buyer or a third party designated by the Buyer. They will be deemed as accepted if alkaSOL does not receive a written notice of defect with regard to obvious defects or other defects that were identified during a prompt and careful inspection, and the notice was received immediately following the delivery of the item or otherwise immediately following the discovery of the defect. Any notices received eight days after the delivery date or latter shall not be accepted. The notice shall precisely describe the defect and include the invitation for alkaSOL to inspect the product.
- c. The limitation period related to the Buyer's claims for defects deriving from products shall be one year from the date on which the products must be picked up or delivered. The limitation period related to the Buyer's claims for services shall be six months from the date on which the delivery of services has been completed.



- d. alkaSOL is free to decide whether the defect (including defects under warranties) will be rectified on location, whether it will be repaired, replaced by a defect-free item, or may request that the Buyer returns the defective delivery item to alkaSOL. alkaSOL does not cover any transportation costs for return of products or for reshipment of any repaired or replaced products, or costs associated with installation, removal or reinstallation of products. Under no circumstances may the product be returned to alkaSOL without its prior written consent.
- e. By enforcement of defects the Buyer is not entitled to withhold the payment of the disputed part of the invoice. A withdrawal right on the part of the Buyer shall be excluded if the Buyer is not able to return the products received. Furthermore, the right to withdraw shall be excluded if alkaSOL has delivered custom-made products.
- f. Defects resulting from normal wear and tear, improper handling, improper installation and assembly, improperly executed modifications or repairs of the products by the Buyer or third parties and similar, shall not establish any claims for defects. The same applies to defects that are attributable to the Buyer or which are due to a reason different from the original defects.
- g. The Buyer's claims for reimbursement of expenses in lieu of damage compensation instead of performance are excluded. alkaSOL is not liable for the following events even in case the Buyer was informed of a possibility of their occurrence: (i) claims for damages from third parties towards the Buyer, (ii) damage or destruction of the product, which occurred as a consequence of improper use of the product, (iii) particular, coincidental or indirect damage or commercial result including lost profit.
- h. alkaSOL's liability shall be limited to such damages that must typically be expected in fine with the contract. Any liability of alkaSOL for damages shall in no event exceed the contract value or fifty thousand EUR (€ 50.000) per event or series of related events, except when mandatory by the law. With regard to slight negligence, alkaSOL shall only be liable to the extent of a breach of fundamental obligations that arise from the nature of the contract and which are of special importance to achieving the contract purpose.
- i. Insofar as alkaSOL provides technical information or becomes active in an advisory capacity and this information or advice is not part of the owed performance scope that has been expressly agreed to by way of the contract, such information and advice shall be provided free of charge and in exclusion of any type of liability.
- j. The liability exclusions and restrictions listed in this Article shall also apply in the same scope in favor of alkaSOL's corporate bodies, statutory representatives, employees and agents.

## 11. Article 11      Warranties

- a. All guarantees for products and services are provided by producers Warranty (Guarantee) Certificates or by contracts. These GTC do not constitute any guarantees. Warranty registrations performed on alkaSOL web site ([www.alkaSOL.com](http://www.alkaSOL.com)) do not affect the starting date for a warranty (guarantee) period, which starts immediately following the delivery of the products to the Buyer or a third party designated by the Buyer (EXW factory), unless expressly agreed differently in writing.
- b. The process of resolving warranty claims can only be performed by alkaSOL The process consists of visual inspection, measuring the (electrical) characteristics of the products and other tests. When resolving the warranty claims, the conditions under which the products have been sold to the Buyer are also considered (e.g. clearing inventories, selling below production costs, selling products with unessential visual defects). In case the warranty claim is found to be unjustified, the producer may charge the Buyer for the costs of resolving the warranty claim.
- c. In case alkaSOL is resolving any warranty claims, the warranty does not cover any transportation costs for return of products or for reshipment of any repaired or replaced products, or costs associated with installation, removal or re-installation of products. All limitations of liability from the previous Article also apply for all warranty claims. Under no circumstances may the product be sent or returned to producer without its prior written consent.



12. Article 12 Confidential information and business secret

- a. Information exchanged between alkaSOL and the Buyer including, but not limited to: research, technology, product developments, marketing plans, market conditions, products, business strategies, pricing and similar, constitute confidential information and business secret of the party disclosing such information. The purpose of such exchange is to allow the parties to meet their obligations and responsibilities. The party receiving any confidential information, its employees and or any other related person will not, except with the prior written consent of the disclosing party, use, divulge, disclose or communicate this data and information to any person, firm, corporation or entity, in any way. The parties will protect the confidential information and business secrets in accordance with the applicable laws and best business practices.
- b. The obligations under this Article will survive the termination the contract between alkaSOL and the Buyer for any cause.

13. Article 13 Intellectual property

- a. alkaSOL is the exclusive holder of the intellectual property rights referring to its products and services. The buyer of the products and services does not acquire any intellectual property rights. In the event that the buyer is not the end customer, but buys the products for resale, the products must be sold exclusively in the manner and within the territory that has been agreed by a written contract between the parties.
- b. All rights arising from samples, models, prototypes, sketches, designs, drawings, specifications, contract documents and other similar documents (hereinafter: documents) shared by alkaSOL, are subject to the title of alkaSOL are part of the intellectual property rights of alkaSOL and are wholly owned by alkaSOL. The Buyer is not entitled to present such documents and items to any third party without prior consent of alkaSOL and will upon request return them to alkaSOL without any further delay.

14. Article 14 Data protection

- a. alkaSOL is entitled to process and store the Buyer's data to the extent that this is required to implement the contracts, and as long as alkaSOL is obliged to store such data based on statutory provisions.

15. Article 15 Exports

- a. The delivered products have been designated to remain in the delivery country that has been agreed with the Buyer. The Buyer may not export deliveries of products that are subject to embargo provisions and administrative limitations.
- b. In particular, the delivered products are subject to German & European Union (EU) export controls and embargo provisions. It is the Buyer's responsibility to obtain information regarding the relevant export and/or import provisions or restrictions, and to obtain the corresponding approvals where necessary.
- c. Notwithstanding anything to the contrary in these GTC or any special agreements, alkaSOL shall in no event be obliged to deliver any product or perform any of its obligations under these GTC or special agreements until the required approvals relating to the export regulations have been obtained by the Buyer. Each party agrees to provide the other party with all such information and assistance as may reasonably be required by the other party in connection with securing such authorizations or licenses, and to take timely action to obtain all required support documents. alkaSOL shall be entitled to terminate any agreed purchase order or any part thereof, if the respective necessary approval(s) according to the applicable export regulations cannot be obtained within a reasonable time period.



16. Article Final provisions

- a. The transfer of the Buyer's rights and obligations to third parties requires alkaSOL's written consent.
- b. alkaSOL 's domicile shall be the place of jurisdiction for all disputes from the business relationship between alkaSOL and the Buyer. alkaSOL is entitled to file a suit at its domicile.
- c. With regard to the legal relationship between alkaSOL and the Buyer, the laws of the Federal Republic of Germany shall apply, unless expressly agreed differently in writing.
- d. In the event of a dispute concerning the interpretation or performance of these GTC or other individual agreements, the English versions shall prevail.
- e. In the event a provision in these GTC is found to be partially or completely invalid, void or unenforceable under any particular national or international legislation, or in the event of a legal loophole, it will not affect the validity of the remaining provisions. The invalid, void or unenforceable provision will be replaced with a valid or feasible provision that most closely corresponds with the purpose of the invalid or infeasible provision.
- f. alkaSOL reserves the right to modify the GTC without prior notification. The modified GTC will be published on alkaSOL's official web page ([www.alkaSOL.com](http://www.alkaSOL.com)).

last revised on: 12.August 2015