

# General Terms and Conditions for Cloud Services and other related services of ALPMA Connect (“GTCCS”) 08/2023

## SCOPE AND FORM

- (1) The following General Terms and Conditions for Cloud Services and other related Services of ALPMA Connect (hereinafter mentioned as “GTCCS”) apply to all Cloud Services, related services and contracts provided by ALPMA Alpenland Maschinenbau GmbH (“ALPMA”) regarding the digitalisation of ALPMA’s equipment, machines, installations and services delivered to its Customers in the dairy and food industry; however they will only apply to the above mentioned companies’ dealing with enterprises in the sense of Section 14 of the German Civil Code (BGB), legal entities under public law or public special funds.
- (2) Any conditions of purchase or general 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 agreeing to fulfil the terms of this contract, the customer recognises that its own terms of business will not be valid. 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 GTCCS will form an integral part of all contracts which ALPMA concludes with the customer for the usage of its Cloud Services and other related Services of ALPMA Connect regarding the services offered by ALPMA. They will also apply to all future services supplied by ALPMA to the customer, even if they are not agreed separately on each occasion.
- (4) Any individual agreements made with the customer on a case-by-case basis (including any supplements, additions or changes) always take priority over these general terms and conditions of delivery. In the absence of evidence to the contrary, the contents of such agreements must have been laid down in a written contract or have been confirmed by ALPMA in writing.
- (5) Any legal declarations or notices by the customer in relation to the contract (e.g. deadlines, notices of defects, withdrawals or reductions) must be made in writing, i.e. in written or text form (e.g. letter, email, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the identity of the declaring party, will not be affected by this.

## 1. DEFINITIONS

1.1 “Affiliate” of ALPMA means any legal entity which is, di-

rectly or indirectly, (i) a subsidiary of ALPMA, or (ii) controlled by ALPMA. “Affiliate” of Customer means any legal entity which is, directly or indirectly, (i) a subsidiary of Customer, or (ii) controlled by Customer. Any legal entity will be considered as an Affiliate as long as it complies with these definitions of subsidiary or controlled by the Company,

- 1.2 “ALPMA Connect” means the Cloud Services, other services and solutions provided by ALPMA under its Platform ALPMA Connect for its Customers.
- 1.3 “ALPMA Materials” means any materials, including reports of the equipment delivered, by ALPMA, its lists of spare parts, machine reports or statistical reports provided, developed or made available by ALPMA (independently or with Customer’s Cooperation), including in the delivery of any support or services of ALPMA to Customer Data, Customer Confidential Information or the Cloud Service are not included in ALPMA’s Materials.
- 1.4 “ALPMA” means ALPMA Alpenland Maschinenbau GmbH, Alpenstraße 39-43, 83543 Rott am Inn, the parent Company of ALPMA Affiliates.
- 1.5 “Agreement” is defined as the order by the Order Form and these general terms and conditions (GTCCS). Deviating regulations must be in writing.
- 1.6 “Application Service” means the Cloud Services and Solutions offered by ALPMA Connect which allows to use them by the Customer or any User authorised by the Customer (“Authorised User”).
- 1.7 “Authorized User” means any individual to whom Customer grants access authorization to use the Cloud Service that is an employee, agent, contractor or representative of Customer, Customer’s Affiliates, or Customer’s and Customer’s Affiliates’ Business Partners.
- 1.8 Business days and hours: Business days are Monday to Friday and Business hours are from 08:00 am till 05:00 pm MEZ.
  - “Cloud Service” means any distinct, subscription-based, hosted, supported and operated on-demand service and solution provided by ALPMA through its Platform ALPMA Connect,
  - which offers a ticket system that enables the Customer to report errors and to ALPMA or to ask for support through ALPMA, in particular through a support in technical questions, which can be reached via email, video chat or telephone during ALPMA’s Business Hours in Germany. The Customer can find the contact details in *the Order Form* or on ALPMA’s website;

- which offers the display and evaluation of the Customer's equipment data, the report of problem and errors;
  - which allows to find the spare parts (3D View);
- All cloud services need the signing of an Order Form.

- 1.9 "Confidential Information" means all information which the disclosing party protects against unrestricted disclosure to others that the disclosing party or its representatives designates as confidential, internal and/or proprietary at the time of disclosure, should reasonably be understood to be confidential at the time of disclosure given the nature of the Information and the circumstances surrounding its disclosure.
- 1.10 "Customer" means the customer of ALPMA who uses the Platform ALPMA Connect for the needs of its industrial activity.
- 1.11 "Customer Data" means any content, materials, data and Information generated from the equipment delivered by ALPMA (such as Customer-specific reports).
- 1.12 "Documentation" means all information that is generated out of the Customer Data which ALPMA makes available to Customer in accordance with the Agreement after signing of the Order Form.
- 1.13 "Intellectual Property Rights" means patents, copyrights, design rights, models and related rights, trade secret, know-how or confidentiality rights, trademarks, trade names and Service marks, whether registered or unregistered, in any country, arising under law or by contract.
- 1.14 "Logins" means the Customer's/Authorized User's own identifier ("LOGIN") and the password ("Password"), communicated after Registration to the service.
- 1.15 "Order Form" means the ordering document which forms together with the GTCCS the Agreement for the Cloud Service and services.
- 1.16 "*Professional Services*" means *Implementation Services, consulting services or other related Services provided under an Order Form and may also be referred to in the Agreement as "Consulting Services"*.
- 1.17 "Representatives" means a party's Affiliates, employees, contractors, sub-contractors, legal representatives, accountants, or other Professional advisors.
- 1.18 "Subscription Term" means the initial subscription term and if applicable any renewal subscription term of a Cloud Service identified in the Order Form.
- 1.19 "User" means the person under the responsibility of the Customer or any final Customer having access to the Platform.

## 2. USAGE RIGHTS AND RESTRICTIONS

### 2.1 Grant of Rights and its Restrictions

ALPMA grants for the duration of the Agreement to the Customer a non-exclusive and non-transferable right to use

- the software functionalities of ALPMA Connect and its Cloud Service (including its Implementation and configuration),
- to use storage capacity up to 100 MB per machine.
- ALPMA Materials and Documentation

via Internet solely for Customer's and its Affiliates' internal business operations. Customer may use the Cloud Service world-wide, except for countries in which export regulations of the UN, EU, USA or Germany are applicable. Permitted uses and restrictions of the Cloud Service also apply to ALPMA Materials and Documentation.

Any further rights are not granted.

### 2.2 Authorized Users

Customer may permit Authorized Users to use the Cloud Service. Usage is limited to the Usage Parameter and volumes stated in the Order Form. Customer is responsible for breaches of the Agreement caused by Authorized Users.

### 2.3 Access to ALPMA Connect

For access to the server, the Customer receives a user ID and a changeable password. The password must have a minimum length of 8 characters and contain at least one letter, one digit and one special character. The Customer may only pass on the password to those persons who have been Authorized User by him to access the storage space. The Customer is obliged to change the password if it is to be feared that the password has become accessible to unauthorized third parties. If the password is entered incorrectly three times in a row, access to the memory space is blocked to prevent misuse. The Customer will be informed of this. He will then receive a new password from ALPMA. In this case, the ALPMA is entitled to reassign not only the password but also the user ID.

### 2.4 Limitation of Usage Rights

The Customer is not entitled to use ALPMA Connect and its software beyond the stipulations of the Agreement, in particular

(a) to allow third parties to use it, to make it accessible to third parties, to duplicate or sell it or parts thereof. Third parties are not vicarious agents of the Customer, such as employees and freelancers of the Customer.

(b) to copy, translate, disassemble, decompile, make derivative works, reverse engineer or modify the Cloud Service, its software or ALPMA's Materials (except as permitted by mandatory law);

(c) use the Cloud Service in breach of applicable law, in particular Customer will not enter, store or transfer any content or data or data on or via the cloud Service that is unlawful or infringes any rights;

or

(d) remove ALPMA's copyright and authorship notices.

Upon ALPMA's request, the Customer must provide ALPMA with all information for the assertion of claims against third parties, in particular their name and address, as well the scope and extent of the unauthorized software transfer.

## 3. ALPMA RESPONSIBILITIES

### 3.1 Provisioning of ALPMA Connect

ALPMA provides access to the Cloud Service as described in the Agreement. ALPMA makes ALPMA Connect and its Service available and is responsible for its operation. The contents of the storage space allocated to the Customer are backed up by ALPMA on working days. The data backup is carried out on a rolling basis in such a way that the data saved for one weekday is overwritten during the data backup for the following same weekday. A weekly data backup is performed according to the same principle, in that the data is also overwritten on a rolling basis after four weeks.

ALPMA is entitled to adapt the hardware and software used to provide ALPMA Connect and its Service. If, as a result of such an adaptation, additional requirements arise for the content stored by the Customer on the server in order to ensure the provision of ALPMA's Services, ALPMA shall inform the Customer of these additional requirements. The Customer will decide without undue delay after receipt of the notification whether the Customer shall meet the additional requirements and by when this will be done. If the Customer does not declare at the latest four weeks before the changeover date that he will adapt his contents to the additional requirements in time for the changeover, i. e. at the latest three working days before the changeover date, ALPMA has the right to terminate the contractual relationship with effect from the changeover date.

**3.2 Suspension and Limitation of Cloud Service.**

ALPMA may suspend or limit the use of the Cloud Service if continued use may result in material harm to the Cloud Service or its users or any adjustments, changes, additions or maintenance work. ALPMA will promptly notify Customer of the Suspension or limitation. ALPMA will limit a Suspension or limitation in time and scope as reasonably possible under the circumstances.

The services of ALPMA in connection with the transmission of data are limited solely to the data communication between the transfer point operated by ALPMA and the transfer point operated by the customer. ALPMA cannot influence data traffic outside its own communication network. A successful forwarding of information from or to the computer querying the contents is therefore not owned in this respect.

ALPMA provides the Cloud Services with an availability on a monthly average of 98%.

Provider does back up the server contents for the Customer.

**3.3 Support**

The Provider of the Cloud Service is InUse and the provider supports the Cloud Service as referenced in the Order Form.

**3.4 Security**

ALPMA will Implement and maintain appropriate technical and organizational measures to protect the personal data processed by ALPMA as part of the Cloud Service as described in the Data Processing Agreement incorporated into the Order Form in compliance with applicable data protection law.

**3.5. Modifications**

**3.5.1 Scope**

As the Cloud Service evolves, ALPMA may improve or modify the Cloud Service. This includes the Option to remove functionality from the Cloud Service where ALPMA either provides a functional equivalent or where this does not materially reduce key functionality of the Cloud Service. Functionality beyond the initial scope of the Cloud Service may be subject to additional terms and Customer's use of such additional functionality shall be subject to those terms.

**3.5.2 Modification Notices**

ALPMA shall inform Customer of modifications to the Cloud Service with an adequate period in advance. ALPMA shall provide Customer one month's advance notice (unless such change is a reduction in the duration of the applicable Maintenance or ) and support Services.

In case ALPMA removes functionality from the Cloud Service without providing a functional equivalent, ALPMA shall provide Customer 6 months' advance notice.

**3.6 Customer Termination**

If a modification materially degrades the overall functionality of the affected Cloud Service, Customer may terminate its subscription to the affected Cloud Service by providing written notice to ALPMA within one month of ALPMA's applicable notice. If ALPMA does not receive timely notice, Customer is deemed to have accepted the modification.

**4. CUSTOMER AND PERSONAL DATA**

**4.1 Customer Ownership**

Customer retains all rights in and related to the Customer Data and will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws. .

ALPMA does not acquire any rights to the Customer Data stored by the Customer when using the Cloud Services (in particular personal data of third parties). However, ALPMA is entitled to use this Customer Data exclusively on the instructions of the Customer in accordance with the following provisions and within the scope of this contract.

The Customer remains "master of the data" in terms of contract law and "controller" in terms of data protection law.

**4.2. Personal Data**

In the case of processing personal data on behalf of the Customer Alpma, will only collect, use and process personal data, on behalf of the Customer, in accordance with the framework of the Agreement made and in accordance with the instructions of the Customer.

When processing personal data, ALPMA is generally responsible for compliance with the provisions of the General Data Protection Regulation (DSGVO/GDPR) with regard to personal data.

The parties will conclude an agreement on data processing within the meaning of Art. 28 GDPR.

**4.3. Customer Security**

Customer will maintain reasonable security Standards for its Authorized Users' use of the Cloud Service. Customer will not conduct or authorize penetration tests of the Cloud Service without advance approval from ALPMA. Using ALPMA Connect the Customer is responsible for any security handling defaults of his representatives and of Authorized Users to the same extent as his own fault.

**4.4. Access to Customer Data**

In Accordance with 3.2 the Customer can access during the period of the Agreement its Customer Data at any time. Customer may call up its Customer

Data in accordance with the following process: Customer may request its Customer Data from ALPMA, ALPMA will confirm the request and within a period of two weeks after the confirmation, ALPMA will provide the Customer Data to the Customer. The Access to the Customer Data is subject to technical limitations, in which case ALPMA and Customer will find a reasonable method to allow Customer access to its Customer Data.

#### **4.5. Destruction of Customer Data**

At the end of the Agreement, ALPMA will delete the Customer Data remaining on Servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.

#### **4.6. Cooperation relating Customer Data**

In the event of third party legal proceedings relating to the Customer Data, ALPMA will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

#### **5. Fees and Taxes**

For the start phase of ALPMA Connect, ALPMA will not charge any fees for the Cloud Services. If ALPMA will introduce on a later stage any fees for its Cloud Services ALPMA will inform with a six month notice about the introduction of these Fees and its amount. The Customer has then the right to terminate the Agreement by written one month notice.

#### **6. Change of Contractual Conditions**

Unless explicitly set forth otherwise, ALPMA is entitled to amend or supplement these contractual conditions as follows. ALPMA shall notify the Customer of the changes in text form at least six weeks before they take effect. If the Customer does not agree with the changes to the contractual terms and conditions, he may object to the changes no later than one week prior to the date of the intended entry into force. Such objection requires the text form. If the Customer does not object, the changes shall be deemed to have been approved by him. Together with the notification of the changes or amendments to the contractual conditions ALPMA will specifically point out the intended meaning of the Customer's conduct to the Customer.

### **7. TERM AND TERMINATION**

#### **7.1. Term**

The Subscription Term is as stated in the Order Form.

#### **7.2. Termination**

A party may terminate the Agreement:

- a) for cause upon 30 days' prior written notice of the other party's material breach of any provision of the Agreement (including Customer's failure to pay any money due hereunder within 30 days of the payment due date only if applicable ) unless the breaching party has cured the breach during such 30 day period; The prior written notice is dispensable if there are special circumstances which, after weighing the interests of both parties, justify immediate termination.
- b) as permitted under the stipulation of the GTCCS or the Agreement (with termination effective thirty

days after receipt of notice in each of these cases); or

- c) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections of the GTCCS and the Agreement.

#### **7.3. Effect of Expiration or Termination**

Upon the effective date of expiration or termination of the Agreement:

- a) Customer's right to use the Cloud Service and all ALPMA Confidential Information will end;
- b) Confidential Information of the disclosing party will be retained, returned, or destroyed as required by the Agreement or applicable law at the latest of four (4) weeks; and
- c) termination or expiration of the Agreement does not affect other agreements between the parties.

#### **7.4. Survival**

ALPMA will keep confidential information secret up to a period of 3 years after termination.

### **8. WARRANTIES**

#### **8.1. Compliance with Law**

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- a) in the case of ALPMA, the Operation of ALPMA's business as it relates to the Cloud Service; and
- b) in the case of the Customer, the Customer Data and Customer's use of the Cloud Service.

#### **8.2. Good Industry Practices**

The Parties are aware of the technical risks inherent to the Internet and access interruptions that may result. Consequently, ALPMA cannot be held responsible for any unavailability or slowdown of ALPMA Connect and its Services caused by the Internet.

ALPMA is not able to guarantee the continuity of the ALPMA Connect and its Services, remotely executed via the Internet, which the Customer recognizes.

ALPMA undertakes to provide the Cloud Service:

- a) As defined in clause 1.8; and
- b) in accordance with care exercised in one own affairs (§ 277 BGB)

#### **8.3. Remedy**

Customer's sole and exclusive remedies and ALPMA's entire liability for breach of the warranty under Section 8 will be:

- a) correction of the deficient ALPMA Connect and its Service, and
- b) if ALPMA fails to correct the deficient Service, Customer may terminate its subscription for the affected ALPMA Connect and its Service. Any termination must occur within 3 months of ALPMA's failure to correct the deficient ALPMA Connect and its Service,

#### **8.4. Warranty Exclusions**

The above mentioned warranties according to 8.2 and 8.4 will not apply if;

- a) the ALPMA Connect and its Service is not used in accordance with the Agreement or Documentation;
- b) any non-conformity is caused by Customer, or by any product or Service not provided by ALPMA; or
- c) the ALPMA Connect and its service is provided as a courtesy therefore ALPMA liability is restricted in accordance to 9.4 .

## 8.5. Disclaimer

Except as expressly provided in the Agreement, neither ALPMA nor any of its subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or Integration with any products or Services provided under the Agreement, or that the Operation of any products or Services will be secure, uninterrupted or error-free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of ALPMA or product roadmaps in obtaining subscriptions for any Cloud Service.

## 9. THIRD PARTY CLAIMS

### 9.1 ALPMA's rights to assign ALPMA Connect

In accordance with applicable law and regulations, ALPMA certifies and warrants that it has the right to assign all rights regarding ALPMA Connect and its Services, or that it has obtained all necessary rights, including from its employees and/or potential subcontractors.

### 9.2 ALPMA's obligations

ALPMA undertakes to indemnify the Customer against any claims of damages, losses, costs, liabilities, fines, or penalties, (including all reasonable attorney's fees), to which the Customer may be condemned by a court decree due to the fact that its use of ALPMA Connect and its Services infringes any intellectual property right, copyright or trade secret.

### 9.3 Obligations of the Customers

This warranty applies subject to compliance with the Customer the following conditions:

- inform ALPMA as soon as possible of any allegation, procedure, action and/ or complaint of third parties as provided above,
- give ALPMA all powers to defend itself,
- provide ALPMA with all necessary assistance for the purposes of these provisions,
- not to make any legally binding declarations towards third parties, in particular not to conclude any settlements.

In addition, if informed of an action or motion to restrict the exercise of any rights assigned under the Agreement, ALPMA ALPMA may at its sole Option and expense

- obtain the right for the Customer, to continue using ALPMA Connect in accordance with the Agreement, or if this first solution is impossible,
- will modify or replace ALPMA Connect to be non-infringing without a material decrease in functionality so that it is no longer in breach, while retaining functional capacities that are at least equivalent.

If none of the options referred to above is reasonably foreseeable, ALPMA will reimburse the Customer the amount paid by it in proportion to the concerned operating restriction, without prejudice to the right of the Customer to be indemnified accordingly.

## 9.4 Limitations

This warranty and ALPMA's obligations does not apply if the above-mentioned alleged claim results from:

- a use of ALPMA Connect and its Services by the Customer does not comply with the Agreement and the GTSSC or is not in combination with any product or service not provided by ALPMA;
- a modification by the Customer of ALPMA Connect and its software without prior authorization from ALPMA;
- any complaint concerning any software provided by the Customer;
- use of the Cloud Service provided by ALPMA for no fee as a courtesy therefore liability is reduced to care exercised in one owns' affairs (§ 277 BGB);
- Customer's failure to timely notify ALPMA in writing of any such Claim if ALPMA is prejudiced by Customer's failure to provide or delay in providing such notice.

## 10. Claims for Damages

### 10.1 Limitation according to TKG

The liability of ALPMA for damages resulting from the use of telecommunication services for the public is governed by the provisions of the Telecommunication Act (TKG).

### 10.2 Liability of ALPMA

Unless specified otherwise in these GTCCS, including in the following provisions, ALPMA will be liable for breaches to contractual and non-contractual obligations in accordance with statutory provisions.

### 10.3 Limitation of Liability

Regardless of the legal grounds, ALPMA will be liable for damages in accordance with the principle of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, ALPMA will be subject to more mild liability criteria and, in line with statutory provisions (e.g. for diligence exercised during our own affairs), will only be liable

- for damages relating to injury to life, body or health,
- for damages arising from the substantial breach of a key contractual obligation (obligations which must be fulfilled in order for the contract to be properly performed and on the observance of which the contracting party regularly relies and may rely); in such cases, however, ALPMA's liability is limited to compensation for foreseeable damage which can typically be expected to occur.

The limitations of liability found in Paragraph 10.3 above also apply to breaches of duty by or for the benefit of persons for whose culpability ALPMA is responsible in accordance with statutory provisions. They do not apply if we maliciously conceal a defect or have agreed to provide a guarantee for the quality of the services; they neither apply to claims made by the Customer under the German Product Liability Act (Produkthaftungsgesetz).

## 11. Intellectual Property Rights

### 11.1. ALPMA Ownership

Except for any rights expressly granted to Customer under the Agreement, ALPMA, own all Intellectual

Property Rights in and derivative works of:

- a) the ALPMA Connect and its Service;
- b) ALPMA Materials;
- c) Documentation; and
- d) any Professional Services, design contributions, related knowledge or processes, whether or not developed for Customer.

Customer shall execute such documentation and take such other steps as is reasonably necessary to secure ALPMA's title over such rights.

## 11.2 Acceptable Use Policy

With respect to the Cloud Service, Customer will not

- a) copy, translate, disassemble, decompile, make derivative works, or reverse engineer the Cloud Service or ALPMA Materials (or attempt any of the foregoing);
- b) enter, store, or transfer any content or data on or via the Cloud Service that is unlawful or infringes any Intellectual Property Rights;
- c) circumvent or endanger the operation or security of the Cloud Service; or
- d) remove ALPMA's Copyright and authorship notices.

## 12. Confidentiality

### 12.1. Use of Confidential Information

The receiving party shall:

- a) maintain all Confidential Information of the disclosing party in strict confidence, taking steps to protect the disclosing party's Confidential Information substantially similar to those steps that the receiving party takes to protect its own Confidential Information, which shall not be less than a reasonable Standard of care;
- b) not disclose or reveal any Confidential Information of the disclosing party to any person other than its representatives whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section.12;
- c) not use or reproduce any Confidential Information of the disclosing party for any purpose outside the scope of the Agreement; and
- d) retain any and all confidential, internal, or proprietary notices or legends which appear on the original and on any reproductions;

Customer shall not disclose any information about the Agreement, its terms and conditions, the pricing or any other related facts to any third party.

Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 12.

### 12.2. Disclosure due to law, court or authority decisions

The receiving party may disclose the disclosing party's Confidential Information to the extent required by law, regulation, court order or regulatory agency; provided, that the receiving party required to make such a disclosure uses reasonable efforts to give the disclosing party reasonable prior notice of such required disclosure (to the extent legally permitted) and provides reasonable assistance in contesting the re-

quired disclosure, at the request and cost of the disclosing party, The receiving party and its Representatives shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally requested to be disclosed and shall request that all Confidential Information that is so disclosed is accorded confidential treatment.

### 12.3. Exceptions

The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

- a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information;
- b) has become generally known or available to the public through no act or omission by the receiving party;
- c) at the time of disclosure was known to the receiving party free of confidentiality restrictions;
- d) is lawfully acquired free of restriction by the receiving party from a third party having the right to furnish such Confidential Information; or
- e) the disclosing party agrees in writing is free of confidentiality restrictions.

### 12.4. Destruction and Return of Confidential Information

Upon the disclosing party's request, the receiving party shall promptly destroy or return the disclosing party's Confidential Information, including copies and reproductions of it. The Obligation to destroy or return Confidential Information shall not apply:

- a) if legal proceedings related to the Confidential Information prohibit its return or destruction, until the proceedings are settled or a final judgment is rendered;
- b) to Confidential Information held in archive or backup Systems under general systems archiving or backup policies; or
- c) to Confidential Information the receiving party is legally entitled or required to retain.
- d) The Parties mutually agree that this Agreement and its consequences, together with all the information relating to a partnership agreement to be defined, are strictly confidential. Consequently, the parties shall refrain from communicating it to third parties without the prior express written consent of the other Party, which shall remain completely free to accept such disclosure or not, except in the event of a legal obligation of disclosure or request from an administrative or judicial authority.
- e) However, the Partner authorizes, without prejudice to the provisions of the preceding paragraph, the Provider to communicate on any medium and by any means the existence of the referencing of the Partner under this Agreement with the Provider.

## 13. Final Provisions

**13.1.** The assignment of claims against ALPMA shall only be subject to the ALPMA's prior written consent. Such consent shall not be unreasonably withheld. The statutory provision of § 354a HGB remains unaffected.

**13.2.** The assignment of claims against ALPMA shall only be subject to the ALPMA's prior written consent. Such consent shall not be unreasonably withheld. The statutory provision of § 354a HGB remains unaffected.

**13.3.** The parties may only set off claims that have been legally established by a final court decision or are undisputed.

**13.4.** All amendments, additions and terminations of contractual agreements must be made in written or electronic form, as must the cancellation of the written form requirement, unless this contract provides for text form.

**13.5.** Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party (force majeure) is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

**13.6.** Should specific provisions of this GTCCS be or become invalid in whole or in part, the validity of the remaining

provisions shall not be affected thereby. In this case, the parties undertake to replace the invalid provision with a valid provision that comes as close as possible to the economic purpose of the invalid provision. The same applies to any gaps in the agreements.

**13.7.** The law of the Federal Republic of Germany shall apply.

**13.8.** Place of jurisdiction is Court of Traunstein.

**13.9.** In the case of a multilingual version of this contract, only the German.