

## General Terms and Conditions of Sale

Droitwich, 01.07.2013

### § 1 Scope of application

- (1) The following conditions shall apply to all supplies and services (e.g. installation, design) by ALPLA. These conditions shall also apply to future business.
- (2) Contrary terms and conditions, in particular Terms and Conditions of Purchase of the customer, are not accepted and shall not apply. No objection is required on the part of ALPLA.
- (3) Any amendment to these conditions must be in writing.
- (4) ALPLA shall sell and the customer shall purchase the Goods in accordance with ALPLA's Written quotation (if acceptable by the customer), or the customer's Written order (if accepted by ALPLA), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the customer.
- (5) Orders are accepted subject to satisfactory credit check results in respect of the customer. ALPLA may use and disclose information gathered for the purpose of credit checks for the following purposes:
  - (i) obtaining credit insurance;
  - (ii) credit control;
  - (iii) assessment and analysis (including credit scoring, market, product and statistical analysis);
  - (iv) securitization;
  - (v) protecting ALPLA's interests.
- (6) ALPLA may apply a credit limit in respect of the customer which it will notify to the customer. ALPLA reserves the right not to do any business with the customer whether pursuant to the Contract or otherwise at any time and for as long as the customer's credit balance with ALPLA is in excess of the credit limit from time to time in force in respect of the customer.

### § 2 Quotation, acceptance, order confirmation

- (1) ALPLA's quotations are subject to a time limit, the length of which shall be stated on the quotation.
- (2) ALPLA accepts orders by confirmation of the order in writing (including by fax and email). Should ALPLA's order confirmation deviate from the conditions of an order, the legal transaction shall be performed under ALPLA's conditions, unless the customer objects in writing immediately after receipt of the order confirmation.

### § 3 Price

- (1) All prices are quoted net ex works in the currency of the country in which the supplying factory of ALPLA

is located. Unless otherwise agreed, the prices valid on the day of delivery shall apply.

- (2) If prices have been agreed and the costs on which these prices were based change, ALPLA is entitled to adjust the prices in accordance with the change in costs (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the customer, or any delay caused by any instructions of the customer or failure of the customer to give ALPLA adequate information or instructions.
- (3) If delivery is carried out at a later date due to circumstances within the customer's control, ALPLA shall be entitled to offset the resulting higher costs with correspondingly higher prices. This shall not affect ALPLA's right to compensation for loss due to other causes.
- (4) The customer shall bear all taxes, customs duties and other charges which it has to pay upon receipt of the delivery, unless ALPLA has undertaken in writing to assume these charges and unless otherwise stated all prices will be quoted excluding VAT and ALPLA shall be entitled to charge VAT in addition at the standard rate then in force.

### § 4 Place of performance, delivery

- (1) The place of performance is the respective supplying factory of ALPLA.
- (2) Dispatch and transport take place for the account and at the risk of the customer. As soon as delivery has been made at the place of performance, the risk passes to the customer. Should the customer not accept the delivery, it is in default of acceptance. Furthermore, ALPLA's delivery is deemed to have been made in this case and ALPLA is entitled to store the goods at the customer's expense. The storage costs incurred shall be immediately refunded to ALPLA.
- (3) ALPLA is entitled to partial deliveries, subject to these conditions in their entirety.
- (4) Should ALPLA be unable to deliver on the agreed date due to unforeseen circumstances beyond its control (force majeure, suppliers' delivery delays, operating defects or interruptions through no fault of its own, transport delays, shortage of raw materials or energy through no fault of its own, etc.), ALPLA shall be entitled to deliver on the earliest possible date, provided the customer is able to accept delivery on this date. Otherwise, ALPLA shall be entitled to withdraw from the contract. In other cases of delayed delivery, ALPLA shall only be liable in the event of its own gross negligence and intent.
- (5) If the customer is not granted an import licence, this shall not discharge him from performance.

## § 5 Warranty and liability

- (1) Subject to the following provisions ALPLA warrants that the Goods will correspond with their specification at the time of delivery and for six months thereafter.
- (2) The above warranty is given by ALPLA subject to the following conditions:
  - (i) ALPLA shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the customer or any Supply Specification signed on behalf of the customer;
  - (ii) ALPLA shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working/usage conditions, failure to follow ALPLA's instructions (whether oral or in writing), misuse or alternation or repair of the Goods without ALPLA's approval;
  - (iii) ALPLA shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
  - (iv) The above warranty does not extend to parts, materials or equipment not manufactured by ALPLA, in respect of which the customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to ALPLA.
- (3) Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (4) Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the customer are not affected by these Terms.
- (5) A claim by the customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the customer) be notified in Writing to ALPLA within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after discovery of the defect or failure, if delivery is not refused, and the customer does not notify ALPLA accordingly, the customer shall not be entitled to reject the Goods and ALPLA shall have no liability for such defect or failure, and the customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- (6) Without prejudice to any other provision of these Terms, ALPLA's obligations in respect of defective Goods are subject to:
  - (i) it being shown to ALPLA's satisfaction that the defect in question is due solely to faulty manufacture by ALPLA; and
  - (ii) the customer returning the Goods to ALPLA within 7 days of the defect being discovered, with particulars of the date and number of the original order and a full description of the nature of the defect
- (7) Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to ALPLA in accordance with these Terms and clause 5.6 has been satisfied, ALPLA may replace the Goods (or the part in question) free of charge or, at ALPLA's sole discretion, refund to the customer the price of the Goods (or a proportionate part of the price), in which case ALPLA shall have no further liability to the customer.
- (8) Except in respect of death or personal injury caused by ALPLA's negligence, or liability for defective products under the Consumer Protection Act 1987, ALPLA shall not be liable to the customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at Common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of ALPLA, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the customer, and the entire liability of ALPLA under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms,
- (9) ALPLA shall not be liable to the customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of ALPLA's obligations in relation to the Goods, if the delay or failure was due to any cause beyond ALPLA's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond ALPLA's reasonable control:
  - (i) Act of God, explosion, flood, tempest, fire or accident;
  - (ii) war or threat of war, sabotage, insurrection, civil disturbance or requisition or act of terrorism;
  - (iii) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - (iv) import or export regulations or embargoes;
  - (v) strikes, lockouts or other industrial actions or trade disputes (whether involving employees of ALPLA or of a third party);
  - (vi) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - (vii) power failure or breakdown in machinery.
- (10) Nothing in these Terms is intended or shall be construed to exclude or limit liability for death or personal injury caused by ALPLA's negligence.

## § 6 Retention of title

- (1) ALPLA shall retain title to the delivered object of the contract (goods subject to retention of title) until fulfilment of all duties incumbent upon the customer, in particular until payment of the purchase price in full.
- (2) The customer shall be entitled to resell the goods subject to retention of title. The entitlement shall

cease if the customer defaults on payment or defaults on any obligation related to payment or ALPLA believes on reasonable grounds it may do so.

- (3) Until such time as the property in the Goods passes to the customer (and provided the Goods are still in existence and have not been resold), ALPLA may at any time require the customer to deliver up the Goods to ALPLA and, if the customer fails to do so forthwith, enter on any premises of the customer or any third party where the Goods are stored and repossess the Goods. The customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of ALPLA, but if the customer does so all moneys owing by the customer to ALPLA shall (without limiting any other right or remedy of ALPLA forthwith become due and payable.
- (4) Should ALPLA make use of its reserved ownership of the products subject by taking back the reserved property, ALPLA shall be entitled to sell the products subject to retention of title or to have these products auctioned free-hand. The products subject to retention of title are retained for the proceeds thereby gained, but at no more than the price originally agreed. ALPLA reserves the right to claim for damages.

## § 7 Payment and default

- (1) The place of performance for payment is the respective supplying factory of ALPLA.
  - (2) Bills of exchange and cheques are accepted only for the purposes of payment and on agreement in writing.
  - (3) The purchase price shall be paid in full within 30 days of the date of the invoice.
  - (4) In the event that the payment is not made when due, ALPLA is entitled to:
    - (i) delay performance of its obligations until the outstanding payment has been made, claim an appropriate extension of the delivery or performance deadline, demand payment of the entire outstanding amount;
    - (ii) offset all dunning and collection costs and the statutory default interest calculated at 7 percentage points above the three-month EURIBOR rate; or
    - (iii) in the case of non-compliance with an additional period of time of reasonable length, withdraw from the contract, whereby ALPLA shall also be entitled to withdraw from the contract as a whole in the case of divisible delivery. Should ALPLA withdraw, the customer shall pay ALPLA an immediate cancellation charge of 10% of the price and reimburse any losses above this.
  - (5) Should judicial execution be levied upon the customer's assets, or if ALPLA on reasonable grounds is in doubt concerning the customer's ability to pay, ALPLA shall be entitled to
    - (i) demand all accounts receivable immediately, regardless of their due date;
    - (ii) withhold all deliveries from contracts not yet fulfilled and make deliveries only against advance payment. Should the customer refuse to pay in advance, ALPLA shall be able to
- withdraw from the contract and also claim compensation for damages.
- (6) Should the customer be in default of acceptance, payment is due immediately.
  - (7) Even if originally allocated elsewhere, payments are always calculated on the basis of the oldest debt and the interest and costs incurred.

## § 8 (Moulding) tools

- (1) Unless otherwise agreed, ALPLA shall remain the owner of the moulds it has produced or which have been commissioned from a third party for the customer. Should the customer become the owner of the moulds, ownership shall be transferred to him only on full payment of the purchase price.
- (2) By express agreement and as long as the customer discharges its payment and acceptance obligations, moulds shall be used only for the customer's orders.
- (3) The price for moulds includes the costs of a one-off sampling process, but not the costs of testing and tooling fixtures or the costs of modifications initiated by the customer.
- (4) ALPLA is obligated to replace moulds only if their initial design does not date back more than three years, the forms are required to fulfil a delivery volume warranted to the customer, and the customer discharges its payment and acceptance obligations.
- (5) ALPLA shall keep moulds for two years beyond the last delivery from the moulds. ALPLA shall inform the customer prior to disposal of a mould.
- (6) Should a contract end before the moulds are repaid, the customer shall pay the redemption amount still outstanding.
- (7) For damage to moulds owned by the customer, ALPLA shall be liable only in the event of wilful default or gross negligence, nor shall ALPLA be liable for these moulds accidentally perishing. ALPLA shall insure these moulds at the customer's request. The costs of doing so shall be borne by the customer, as are the costs of maintaining and servicing these moulds.
- (8) Should the customer not collect moulds belonging to him within a reasonable period of time after the contract ends, ALPLA shall be entitled to store or dispose of the moulds at the customer's expense. ALPLA shall be entitled irrespective of this to keep moulds owned by the customer until the customer discharges in full all obligations arising from the contract and incumbent upon it.
- (9) Unless otherwise agreed by ALPLA in writing, ALPLA reserves the right to make a separate charge to the customer in respect of all or a proportion of the cost incurred by ALPLA of manufacturing or otherwise obtaining any moulds, tools or other items required for the proper execution of the order received from the customer ("Special Items"). Except where clause 9.2 below applies, such Special Items shall at all times remain the sole and exclusive property of ALPLA and will be retained by ALPLA for a reasonable time in anticipation of the receipt of further orders from the customer, but at its sole discretion and without incurring any liability whatsoever to the customer, ALPLA may dispose of such Special Items at any time by sale or otherwise.
- (10) Where ALPLA has agreed in any quotation or acceptance of the customer's order to sell any Special

Items to the customer, ALPLA shall sell and the customer shall purchase the Special Items upon and subject to these Terms as if, for the purposes of these Terms, the Special Items were Goods and the charges for the Special Items were the price of the Goods, except as such Terms are varied as follows:

- (11) ALPLA may invoice the customer for the price of the Special Items upon completing their manufacture or prior to obtaining them, as applicable, and may retain the Special Items at its premises for the purposes of fulfilling the customer'

## § 9 Place of jurisdiction and applicable law

- (1) All legal relations between ALPLA and the customer are subject to the national substantive law applicable for ALPLA's respective supplying factory in the case of ALPLA UK that of England and Wales. The UN Convention on Contracts for the International Sale of Goods shall not apply.
- (2) The exclusive place of jurisdiction for disputes within the scope of the Lugano Convention or of the European Jurisdiction and Enforcement Regulation is the court with jurisdiction over ALPLA's respective supplying factory.
- (3) It is agreed that the international court of arbitration of the Chamber of Commerce of Austria in Vienna shall be responsible for all cases outside the scope of this jurisdiction. The place of arbitration shall be Vienna, Austria. The language of arbitration shall be German. If the contract is drawn up in a language other than German, English shall be the language of arbitration.
- (4) ALPLA is, however, entitled in all cases to bring an action against the customer before another competent court.

## § 10 Reusable packaging

- (1) Reusable packaging is and remains the property of ALPLA. The customer shall be liable for any damage or loss to this. ALPLA alone shall decide whether reusable packaging is damaged, at its own discretion.
- (2) The customer shall return the reusable packaging to ALPLA without request after emptying it. Should insolvency proceedings be opened concerning the customer's assets or the business relationship end for any reason whatever, the customer shall likewise return the reusable packaging without request.
- (3) The customer shall be charged retro-actively each quarter for damaged and lost reusable packaging and reusable packaging not returned in due time. Should insolvency proceedings be opened concerning the customer's assets or the business relationship end for any reason whatever, the costs of damaged and lost reusable packaging and reusable packaging not returned in due time shall be settled immediately. Reusable packaging placed to account shall be paid for within 30 days of the date of invoice without any deductions.

## § 11 Insolvency of the customer

- (1) This clause 11 applies if:
  - (i) the customer makes a voluntary arrangement with its creditors or (being an individual

or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

- (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the customer; or
  - (iii) the customer ceases, or threatens to cease, to carry on business; or
  - (iv) ALPLA reasonably apprehends that any of the events mentioned above is about to occur in relation to the customer and notifies the customer accordingly; or
  - (v) the customer resolves to petition the courts for the appointment of an administrator, of which event the customer undertakes to immediately notify ALPLA.
- (2) If this clause applies then, without limiting any other right or remedy available to ALPLA, ALPLA may cancel the Contract or suspend any further deliveries under the Contract without any liability to the customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## § 12 General

- (1) ALPLA is a member of a group of companies, and accordingly ALPLA may perform any of its obligations or exercise any of its rights under the Contract by itself or through any other member of such group, provided that any act or omission of any such other member shall be deemed to be the act or omission of ALPLA.
- (2) A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and where given by post shall be sent by registered post (or international equivalent). A notice given by post which is not returned to the sender as undelivered shall be deemed to have been given on the second day after the envelope containing it was so posted; and proof that the envelope containing any such notice was properly addressed, and sent by first class, pre-paid registered post, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given. A notice or other Document sent by facsimile transmission shall be deemed to have been duly given on the date of transmission provided no answer back is received and a notice or other Document sent by electronic mail shall be deemed to have been duly given upon its receipt into the mailbox of the addressee (whether or not it has been read).
- (3) The customer is not entitled to offset any claims against ALPLA with claims for payment against it by ALPLA. The customer has no right of retention.
- (4) The customer is not entitled to assign its accounts receivable on delivery of the object of the contract to another party.
- (5) Any right of rescission of a contract on the grounds of error by the customer shall be excluded to the extent permitted by law.

- (6) Documents or information concerning ALPLA, its products, sales partners or other customers, which are made available to the customer or from which the customer gains other knowledge may not be passed on to third parties, in particular not to rival companies or be made public in any other way. This applies analogously to documents such as samples, drawings, drafts, cost estimates or advertising material which are passed on to the customer or on the basis of which the customer acquires other information. ALPLA retains all rights to such documents.
- (7) The customer shall guarantee that no third party rights pertain to the drawings, sketches, models, etc. which it provides. It shall indemnify ALPLA and hold it harmless in respect of all claims arising from a breach of such rights and shall reimburse ALPLA with all costs incurred in this regard. If such rights are asserted, ALPLA is entitled to withdraw from the contract without setting a time extension and to immediately suspend deliveries, without checking the legal situation and without the customer being entitled to assert claims against ALPLA.
- (8) Should any provisions of the contract be or become invalid or unenforceable, this shall not affect the validity of the rest of the contract including the remainder of the provision affected.
- (9) If the contract is also drawn up in English, the English text shall apply for the interpretation of the contract and its terms and conditions.