

General terms of delivery of ALPMA Alpenland Maschinenbau GmbH



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§ 1 Scope

(1) The following general terms of delivery apply to all goods, services and contracts of ALPMA Alpenland Maschinenbau GmbH (ALPMA) and LTH Dresden. However, they will only apply to the above companies' dealings with enterprises in the sense of § 310 Para. 1 of the German Civil Code and legal entities under public law or public law special funds (customers).

(2) Terms of delivery or terms of business issued by the customer or third parties will not be applicable even if ALPMA does not expressly rule out their validity in each individual case and supplies the goods or provides the service without reservation in the knowledge that contradictory general terms of delivery exist. By performing the contract, the customer acknowledges that its terms of business are invalid. Even if ALPMA makes reference to a letter which contains the terms of business issued by the customer or a third party or refers to them, this will not constitute any agreement to the validity of those terms of business. Other provisions only apply if a different agreement is set out in the written order confirmation supplied by ALPMA.

(3) These general terms of business will be an integral part of all contracts which ALPMA concludes with the customer for the goods and services offered by it (ALPMA). They will also apply to all future goods, services or quotations supplied by ALPMA to the customer, even if they are not agreed separately on each occasion.

§ 2 Quotation, contract conclusion and scope of delivery

(1) The basis for the contract between ALPMA and the customer is an order placed by the customer and the confirmation of that order issued by ALPMA. The order confirmation may be supplied within a period of four weeks.

(2) Unless the customer makes an objection in writing within 7 working days of the order confirmation, the content of the contract and the scope of delivery/services will be based exclusively on the order confirmation issued by ALPMA, including these general terms of delivery. The order confirmation contains all agreements between the parties to the contract relating to the contract goods or services in full. Oral assurances made by ALPMA before the conclusion of this contract will not be legally binding and shall be replaced by the written order confirmation unless they expressly state that they continue to be binding.

(3) Supplements and amendments to the agreements including these terms of delivery must be made in writing in order to be valid. Transmission by fax or a PDF with an electronic signature will be sufficient to maintain this requirement for written form. (4) Details supplied by ALPMA relating to the goods or services (for example weights, dimensions, consumption values, load capacity, tolerances and technical data) and their presentation (for example in drawings and illustrations) are only approximate unless the usefulness of the goods or services for the purpose set out in the contract requires greater precision. These are not guaranteed properties but descriptions or characteristics of the goods or service. Conventional discrepancies and discrepancies made as a result of legal regulations or which constitute technical improvements as well as the substitution of components with equivalent parts are permitted as long as they do not adversely affect the usefulness of the goods or services for the purpose set out in the contract.

§ 3 Documentation and business secrets

(1) ALPMA reserves all rights, in particular property rights and copyright, to all submitted quotations and estimates as well as to documentation supplied to the customer, such as plans, drafts, illustrations, drawings, calculations, models, tools and other equipment. The customer must not provide access to these items as such or to their contents to third parties, disclose them or allow them to be used or copied by third parties without the express written consent of ALPMA. At the request of ALPMA the customer must return these items in full and destroy any copies that may have been made if they are no longer needed by the customer in the course of its normal business or if negotiations do not result in the conclusion of a contract.

(2) The customer must treat in confidence all business and trade secrets of ALPMA and its associated companies, in particular Alphenhain Camembert-Werk Gottfried Hain GmbH & Co. KG and Frischpack GmbH & Co. KG.

(3) ALPMA may only allow third party access to documentation supplied by the customer, and marked as confidential, with the written consent of the customer.

§ 4 Prices and terms of payment / setoff and rights of retention

(1) The prices apply to the products and services set out in the order confirmations. Additional or special services will be charged separately. Prices are to be understood in EURs exclusive of value-added tax at the rate in force on the date of the invoice. The following applies to the supply of goods unless otherwise agreed:

FCA ALPMA (Incoterms 2010), standard packaging (= on wooden pallet, covered with PVC film).

(2) Payment will be made as per the order confirmation on a strictly net basis. The customer is required to make payment by credit transfer at the customer's own risk and expense to one of the bank accounts specified by ALPMA. The date of receipt by ALPMA is regarded as the date of payment. In the event of payment arrears, the default interest will be 8 percentage points above the base rate. This will not affect claims for other damages in the event of payment arrears.

(3) Setting off against counter claims held by the customer or the retention of payments on the basis of such claims are only possible if the counter claims are undisputed or have been established by a court of law. The customer is therefore also not authorized to exercise a right of retention if its counter claim is based on other contractual or legal relationships. The customer is not authorized to assign payment claims against ALPMA to third parties.

(4) If, after conclusion of the contract, ALPMA should become aware of circumstances which cast serious doubt on the customer's creditworthiness and which jeopardize the payment of outstanding claims held by ALPMA against the customer from the relevant contractual relationship (including those from other individual orders), ALPMA will be entitled to supply the outstanding goods or provide the outstanding services against payment in advance or against the provision of security.

(5) ALPMA is entitled to make a reasonable increase in the agreed price if, after conclusion of the contract, the customer wishes amendments to be made to the subject matter of the contract and these amendments result in additional work. ALPMA will provide the customer with details of the additional work on request.

(6) Transport containers, tools, surplus material, welding gas cylinders and other equipment are not included in the subject matter of the contract and remain the property of ALPMA. They are to be brought in, out and returned by the customer at the customer's own risk and expense.

(7) Installation work will be carried out exclusively on the basis of ALPMA's separate terms of installation. This work will be billed on the basis of ALPMA's current rates.

(8) Unless otherwise agreed, the payment must be made in the official currency of the Federal Republic of Germany.

§ 5 Delivery and lead time

(1) The times for delivery stated in the quotation are non-binding unless a binding time for delivery has been agreed for an individual case. Compliance by ALPMA with an agreed binding time for delivery is subject to all commercial and technical questions having been fully clarified by ALPMA and the customer and the customer having fulfilled its obligations on time and in their entirety. ALPMA may demand a reasonable extension of the deadlines for the delivery of goods or the provision of services for the period, as a minimum, in which the customer does not fulfill its contract obligations to ALPMA, in particular does not provide product information and plants or fails to pay agreed deposits or interim payments.

(2) The time for delivery will be considered to have been complied with if the goods have either left the factory by the time or the customer has been advised that they are ready for dispatch by that date.

(3) ALPMA cannot accept liability if it becomes impossible to supply the goods or delays occur if this situation is caused by a force majeure or other events which were not foreseeable at the time of the contract conclusion (for example plant interruptions, shortages of raw materials, industrial action, supplies to ALPMA not delivered on schedule or delivered incorrectly, general shortage of materials, shipwreck, insufficient port and unloading capacities, transportation-related delays, non-availability of required shipping space, reasoned change of forwarding agent and/or freight carrier and/or ship owner, and accidents during transportation as well as difficulties in obtaining official permits and other official measures) for which ALPMA is not responsible.

(4) If these events make it considerably more difficult or impossible for ALPMA to supply the goods or provide the service and the hindrance is not just of a temporary nature, ALPMA shall be entitled to withdraw from the contract. If such events are of a temporary nature, the deadlines shall be extended accordingly. Where any hindrance, irrespective of type, is not caused by ALPMA, ALPMA is entitled to demand reimbursement from the customer for all additional services and/or costs involved.

(5) If the time for delivery is extended because of force majeure or other circumstances over which ALPMA has no influence, this will only entitle the customer to withdraw from the contract if it can no longer be reasonably expected to accept the goods or services in full. ALPMA must be notified without delay in writing of this, otherwise the right to withdraw will be void.

(6) Partial deliveries are permitted if it is reasonable to expect the customer to accept them.

(7) If ALPMA is in default with the supply of goods or provision of a service, or if it is unable to supply the goods or provide the service (regardless of the reasons) ALPMA's liability shall be limited to that described in this provision. If the customer can demonstrate that it incurred damages as a result of ALPMA being in default, the customer may demand lump-sum compensation for the delay at a level of 0.5% for each completed week of the delay subject to a maximum of 5% of the price for the part of the goods or services which, because of the delay, has not been put into operation for the purpose intended. If the customer grants us a reasonable grace period after the due date – taking account of statutory exceptions – and we allow this period to pass fruitlessly, the customer shall be entitled to withdraw from the contract in accordance with the law.

Further claims arising out of or in connection with default in delivery shall be based exclusively on § 12 of these terms.

§ 6 Place of fulfillment

The place of fulfillment for all obligations from the contractual relationship is Rott am Inn unless specified to the contrary. The place of fulfillment for all obligations from the contractual relationship with the branch office LTH Dresden is Dresden if the contract came about through ALPMA's branch office, LTH Dresden, and unless agreed otherwise.

§ 7 Dispatch, packaging and insurance

(1) Dispatch is on account of and at the risk of the customer.

(2) The choice of mode of dispatch and packaging is at the discretion of ALPMA. The subject matter of the contract will be properly packaged; the costs of packaging which is more elaborate than the packaging described in the quotation shall be charged in addition to the goods. The customer is responsible for disposal of the packaging material. Where ALPMA is required under the provisions of the German Packaging Directive to take back packaging material used for transportation, the customer is obliged to pay the transportation costs of returning the packaging material and the reasonable costs of its re-use. If the returned packaging material is no longer capable of re-use, the customer is obliged to bear the costs incurred by ALPMA for the recycling of the material.

(3) ALPMA will insure all deliveries against damage and loss (transportation insurance) on behalf of and at the expense of the customer. If the delivery should incur transportation damage or transportation-related damage and ALPMA should be entitled to make claims against the transportation insurer and/or the carrier, ALPMA will surrender these claims (under exclusion of liability for the upholding of the claims) to the customer, if requested by the customer, on a successive basis against payment of the agreed total price for the subject matter of the contract and all outstanding costs. Any further claims against ALPMA in relation to transportation damage will not be accepted. This also applies to contracts between ALPMA and the customer, which include the performance of installation obligations or the installation of a turnkey plant.

§ 8 Transfer of risk, acceptance, duty to examine

(1) Acceptance may not be refused as a result of the goods or services suffering from minor defects.

(2) Where the customer defaults on acceptance of delivery or any other obligations to cooperate, the risk for complete loss, destruction or accidental deterioration of the subject matter of the contract will transfer to the customer at the date the default on acceptance of delivery arises. If the customer defaults on acceptance of delivery or culpably breaches any other obligations to cooperate, we are entitled to assert a claim for the damages incurred.

(3) In the case of a delivery the risk shall be transferred to the customer at the latest when the goods are handed over to the forwarder, driver or other third party commissioned to ship them (with the start of the loading process marking the actual transfer point). If the delivery or transfer is delayed for any reason not caused by ALPMA, the risk shall be transferred to the customer on the day that ALPMA is ready to dispatch the goods and has notified the customer of this. All deliveries, including possible return deliveries, are at the risk of the customer. In the case of the delivery of a work the risk shall be transferred to the customer when the work is commissioned (namely for industrial production). If commissioning is delayed for any reason not caused by ALPMA, the risk shall be transferred to the customer on the scheduled day of commissioning in accordance with the customer's time schedule.

(4) The customer must pay all storage costs after the transfer of risk, particularly if the acceptance process is delayed. If the goods are stored by ALPMA the storage costs are 0.25% of the invoice total for the goods in storage per full week for each month or part thereof, starting one month after notification that the goods are ready for dispatch by ALPMA. The right to charge higher storage costs is reserved.

(5) The rights of the customer with regard to defects are subject to it having duly met its responsibilities to check the object of delivery and performance and defects as required by § 377 of the German Commercial Code (HGB). Notification of defects or incomplete delivery shall be submitted by the customer to ALPMA in writing, with a precise description of the asserted defects, no later than five working days. Hidden defects shall be notified to ALPMA in writing immediately on discovery, or no later than five working days thereafter. Any claims in relation to late notification of defects or damage in transit shall not be accepted.

§ 9 Acceptance

(1) ALPMA and the customer both undertake to accept the goods or service.

(2) In general a formal acceptance process will be held, other forms of acceptance are not ruled out, however. An acceptance report will be produced for the acceptance process in which outstanding work and any defects must be described even if there are any differences of opinion on this. Acceptance of the goods or services may not be refused for minor defects.

(3) In addition, acceptance shall be regarded as having been completed

- if the supply or service has been completed

- if ALPMA has notified the customer of this and has requested that the acceptance process be arranged by a suitable deadline

- and the customer has failed to organize the acceptance process within this deadline, or

- the customer has commenced industrial production with the object of delivery and performance, and, in particular, has produced products which are suitable for sale.

(4) The customer is required to provide ALPMA with the materials required by ALPMA, in the quantity and quality required by ALPMA, for the preparation and completion of the acceptance inspection. If ALPMA is responsible for any working of materials with a value commensurate with the complexity of the project prior to the acceptance inspection such that the materials are no longer capable of being used, reused or worked further, ALPMA shall bear the resultant additional costs.

§ 10 Reservation of title, return of the object of delivery and performance

(1) The goods remain the property of ALPMA until payment has been effected irrevocably, unconditionally and in full. For as long as the reservation of title remains in force, the customer is not entitled to encumber the subject matter of the contract with a security interest (e.g. ownership by way of security, pledge, mortgage, land charge, etc.) or sell it on. If "reservation of title" is not recognized as a means of providing security at the location where the subject matter of the contract is located, the means of providing security that comes closest to the meaning of "reservation of title" under applicable law at that location should be agreed. The customer is obliged to cooperate, particularly in respect of the provision of declarations of intention of the sort which may be required in accordance with applicable law at the respective location, for the agreement and justification of a means of security of this type.

(2) If the reservation of title should be extinguished, in particular as a result of selling on, union, changing into a new form, etc., the reservation of title will transfer to the new object or the resultant customer's claim against a third party. Only ALPMA may collect this claim if the customer is in payment arrears with ALPMA. If the goods subject to reservation of title should be processed or transformed, joined or mixed with other goods by the customer, ALPMA will be entitled to a proportion of the value of the new object commensurate with the invoice value of the goods subject to reservation of title relative to the invoice value of the other goods resulting from processing or transformation. The customer will keep the sole or jointly owned property thus produced free of charge for ALPMA.

(3) In order to provide security for all claims made against the customer by ALPMA, the customer assigns to ALPMA all claims and entitlements accruing to the customer against a third party from the association of the subject matter of this contract with a property. ALPMA herewith accepts the assignment.

(4) If the value of the security provided for ALPMA from the reservation of title and the extended reservation of title exceed the claims by ALPMA against the customer by more than 10%, ALPMA will release security on request from the customer if there is a case to be made of excess security. ALPMA will decide which security can be released.

(5) ALPMA's right to withdraw from the contract remains unaffected. In the event of withdrawal, ALPMA is entitled to enter the customer's business premises in order to retrieve the subject matter of the contract and delivery. This shall not affect any further claims of ALPMA.

(6) ALPMA is entitled to sell the subject matter of the contract once it has been returned; the proceeds from the sale will be credited against the customer's liabilities – less reasonable costs of selling.

(7) Until all claims by ALPMA have been fully settled, the customer is required to insure the subject matter of the contract against the risk of loss or deterioration at his own expense. All the necessary servicing, maintenance and repair work must be carried out by the customer at its own expense.

(8) The customer is required to inform ALPMA immediately of any interference by third parties in the rights of ALPMA (for example seizures, confiscations and other such actions) and to provide ALPMA with all required information pertaining thereto. The customer must notify the third party without delay of ALPMA's title rights. If the third party is unable to reimburse ALPMA the court and out of court costs incurred in this respect, the customer shall be liable to ALPMA for these costs.

§ 11 Material defects

(1) ALPMA is liable to the customer for ensuring that the subject matter of the contract is free of material defects and legal defects when the risk for the subject matter of the contract is passed to the customer. Insignificant variations from the agreed properties of the subject matter of the contract will not constitute material defects. Defects must be reported to ALPMA immediately.

(2) ALPMA disclaims all liability for defects caused by improper use, poor maintenance, alterations made without written approval from ALPMA, improper repairs carried out by the customer, improper cleaning, non-compliance with the instruction manual and instructions for use from ALPMA, chemical, electrochemical or electrical influences, incorrect replacement of materials, and test materials or operating materials supplied by the customer or a design specified by the customer. ALPMA also disclaims liability for wear on the subject matter of the contract or parts thereof; wear is moreover defined as the progressive loss of material on the surface of a solid body resulting from mechanical causes, i.e. through contact and relative movement of a solid, liquid or gaseous counter-body.

(3) Any used goods supplied by individual agreement with the customer will not be covered by a warranty.

(4) If ALPMA is liable for a material defect, the customer initially is only entitled to remedial work. ALPMA may choose to remedy the defect or supply replacement goods at its discretion. If three attempts by ALPMA to rectify the situation fail and ALPMA is responsible for these failures, the customer may demand the reduction of the purchase price or the cancellation of the contract at its discretion. ALPMA will not accept liability over and above the limits of liability set out in § 12.

(5) Where the defect does not require repair work to be undertaken at the place of installation, the customer shall send the defective part to ALPMA at its own expense for repair or replacement with a precise description of the defect. If it is confirmed that the part was defective, ALPMA will reimburse the customer with the costs it has incurred. Replaced parts will be or become the property of ALPMA. ALPMA's liability for the material defect will be discharged when ALPMA has returned the properly repaired part or a suitable replacement part.

(6) ALPMA may refuse to remedy a defect if the customer defaults on his payment obligations; with the exception of a payment obligation, which amounts to the equivalent of the costs of remedying the particular defect. If the customer asserts a claim based on defects and it is subsequently established after examination by ALPMA that the claim based on defects asserted by the customer has no material or legal basis, ALPMA will be entitled to claim reasonable remuneration for services rendered, including the examination undertaken by the company, and reimbursement of all expenses.

(7) If we are not allowed to carry out the remedial work or if defects asserted by the buyer are remedied by the customer or third parties without our written consent, all warranty claims will no longer be valid unless a previous attempt by us to remedy the defects failed.

(8) The repair of the subject matter of the contract, or parts thereof, will not result in the suspension of or interruption to the running of time of the limitation period for claims based on defects.

§ 12 Claims for compensation for damages

(1) If, due to ALPMA's fault, the customer is unable to make use of the delivered goods in accordance with the contract because of a complete or partial failure to implement proposals and advice or because of a breach of other ancillary contractual duties – in particular instructions for the operation and maintenance of the delivered goods – which took place prior to or subsequent to the conclusion of the contract, the provisions of this section shall apply, to the exclusion of all further claims by the customer.

(2) In the case of damages not arising on the delivered goods themselves, ALPMA shall only be liable for damages, regardless of legal grounds, in the event of the following:

- intent;
- gross negligence on the part of the owner/its organs or management staff;

- culpable injury to life, body or health;
- defects which are fraudulently concealed by the supplier;
- as part of the promise of a guarantee;

(f) defects in the delivered goods if product liability legislation demands liability for personal injury or damage to property on privately used items.

In the event of the culpable breach of major contractual duties, ALPMA shall also be liable for gross negligence by non-management staff and for minor negligence, with the latter being limited to typical damage for this type of contract that could reasonably be foreseen, up to a maximum of 10% of the order value.

(3) If ALPMA provides technical information or acts in an advisory capacity and this information or advice is not part of the service to be provided by ALPMA under the contract, it will be provided free of charge and with no liability.

§ 13 Statute of limitations

(1) The statute of limitations period for claims and rights relating to material defects in the goods or services (regardless of the legal basis) is one year for warranty claims for which the statute of limitations period by law is two years. In other respects the statutory limitation periods apply.

(2) The statute of limitations periods given in Para. 1 also applies to all compensation claims against ALPMA which are related or not related to the defect – regardless of the legal basis for the claim.

(3) The statute of limitations periods given in Para. 1 and Para. 2 apply with the following provisos:

a) The statute of limitations periods do not generally apply in the event of intent or fraudulent concealment of a defect or if ALPMA has provided a guarantee for the properties of the service or the goods.

b) The statute of limitations periods also do not apply in cases of damages relating to injury to life, body, health or freedom, claims under the Produkthaftungsgesetz (German Product Liability Law), a grossly negligent dereliction of duty or a breach of duties which are essential to the contract.

(4) The statute of limitations period begins with the transfer of risk and, where ALPMA has undertaken to perform installation services, with the completion of installation.

(5) The above provisions do not involve any change in the burden of proof to the detriment of the customer.

§ 14 Obligations of the customer

The customer is obliged to exercise proper care in observing the instructions for use, the operating instructions and the safety regulations supplied by ALPMA. In particular the customer is obliged to comply with instructions of ALPMA on the risk-free use of the subject matter of the contract, on the applicable regular and individual safety precautions required and the kinds of misuse to be prevented. Furthermore, the customer is obliged to provide the operating and maintenance personnel on the agreed training dates and to operate and maintain the plant using this trained personnel. If the customer should be in breach of these obligations, ALPMA will not accept liability for any resultant damages.

§ 15 Software

(1) ALPMA will grant the customer a non-exclusive license in accordance with § 31 Para. 2 Urheberrechtsgesetz (German Copyright Act) for the supplied software. The customer is only permitted to use the supplied software in association with the subject matter of the contract. The customer is entitled to use the supplied software for an indefinite period for the entire length of the economic life of the subject matter of the contract. The customer has no entitlement to the relinquishment of the source code for compiled programs.

(2) The customer is not entitled to transfer his license to a third party. If the customer sells the subject matter of the contract within the framework of the customer's course of business to a third party and that third party is not a competitor of ALPMA, ALPMA undertakes to agree to the transfer of the license for the use of the supplied software, upon request, unless ALPMA can provide reasoned justification for believing that this would enable competitors of ALPMA to obtain knowledge of ALPMA's trade and business secrets. The customer's license is not exclusive. ALPMA is entitled to grant licenses of all types for the use of the supplied software to any number and type of other customer.

(3) The customer is not permitted to make the supplied software and user manual which may accompany the software available to third parties or to make access possible to third parties, with the exception of the customer's employees, even on a temporary basis or without remuneration.

(4) The customer is not permitted in any way to alter identifying markings, copyright labels or information pertaining to ownership on the supplied software. The customer is not permitted to make any copies of the supplied software, with the exception of a backup copy made by the person given user rights for the program where this is essential for safeguarding future use. The customer is not permitted to copy the documentation accompanying the supplied software, either in part or in full, by means of photocopying, electronic storage or any other process.

(5) Disassembly, reverse engineering or decompilation of the supplied software is not permitted and the customer will not cause or permit this to be done, unless the conditions of § 69 lit. e) Urheberrechtsgesetz (German Copyright Act) have been met.

(6) All property, copyright and other industrial property rights in respect of the supplied software, updates and associated documentation belong to ALPMA; the same shall apply mutatis mutandis to amendments to and translations of the programs.

(7) ALPMA is entitled, at its own expense, to make essential amendments to the supplied software at the customer's premises in response to copyright claims by third parties. This will not provide the customer with any basis for the derivation of a claim.

§ 16 Concluding provisions

(1) The place of jurisdiction for all disputes arising from the business relationship between ALPMA and the customer is Munich. The place of jurisdiction for all disputes arising from the business relationship between LTH Dresden and the customer is Dresden. ALPMA and LTH Dresden are also entitled to bring an action at the customer's registered place of business. Mandatory statutory regulations relating to the exclusive place of jurisdiction are not affected.

(2) The law of the Federal Republic of Germany applies only. The UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980) does not apply.

(3) If the contract or these general terms of delivery contains loopholes, these loopholes will be closed by legal provisions which the parties to the contract would have agreed on the basis of the financial aims of the contract and the purpose of these general terms of delivery if they had identified the loopholes.

(4) Should any individual provision of these General Terms of Delivery and/or a contract be or become invalid, this shall not affect the validity of the remaining provisions; in this case, such a provision shall be deemed to be agreed between ALPMA and the customer which most closely reflects what the parties to the contract would have agreed on the basis of the commercial objectives of the delivery transaction and the purpose of these General Terms of Delivery.