

General Terms and Conditions for the Delivery of Spare Parts by ALPMA Alpenland Maschinenbau GmbH as of October 2018



Version 01/2020

1. Scope; form

- (1) The following general terms and conditions for the delivery of spare parts apply to all deliveries of spare parts from ALPMA Alpenland Maschinenbau GmbH (ALPMA) and LTH Dresden; however only if the customer is an entrepreneur as defined in Section 310 Paragraph 1 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law (customer).
- (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 spare part without reservation in the knowledge that contradictory general terms of delivery exist. 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 and conditions for the delivery of spare parts are an integral part of all contracts which ALPMA concludes with the customer for the deliveries of the spare parts which it offers. They will also apply to all future deliveries of spare parts or quotations for spare parts 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 us 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.

2. Quotations, conclusion of the contract and scope of delivery

- (1) Our quotations are subject to change and non-binding. This also applies if we have given the customer catalogues, technical documents (e.g. drawings, plans, calculations, estimates, references to DIN standards), other product descriptions or documentation, including in electronic form.
- (2) If the customer orders goods or services, this will be regarded as a binding contract offer. Unless specified otherwise in the order, we are entitled to accept this contract offer within four weeks of receiving it. The order can either be accepted in writing (e.g. by means of an order confirmation) or acceptance can be confirmed by means of the delivery of the goods or provision of the service.
- (3) Irrespective of the provision under Section 2 Paragraph 2 of these general terms and conditions of delivery, the basis for the contract between ALPMA and the customer is an order placed by the customer and a written confirmation of that order issued by ALPMA. The order confirmation may be supplied within a period of four weeks.
- (4) Unless the customer objects in writing within seven working days of the order confirmation, the content of the contract and the scope of the delivery of spare parts will be based exclusively on the order confirmation issued by ALPMA, including these general terms and conditions for the delivery of spare parts. 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.
- (5) Supplements and amendments to the agreements, including these general terms and conditions for the delivery of spare parts, must be made in writing in order to be valid. This includes faxes and PDFs.
- (6) Details supplied by ALPMA relating to the delivery of spare parts (e.g. weights, dimensions, consumption values, load capacity, tolerances and technical data) and their representations (e.g. drawings and illustrations) are only approximate unless the usefulness of the goods or services requires greater precision for the purpose set out in the contract. 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.
- (7) 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.
- (8) 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.

3. Prices and terms of payment/offset and right 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 in euros, plus any VAT applicable at the time of the invoicing. The following applies to the delivery of spare parts unless otherwise agreed: FCA ALPMA (Incoterms 2020), with standard packaging (i.e. cardboard box or cardboard pallet box). The minimum order cost for the delivery of spare parts is EUR 150. For orders totalling less than the minimum cost, an additional charge of EUR 25 applies.
- (2) The conditions stipulated in the order confirmation apply to the payment. Unless stated otherwise in the order confirmation, the purchase price is due and must be paid within 30 days of the invoice date and delivery of the goods. The customer is required to pay the agreed purchase price by credit transfer at their 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 9 percentage points above the base rate. This will not affect claims for other damages in the event of payment arrears.
- (3) Offsetting against counterclaims held by the customer or the retention of payments on the basis of such claims are only possible if the counterclaims are undisputed or have been established in a court of law. The customer also may not exercise a right of retention insofar as its counterclaim is based on other contractual or legal conditions. With the exception of cases where Section 354a Sentence 1 of the German Commercial Code (HGB) applies, the customer is not authorised to assign payment claims against ALPMA to third parties.
- (4) ALPMA is entitled to carry out the outstanding deliveries of spare parts or provide the outstanding services only if an advance payment is made or security provided. ALPMA will declare any reservation in this respect no later than with the order confirmation.
- (5) If, after conclusion of the contract, it becomes clear (e.g. as a result of an application to open insolvency proceedings) that ALPMA's right to receive payment of the purchase price is being put at risk by the customer or if, after conclusion of the contract, circumstances become apparent which cast serious doubt on the customer's creditworthiness and which put at risk the fulfilment of 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, in accordance with statutory provisions, to refuse to deliver the goods or provide the services and – possibly after setting a deadline – to withdraw from the contract (Section 321 of the German Civil Code – BGB). In the case of contracts for the production of single items (custom-made products), ALPMA may withdraw immediately; statutory regulations on the lack of necessity to set a deadline will not be affected by this.
- (6) 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.

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

4. Delivery, delivery time and default in delivery

- (1) The delivery times stated in the quotation and order confirmation are non-binding unless a binding delivery time has been agreed for that individual order. ALPMA's compliance with an agreed binding delivery time shall presuppose that all business and technical questions have been fully resolved. Notwithstanding the rights arising from the customer being in arrears with payments, ALPMA may demand a reasonable extension of the deadlines for the delivery of goods or the provision of services, at least for the period in which the customer fails to fulfil its contractual obligations to ALPMA; in particular failure to provide product information and plans or pay deposits or interim payments that have been agreed.
- (2) If ALPMA cannot observe binding delivery times for reasons for which ALPMA is not responsible (non-availability of the goods), ALPMA will inform the customer of this immediately. In this context, goods will in particular be deemed to be non-available if our suppliers do not supply us on time if we have concluded a congruent hedging transaction stating that neither we nor our suppliers are at fault. (3) ALPMA cannot accept liability if it becomes impossible to supply the goods or delays occur due to force majeure or other events which were not foreseeable at the time of the conclusion of this contract (e.g. interruptions at the manufacturing plant, shortages of raw materials, industrial action, delayed or incorrect deliveries of supplies to ALPMA, general shortage of materials, shipwreck, transportation-related delays, appropriate change of forwarding agent and/or freight carrier and/or shipping company, accidents during transportation and 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 make the delivery and the interruption is not temporary, 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) Statutory provisions will be used to determine when ALPMA is in default. The customer is, however, required to issue a reminder in each individual case. If ALPMA is in default with a delivery or the performance of a service, ALPMA's liability will be limited in accordance with this clause. The customer can request lump-sum compensation for the delay. The lump-sum compensation amounts to 0.5% of the net price (delivery value) for each full calendar week of delay; however, it cannot exceed 5% of the delivery value of the goods delivered or service provided late. ALPMA reserves the right to provide evidence that the delay did not cause any damage or caused considerably less damage to the purchaser.
- (8) Further claims arising from a default in delivery are specified exclusively in Section 10 of these terms and conditions.

5. Place of fulfilment

The place of fulfilment for all obligations from the contractual relationship is Rott am Inn unless specified to the contrary. If the contract was concluded through ALPMA's branch office, LTH Dresden, and unless otherwise agreed, the place of fulfilment for all contractual obligations is the LTH Dresden branch.

6. Shipping, 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. Goods will be properly packaged; the costs for more elaborate packaging than stated in the quotation will be charged in addition to the delivery. 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 recycling 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 or transportation-related 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.
- (4) A reasonable additional cost will be invoiced for express purchases at the customer's request.

7. Transfer of risk, acceptance and inspection obligation

- (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 ALPMA incurs higher costs as a result of this, they must be reimbursed by the customer.
- (3) The risk of accidental loss and accidental deterioration of the goods shall be transferred to the customer upon handover of the goods; in the case of sales involving the carriage of goods, these risks as well as the risk of delay 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), insofar as no acceptance is agreed. If the shipment or handover 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. For deliveries to factories, the risk shall be transferred to the customer when the goods are commissioned (i.e. industrial production). If there is a delay in commissioning the goods for any reason not caused by ALPMA, the risk shall be transferred to the customer on the date the goods were originally scheduled to be commissioned.
- (4) The customer must pay all storage costs after the transfer of risk, particular 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 spare parts in storage per full week for each month, 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 customer's rights regarding defects in accordance with Section 9 presuppose that it inspects the goods and examines any defects properly in accordance with Sections 377 and 381 of the German Commercial Code (HGB). For complaints about defects or incomplete deliveries, the customer must provide a detailed written description of the defect for which it is making a claim to ALPMA within five

working days at the latest. If a concealed defect is discovered, ALPMA must be notified immediately within five working days at the latest. Claims involving delayed notifications regarding defects or damage in transit are excluded. If the customer fails to properly inspect the goods and/or notify ALPMA of defects, in accordance with the statutory provisions ALPMA cannot be held liable for any defects that it has not been notified of or for any defects that it has not been notified of properly or on time.

8. Reservation of title, redemption and cessation of delivery and provision of services

(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. 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) 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.

9. Warranty from ALPMA/LTH Dresden

(1) Unless specified otherwise below, the statutory provisions apply to the customer's rights in the event of material and legal defects (including incorrect or insufficient deliveries as well as improper assembly or inadequate assembly instructions). In any case, the special statutory provisions regarding the final delivery to a consumer remain unaffected by this.

(2) 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. In particular, the agreed quality of the goods, service or work will be taken as the basis for ALPMA's liability for defects. Insignificant variations from the agreed properties of the subject matter of the contract will not constitute material defects. Any defects must be disclosed to ALPMA immediately. ALPMA will not, however, accept any liability for public statements made by third parties (e.g. advertising messages).

(3) In order to make claims based on defects, the customer must have fulfilled its duty to examine the subject matter of the contract and to make complaints (Sections 377 and 381 of the German Commercial Code – HGB).

(4) ALPMA shall not be liable 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.

(5) Unless otherwise agreed with the customer in writing on an individual basis, the warranty period for used spare parts will be six months from the date of dispatch. If the replaced part has a longer remaining warranty period, this longer period will apply to the used spare part.

(6) If ALPMA is liable for a material defect, the customer is initially only entitled to remedial work. ALPMA may choose to remedy the defect or supply replacement goods free from defects at its discretion. If ALPMA's attempt to rectify the situation fails twice and ALPMA is responsible for these failures, the customer may demand a reduction of the purchase price or the cancellation of the contract at its discretion. There will, however, be no right of withdrawal for minor defects. ALPMA shall not accept liability over and above the limits of liability set out in Section 10.

(7) 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.

(8) ALPMA may refuse to rectify a defect if the customer defaults on its payment obligations; with the exception of a payment obligation which amounts to the equivalent of the costs of rectifying 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.

(9) ALPMA's liability for products which are produced mostly by a third party is limited to the assignment of the liability claims to which ALPMA is entitled against the supplier of the third-party product.

10. Liability for compensation for culpability

(1) If the delivered goods cannot be used by the customer in accordance with the contract due to a failed or incorrect implementation by ALPMA of suggestions and advice provided before or after conclusion of the contract or due to the violation by ALPMA of other contractual obligations, in particular instructions for operation and maintenance of the spare parts and original delivery items, the provisions of this section shall apply and the customer has no further right to make claims.

(2) Whatever the legal reasons, ALPMA shall only be liable for damage that is not caused to the spare part itself in cases

- a) Of intent,
- b) Gross negligence on the part of the owners/the executive body or senior management,
- c) Of acts of culpable negligence causing death or personal injury,
- d) Of defects that were maliciously concealed,
- e) In which a guarantee promise is involved,

f) Of defects of the delivered goods to the extent that liability applies under the German Product Liability Act (Produkthaftungsgesetz) for personal injury and property damage in relation to privately used items.

In the event of culpable violation of key contractual obligations, ALPMA shall also be liable in cases of gross negligence by non-executive personnel and cases of ordinary negligence; in the latter case liability shall be limited to contract-typical, reasonably foreseeable damage. Further claims are excluded.

(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.

11. Statute of limitations

(1) The limitation period for claims and rights regarding defects in the delivery of spare parts, irrespective of their legal grounds, is twelve months from the delivery/handover of the spare part. Section 9 Paragraph 5 of these general terms and conditions apply to used spare parts. In other respects the statutory limitation periods apply.

(2) The limitation periods as stipulated in Paragraph 1 also apply to all compensation claims against ALPMA, regardless of their legal basis.

(3) The limitation periods as stipulated in Paragraphs 1 and 2 apply with the following stipulation:

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

(4) The limitation period begins with the transfer of risk.

(5) Unless expressly stated to the contrary, the statutory regulations relating to the start of the statute of limitations, the suspension of the process and the suspension and restart of periods are not affected.

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

12. 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.

13. 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 and conditions for the delivery of spare parts contain loopholes, these loopholes will be closed by legally valid 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 and conditions for the delivery of spare parts if they had identified the loopholes.