

## General Terms and Conditions of Sale

Sherman, 2012-03-07

### § 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. Submission of an order or acceptance of delivery shall constitute acceptance of these conditions in every case. Should the terms and conditions contained in the Sales Conditions deviate in any manner from the terms and conditions contained in the customer's order submission documents, the transaction shall be governed solely and exclusively by the Sales Conditions, ALPLA expressly objects to the inclusion of any such additional or different terms and conditions in the contractual relationship between the parties, and acceptance of any product order by ALPLA is expressly conditioned on the customer's agreement to be bound by the Sales Conditions.

### § 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. 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 on in the quote change, ALPLA is entitled to adjust the prices in accordance with the change in costs as specified in the quote. ALPLA shall give the customer written notice of any such price changes. The price change will then be effective for all orders/shipments made after the date the notice is given.
- (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.

### § 4 Place of performance, delivery

- (1) The place of performance is the respective supply 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, the customer is in default of acceptance. If the Customer is not accepting delivery subject to other provisions contained in the Sales Conditions regarding non-confirming goods, ALPLA will have all remedies available under the Sales Code, including, without limitation, recovery of the purchase price from the customer. 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 as soon as reasonable practicable, (provided the customer is able to accept delivery on this date). In such event, the customer should be required to reasonably cooperate with ALPLA with respect to such delivery. Otherwise, ALPLA shall be entitled to terminate the contract. In other cases of delayed delivery, ALPLA shall be liable for delivery delays only in the event of its own gross negligence or willful misconduct.
- (5) If the customer is not granted an import licence, this shall not discharge him from performance.

### § 5 Warranty and liability

- (1) ALPLA guarantees that the goods conform to the agreed specifications. The customary tolerances shall apply.
- (2) The customer shall inspect the goods carefully on receipt and shall notify any defects in writing within ten days of handover by submitting a sample of the faulty goods; otherwise any claims, including claims for consequential loss, shall be excluded. If a defect is notified in due time, ALPLA shall, at its discretion, provide a remedy by improving, replacing or taking back the faulty goods and crediting the purchase price or reducing the price. The customer shall have no other rights.
- (3) The warranty period is 6 months and begins as soon as the goods are tendered for delivery to the customer at the place of performance. ALPLA DISCLAIMS ALL WARRANTIES (INCLUDING THE

IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE). THE WARRANTY PERIOD ONLY APPLIES TO ALPLA'S WARRANTY THAT THE GOODS WILL COMPLY WITH THE AGREED UPON SPECIFICATIONS.

- (4) The customer is not entitled to withhold payment against warranty or other claims, of whatever kind.
- (5) Notwithstanding anything to the contrary contained in the Sales Conditions, ALPLA will only be liable for damages to the extent of its willful misconduct or gross negligence. ALPLA SHALL NOT BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND RETURN COSTS. ALPLA's liability for damages shall be limited to the lesser of the replacement cost or USD 5 million. ALPLA shall meet contractor's product liability claims up to the lesser of the replacement costs or to USD 5 million.
- (6) Returning goods not meeting specifications requires the prior explicit consent of ALPLA. If goods are returned without prior consent, ALPLA is entitled to refuse acceptance of the goods returned and to return them to the customer at the latter's expense.
- (7) Samples may differ in quality, properties, shape, design and functionality from the delivery. ANY SAMPLE PROVIDED WILL BE FOR THE CONVENIENCE OF THE CUSTOMER ONLY AND SHALL NOT BE DEEMED TO BE A WARRANTY WITH RESPECT TO THE ACTUAL GOODS TO BE DELIVERED TO THE CUSTOMER.

## § 6 Payment and default

- (1) The place of performance for payment is the respective supplying factory of ALPLA.
- (2) The purchase price shall be paid in full within 30 days of the date of the invoice.
- (3) In the event that the payment is not made when due, ALPLA is, in addition to and not in lieu of any other remedies under the Sales Code, entitled to:
  - 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,
  - offset all dunning and collection costs and an additional monthly interest rate of 1.5%, or
  - in the case of non-compliance with an additional period of time of reasonable length, terminate the contract, whereby ALPLA shall also be entitled to terminate the contract as a whole in the case of divisible delivery. Should ALPLA terminate the contract the customer is to pay ALPLA any open amortization as defined in the quote. Any outstanding payments are due immediately at termination.
- (4) Should judicial execution be levied upon the customer's assets, or if ALPLA is in doubt concerning the customer's ability to pay, ALPLA shall be entitled to:
  - demand all accounts receivable immediately, regardless of their due date,

- 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 terminate the contract and also claim compensation for damages.

- (5) Should the customer be in default of acceptance, payment is due immediately.

## § 7 (Moulding) tools

- (1) Unless otherwise agreed, ALPLA shall remain the owner of the tools it has produced or which have been commissioned from a third party for the customer. Should the customer become the owner of the tools, ownership shall be transferred to him only on full payment of the purchase price.
- (2) ALPLA is obligated to replace tools only if their initial design does not date back more than three years, the tools are required to fulfil a delivery volume warranted to the customer, and the customer discharges its payment and acceptance obligations.
- (3) ALPLA shall keep tools that are owned by ALPLA for two years beyond the last delivery from the tools. ALPLA shall inform the customer prior to disposal of a tool.
- (4) Should a contract end before the tools are repaid, the customer shall pay the redemption amount still outstanding.
- (5) Should the customer not collect tools 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 tools owned by the customer until the customer discharges in full all obligations arising from the contract and incumbent upon it.

## § 8 Place of jurisdiction and applicable law

- (1) This Agreement shall be deemed performed in its entirety in the State of Georgia and shall be interpreted exclusively in accordance with the laws thereof. The parties agree to the exclusive jurisdiction of the courts sitting in Georgia, USA.

## § 9 Reusable packaging

- (1) If not otherwise stated 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.

## § 10 Final provisions

- (1) 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.
- (2) The customer is not entitled to assign its accounts receivable on delivery of the object of the contract to another party.
- (3) Rescission of a contract on the grounds of error by the customer shall be excluded.
- (4) 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 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.

- (5) 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.
- (6) Should any provisions of the contract be or become invalid or unenforceable, this shall not affect the validity of the rest of the contract. These invalid or unenforceable provisions shall be deemed to have been replaced with valid and enforceable provisions which most closely reflect the intended economic purpose (severability clause).