

General Terms and Conditions for Remote Service

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1 General and validity

1.1 The following General Terms and Conditions for Remote Service apply to all services and contracts of ALPMA Alpenland Maschinenbau GmbH (ALPMA) and LTH Dresden, subsidiary of ALPMA Alpenland Maschinenbau GmbH (hereinafter referred to as ALPMA); however only if the customer is an entrepreneur as defined in Section 14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law (customer).

1.2 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 and Conditions for Remote Service 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.

1.3 These General Terms and Conditions for Remote Service will be an integral part of all contracts which ALPMA concludes with the customer for all deliveries or services provided by ALPMA for remote service. They also apply to all future remote service contracts. ALPMA is entitled to modify these terms for future contracts. Other terms do not become integral components of the contract, even if ALPMA does not expressly object to them. The customer may only invoke ancillary agreements made before and during the conclusion of contract in the case of prompt written confirmation. Deliveries, services or quotations supplied by ALPMA to the customer, even if they are not agreed separately on each occasion, take priority over these General Terms and Conditions for Remote Service.

1.4 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 for Remote Service. 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.

1.5 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 Remote diagnosis

2.1 The customer will agree with ALPMA on the specified remote services based on the following conditions before the first intervention (a) in a contract for remote service (framework agreement) or (b) in an individual order or (c) on purchase of a new ALPMA installation. With the remote services to be performed as required, the customer will receive support from ALPMA by qualified specialists. As far as possible, this will be provided through communication via telecommunications (online via Internet, phone and data transmission). For this purpose, the customer will provide trained personnel for collaborating, enabling and implementing the remote services.

2.2 The purpose of remote service is prompt and cost-effective identification of faults that occur as well as determining the condition of ALPMA machines or installations on the customer's premises using telecommunications based on the recorded data and the information provided by the customer. ALPMA analyses the collected data and processes of the computer, installation or machine (hereinafter also referred to as "installation") for deviations of the actual state from the desired state. ALPMA analyses established deviations to discover their causes.

2.3 If, in the course of the remote diagnosis, ALPMA establishes deviations that require action to be taken, ALPMA will support the customer during repair and maintenance work to the extent that this is possible for ALPMA using the telecommunication means and telephone hotline described in the agreement. Should it prove not possible to repair, or fully repair, the installation by telecommunication means (remote maintenance and/or repair), ALPMA will duly notify the customer.

If so requested by the customer in exchange for separate remuneration, ALPMA will either undertake or propose further maintenance and repair measures for the customer, which will ensure the proper operation of the installation. ALPMA will also provide support during implementation of the proposed measures. Unless specified elsewhere within the provisions of this agreement, this will require a separate agreement.

2.4 At the customer's request, ALPMA can carry out actions that extend beyond the services (repair/maintenance services) stipulated in this agreement. This requires a separate agreement.

2.5 The service report shall be submitted to the customer together with the invoice.

2.6 If, when providing services within the framework of this agreement, ALPMA establishes that these deviations have been caused by external force, other unforeseeable influences, improper handling, or failure to observe the manufacturer's installation or environmental conditions, ALPMA shall not be obliged to undertake remote repair work or provide services as contemplated by the agreement. This also applies if the customer modifies the software or software environment, including the hardware.

2.7 In such cases, the contracting parties shall convene with the aim of drawing up a mutual course of action and agreeing the required steps.

2.8 ALPMA undertakes to fulfil its individual obligations as specified in the agreement. However, this does not guarantee that the contractual services will be sufficient to diagnose/remedy all damage and defects of the machine/installation. Neither does it guarantee that ALPMA can make the machine/installation fully functional.

3 Data transmission

3.1 Each party is responsible for the maintenance and operation of the necessary telecommunications equipment. In its own name and its own cost, the customer will establish the technical prerequisites for Internet-based remote service:

3.2 The customer is responsible for proper configuration of the firewall. The ALPMA machine on the customer's premises must be prepared for remote service via Internet (hardware and software) and be configured by the customer for access to the customer's network via TCP-IP. It must be able to establish a connection to the ALPMA remote service portal over the Internet via the customer network. Where possible, the firewall rules that control access should not be automatically deactivated based on longer periods of non-utilization.

The customer undertakes to ensure that this connection is available to ALPMA at all times for the services as specified under the provisions of this agreement. The customer undertakes to pay the monthly fee required for the connection and any fees incurred for individual transmission processes.

3.3 In the event that Internet access is disrupted so that ALPMA cannot receive any, or sufficient, data for the purpose of its services, ALPMA shall be released from its contractual obligations. This also applies if the data quality is such that ALPMA is unable to fulfil its obligations. In this case, ALPMA shall duly notify the customer of the defective line or connection.

3.4 Online access to the ALPMA machines and installations can be activated by the customer as required. ALPMA then dials into the control system of the machine. On completion of any work required, the Teleservice facility shall be deactivated again by the customer.

4 Confidentiality, data security and malware

4.1 All customer data exchanged within the framework of the Teleservice, and any other information of the customer concerning production secrets or relevant product-related data, shall only be used by ALPMA for services as defined by the terms of this agreement and shall not be passed onto third parties.

4.2 Both ALPMA and the customer shall take appropriate measures incorporating the latest technology to prevent any viruses infecting the software used. If one of the contracting parties is affected by a virus that impairs the remote service, or which could be transmitted to the systems of the other contracting party, the other contracting party must be duly notified in writing immediately (including fax or email).

4.3 The customer must ensure that the processing and use of personal data on its IT systems occurs in compliance with the current applicable data protection regulations, in particular the GDPR and BDSG in their latest valid versions, and also considering any particular data protection regulations that are applicable for the customer. The remote service is provided in the scope of service agreed with the customer. The processing of personal data by processors pursuant to Art. 28 GDPR is expressly not intended in this context. The customer is responsible for the admissibility of ALPMA's remote services under data protection law. ALPMA will only inform the customer if the remote services are evidently not admissible. ALPMA has obligated its employees who are engaged with the remote service to maintain compliance with data protection and confidentiality and informed them of the consequences of any misuse of data or confidentiality. ALPMA is obligated to erase personal data which ALPMA has obtained when providing the services promptly after the completion of the services.

4.4 The customer is obliged to take appropriate security measures to ensure the integrity of its network connected to ALPMA systems. The customer undertakes to inform ALPMA immediately if it becomes aware of malware, security breaches or other harmful elements in its network. Reports of malware or security breaches must be sent to ALPMA in text form or by telephone. The customer must ensure that the report contains all relevant information. In the event that malware or a security breach is detected in the customer's network, ALPMA reserves the right to temporarily restrict online access both on site and via online remote access remote diagnostics. These restrictions are in place to protect the integrity of our service infrastructure and to prevent the potential spread of malicious elements to other systems. Following a thorough security review and the implementation of appropriate measures to eliminate the virus risk by the customer, ALPMA will resume service operations. This assumes that the customer has demonstrably ensured that its network has taken appropriate security precautions to prevent future incidents.

5 Customer's duty to cooperate

5.1 In cases where the Teleservice may place persons or objects at risk, the customer must undertake reliable measures to ensure that the intended actions can be carried out safely. In particular, the customer must ensure that no persons concerned with the on-site execution of services under the terms of this agreement are placed at risk.

5.2 During the detection, location, notification and description of faults, the customer must follow all instructions issued by ALPMA. The customer must provide fully trained and competent personnel for the Teleservice.

5.3 The customer must not make any modifications to the machine/ installation or respective technical environment, which may impact on the Teleservice, without prior agreement with ALPMA.

5.4 The responsibility and decision-making authority for the operation of the machine or installation remain solely with the customer, even in the case that ALPMA provides consulting services or remote service. Remote service does not replace regular maintenance and safety inspections of the machine or installation.

5.5 In the event that a fault occurs, the customer will determine whether it is able or willing to carry out troubleshooting to determine the cause of the fault and eliminate the fault with the help of advice provided over the phone. The customer then chooses phone advice without ALPMA having access to the machine.

5.6 If ALPMA assists in locating faults or determining the cause of the fault, but the customer eliminates the fault itself, a passive remote access (seeing and showing) is required.

5.7 If the customer desires full service (locating faults or determining the cause of the fault and eliminating the fault, if possible via remote access), active full access (with or without counter-confirmation of the specific action by the customer) to the control system with administrator rights is required.

5.8 The direct control of the machine or installation or safety-relevant parts of devices (accessories) is not permitted in active remote access. For active remote service, a trained and experienced employee of the customer is therefore required at the machine or installation.

6 Payment and performance period, force majeure

6.1 All prices are fixed for the first 12 months of the agreement. After this initial period, fees will be adjusted to reflect the general cost trend in the technical service area. Prices are in euros, plus any VAT applicable at the time of the invoicing.

6.2 Payment will be made as per the order confirmation on a strictly net basis. Unless stated otherwise in the order confirmation, the payment is due and must be paid within 30 days of the invoice date.

6.3 The customer is required to pay the agreed price or fee 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 9 percentage points above the base rate. This will not affect claims for other damages in the event of payment arrears.

6.4 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 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.

6.5 ALPMA is entitled to supply outstanding goods or provide outstanding services only against payment in advance or against the provision of security. ALPMA will declare any reservation in this respect no later than with the order confirmation.

6.6 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 fee is being put at risk by the customer's lack of ability to pay or if, after conclusion of the contract, other 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 – after setting a deadline if necessary – to withdraw from the contract (Section 321 BGB).

6.7 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.

6.8 ALPMA undertakes to offer the agreed services at the following times:

– Monday to Friday from 8:00 am to 5:00 pm CET.

The agreed service is not available outside this time period or on German public holidays.

6.9 If the performance of services owed is delayed – including within any period of default – in cases of force majeure (including epidemics, pandemics, war, civil war or situations similar to war or civil war, or the impending existence of such circumstances) or due to measures taken in the context of labour disputes, in particular strike and lockout, as well as the occurrence of circumstances for which ALPMA is not responsible, the services can be performed later within a reasonable period of time after the end of the events in question, as long as these events have impacted timely performance. ALPMA will inform the customer as soon as possible regarding the occurrence and anticipated duration of such events.

6.10 The performance period will also be postponed by a reasonable amount of time if the customer is in arrears with payment or other cooperation obligations and duties arising from the order.

7 Liability

7.1 ALPMA is liable on the basis of the following provisions for all damages to machines, installations or their accessories which are the object of the remote service, and which have been culpably caused by ALPMA's consultants acting as agents.

7.2 Liability is excluded insofar as the damages were caused by

- faulty data cables,
- damage to data,
- loss of data,
- transmission errors
- remote programs that are not kept up to date
- third-party access
- operating systems, programs or data protection devices (permanent updates, virus protection, permanent data backup) that are absent or faulty or not kept up to date
- absent or incorrectly configured data protection measures (password protection, access rights restrictions, encryption)
- the continued use of outdated software that is no longer supported by the manufacturer's security updates
- as well as misconduct on the part of the customer and its agents, particularly if the misconduct consists of a breach of duty under this contractual relationship, in particular
- breach of cooperation obligations pursuant to Clause 5

unless the action or failure to act on the part of the customer, its agents or third parties which causes the damage was occasioned by wilful intent or gross negligence by executive personnel, or wilful intent by ordinary agents of ALPMA.

7.3 Purely financial losses, in particular damages due to disruption of operation and downtimes, will not be compensated.

7.4 If the customer sustains damages as an unavoidable consequence of a delay for which ALPMA is responsible, the customer shall be entitled to compensation for the demonstrated damages owing to delay in the amount of 0.5% of the service rate for each full week of delay, up to a maximum of 5% of the fee. The client shall not be entitled to any further compensation, notwithstanding the provisions under Clause 7.6.

7.5 ALPMA shall provide its services in accordance with the applicable standards and the generally recognized principles of technology. In the event that any services provided under the terms of this agreement are not completely or properly executed, ALPMA undertakes to rectify this free of charge.

If ALPMA fails to rectify such services, the customer is entitled to set ALPMA a reasonable period. If ALPMA fails to rectify matters within this set period, or if the fault elimination is ineffective for any other reasons, the customer can choose to demand a reduction in the payment due or to terminate the agreement without notice.

7.6 ALPMA undertakes to repair free of charge any damage to serviced machines culpably caused by ALPMA or its vicarious agents. The customer shall only have the right to further claims in the event of:

- a) intent,
- b) gross negligence on the part of the owner/the executive body or senior management of ALPMA,
- c) acts of culpable negligence causing death or personal injury,
- d) defects that were fraudulently concealed or whose absence was guaranteed,
- e) only to the extent that liability applies under the product liability law 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.

The customer is not entitled to make any further claims against ALPMA, regardless of the legal grounds invoked, above and beyond those acknowledged here. This applies in particular to claims for compensation, including those based on noncontractual liability, or other rights concerning possible disadvantages, which are connected to the agreed services. This particularly applies to damage caused by damage to data or data loss.

7.7 All claims of the customer – regardless of their statutory basis – shall be statute-barred after 12 months, beginning from termination of the respective service. The limitation period shall be extended by the time required to remedy the defect. If an acceptance inspection has been agreed, the limitation period begins with the date of acceptance, the onset of effects from acceptance (in the event of delay of acceptance, acceptance due to conclusive behaviour on the part of the customer or after a period has elapsed pursuant to Section 640 (2) of the German Civil Code (BGB)), or upon delay of acceptance.

7.8 Reports of defects, follow-up correspondence, measures for inspecting and identifying faults, as well as actions taken for subsequent performance, neither interrupt nor limit the expiry of the limitation period. These effects must be expressly agreed in the individual case.

7.9 In cases of unlimited legal liability, the legal regulations for the statute of limitation also apply.

8 Place of jurisdiction, choice of law, language, interpretation

8.1 The place of jurisdiction for all disputes arising from the business relationship with ALPMA is Traunstein. ALPMA is 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.

8.2 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.

8.3 If the contract or these General Terms and Conditions for Remote Service 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 and Conditions for Remote Service if they had identified the loopholes.

8.4 Should any individual provision of these General Terms and Conditions for Remote Service 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 transaction and the purpose of these General Terms and Conditions for Remote Service.

8.5 Unless otherwise agreed, the contract language is German. If apart from the order confirmation in German, a version exists in the customer's language or another foreign language, solely the German version is authoritative for contract interpretation. If there is only an order confirmation in a foreign language, its wording as translated into German is authoritative for interpretation.

8.6 If the contracting parties are unable to agree on the wording of a translation pursuant to section 8.5, a publicly appointed and sworn translator will be engaged jointly at the cost of both parties, and the wording of this translation will be authoritative for contract interpretation.

8.7 If the contracting parties are unable to agree on a translator pursuant to section 8.6, this person will be appointed by the President of the Traunstein District Court. Both contracting parties are entitled to request this appointment.

8.8 If the question of contract interpretation or valid version cannot be resolved by mutual agreement, the responsible court will determine the basis of interpretation independently.