



## General Terms and Conditions of Sale

### 1. Scope of the General Terms and Conditions

- (1) These General Terms and Conditions shall only apply in relation to any companies, corporate legal entities, segregated assets or other bodies organized pursuant to public law, it is inapplicable in relation with consumers.
- (2) All product deliveries and services provided by ALWA shall be governed exclusively by these General Terms and Conditions. Any general terms and conditions provided by ALWA's customers shall be inapplicable to ALWA's product deliveries and services - even if ALWA carries out the deliveries in knowledge of the deviating terms or accepts payments without reservation. However, the priority of the individual agreement shall apply; this means that if ALWA specifically agrees on something with the customer, this shall also apply if something else is stated in these GTCs.

### 2. Conclusion of Contracts and Catalog Descriptions

- (1) These General Terms and Conditions shall become an integral part of any individual contract within their scope, whether the contract was formed by an offer from ALWA followed by an acceptance letter or by a purchase order of ALWA's customer followed by ALWA's confirmation, or in any other form.
- (2) Unless customer's order fully conforms with the content of the offer issued by ALWA, including these General Terms and Conditions, purchase orders will only be binding upon ALWA's written confirmation and shall be subject to these General Terms and Conditions.
- (3) Oral agreements are only valid if the parties confirm them in writing immediately but no later than within four (4) weeks of their making.
- (4) Product or service presentations on the part of ALWA (for example in brochures and catalogs) are not binding offers, but are subject to change and non-binding. This shall not apply if they are expressly marked as binding or contain a specific acceptance period. They thus constitute an invitation to place an order. The information contained therein are approximate values which comply with customary industry practice. Illustrations and drawings and the like contained therein are only approximately authoritative. Anything to the contrary shall only apply if the customer proves that ALWA expressly designates catalog information, drawings or illustrations as binding in writing or explicitly states them in writing in an offer or order confirmation.

### 3. Pricing, Price Changes

- (1) ALWA's prices are quoted in Euro and are net prices ex works (EXW according to ICC INCOTERMS 2020), exclusive of value added tax, packaging, freight, postage, customs and other duties or public charges and insurance. Costs for additional services are not included.
- (2) ALWA's price calculation are based on the information provided by the customer regarding quantities and time periods and shall apply to the scope of services and scope of delivery specified in ALWA's order documents. Alterations in quantity or time periods may result in corresponding changes in the invoices, both in favor or to the disadvantage of the customer.
- (3) In case of long-term contracts (contracts with a term of more than twelve (12) months) ALWA's tender prices shall apply, unless otherwise agreed, for one (1) year from the start of series delivery (if necessary also under special release). For the period thereafter, ALWA shall renegotiate the prices with the customer taking into account the development of the world market prices, in particular any significant changes in the cost of wages, raw materials, material or energy costs.
- (4) Unless otherwise specified, all individual framework orders for future on-call orders ("long-term orders") shall be considered binding orders for any amounts specified therein to be delivered within a twelve (12) month period. Each individual call order is considered a separate contract governed by the framework orders. Each call order will be made in writing no less than two (2) months prior to the desired delivery time. ALWA will confirm the order accordingly. Additional costs resulting from orders placed less than two (2) months prior to the desired delivery time or changes made by the customer in such orders with regard to quantity or time periods shall be borne by ALWA's customer. In cases of doubt, the re-calculation for additional costs shall be

based upon the price calculations underlying the framework order. If the customer can show that no definite amount was specified, ALWA may use quantities of comparable past time periods for the calculation of the specified amount. In the event ALWA's customer does not issue call orders for the full amounts specified or the amounts which could reasonably be expected, ALWA will be entitled to adjust its prices accordingly or claim damages. In the event ALWA's customer orders more than the expected or specified quantity, ALWA will in turn reduce prices accordingly so long as the customer announced the increased quantities at least three (3) months prior to delivery.

#### **4. Termination**

- (1) A contract between the parties ends with limitation, when performance was fully completed, a mutual cancellation has been agreed upon or it was terminated in accordance with the law.
- (2) Unlimited and long-term contracts may be terminated with six (6) months' notice to the end of the month. Any amount specified in the long-term order shall be nonetheless purchased by the customer at the end of the duration of the long-term order.

#### **5. Non-Disclosure**

- (1) Each party shall use all "Confidential Information", i.e. all documents (including samples, models and data) as well as any information gained in the course of the business relationship, all business and trade secrets, industrial property rights and inventions as well as know-how and technologies, irrespective of whether they are obtained in physical, written, electronic or oral form, solely for the joint purpose and shall keep them secret from third parties with the same care as its own corresponding Confidential Information if the other party designates them as confidential or has an obvious interest in keeping them secret. This obligation shall commence upon first receipt of the Confidential Information and shall continue indefinitely beyond the end of the business relationship.
- (2) This obligation shall not apply to Confidential Information which is or becomes generally known or publicly accessible, or which was already demonstrably known to the party upon receipt without the party being under an obligation of secrecy, or which is subsequently transmitted by a third party authorized to disclose it, or which was or is developed by the receiving party without exploitation of Confidential Information of the other party which is to be kept secret.
- (3) Affiliated companies of ALWA as defined in §§ 15 et seqq. AktG (German Stock Corporations Act) shall not be considered third parties for the purpose of the foregoing regulations.

#### **6. Intellectual Property of Designs and Descriptions**

- (1) If one party discloses any drawings or technical documentation regarding the products to be delivered or the manufacturing process to the other party, such disclosing party shall remain - without prejudice to the rights of third parties - the sole proprietor of any intellectual property in connection with such drawing or technical documentation or the development thereof. Any existing copyrights or intellectual property rights shall remain unaffected; rights of use shall remain reserved, unless otherwise agreed.
- (2) Drawings or technical documentation may not be made accessible to third parties unless the disclosing party expressly gives its prior written consent to such disclosure. Drawings, technical descriptions and designs are subject to non-disclosure described in clause (5) of these General Terms and Conditions without any further designation.

#### **7. Prototypes and Operating Equipment**

- (1) The prices of sample products (prototypes) and operating equipment (tooling, test equipment, molds, master plates, appliances and machine equipment etc.) will, unless otherwise agreed in writing, be invoiced in addition to the goods to be delivered. This shall also apply to operating material produced by third parties.
- (2) ALWA shall only bear the costs for maintenance in the sense of preventive maintenance until the respective agreed output quantity or service life is reached and proper storage, as well as the risk of damage to or destruction of the equipment. If corrective maintenance of an item of equipment becomes necessary, ALWA shall bear the costs for this only if ALWA is at fault and has acted culpably.
- (3) Should a customer cancel or postpone performance in the course of the manufacturing process, all production expenses for the samples or manufacturing equipment incurred up to that point shall be borne by the customer.
- (4) After full payment has been made by the customer, all equipment shall still remain in ALWA's possession until complete mutual performance of the contract. Thereafter, the customer may request the repossession of the operating equipment.

- (5) After complete mutual performance, ALWA will store the operating equipment free of charge for the customer for three (3) years. After this date, ALWA may request instructions from the customer in writing concerning the further use of the operating equipment. The customer shall respond within six (6) weeks. ALWA's duty of storage ends automatically within these six (6) weeks if no statement is made.
- (6) Customer-specific operating equipment may not be used for supplying third parties, unless prior written consent of the customer was given.

#### **8. Payment Terms**

- (1) Invoices shall become due for payment after fourteen (14) days from receipt of invoice, unless the parties have agreed otherwise in writing.
- (2) Reasonable partial deliveries within the meaning of clause 9 (1) may be invoiced in addition to the delivered part
- (3) In case of delayed payments, ALWA may charge interest on arrears in the amount of nine (9) percentage points p.a. above the respective base interest rate of the European Central Bank. Any additional rights to claim damages for delay shall remain unaffected by the foregoing.
- (4) One third of the price for operating equipment may be invoiced upon order confirmation, the other two thirds will fall due upon delivery or completion.
- (5) In the event ALWA indisputably supplied defective goods, the customer shall nevertheless be obliged to pay for the non-defective portion of the respective delivery, unless the customer can show that such partial delivery is of no interest whatsoever to the customer.
- (6) Any offsetting or retention shall be excluded. Excluded from this prohibition of set-off and retention are both undisputed and legally binding claims as well as counterclaims from the same contractual relationship.
- (7) In the event of any delay in payment, ALWA may, after giving notice in writing to the customer, suspend its obligations under the same contractual relationship, particularly discontinue further deliveries, until all payments have been received.

#### **9. Delivery**

- (1) Partial deliveries are permissible to a reasonable extent. A reasonable scope shall be deemed to exist in any case if ALWA and the Customer have agreed on this without reservation.
- (2) Production-related long or short deliveries may be made within a tolerance of five (5) percent of the total order quantity.
- (3) Unless otherwise agreed, ALWA shall deliver according to EXW (ICC Incoterms 2020).
- (4) Compliance with the delivery date or delivery period shall be based on ALWA's notification of readiness for dispatch or collection.
- (5) The customer shall collect products without delay upon such notification. Failure to collect shall entitle ALWA at its discretion to either store the products or dispatch the products at the customer's risk and expense.
- (6) In case the customer does not dispatch in time or at all, ALWA may select, in the event that the choice is made to ship the goods, the transport method and routing at the customer's expense.

#### **10. Transfer of Risk**

- (1) ALWA is under no obligation to provide for any equipment for loading or transport or assist the haulage contractor/freight carrier.
- (2) The risk of loss shall pass to the customer at the time products are surrendered to railway, agent or freight carrier, or at the time initially stored, but in any case no later than the departure from the factory or warehouse; this also applies if ALWA undertook delivery.

#### **11. Delay in Delivery**

- (1) Unless the parties have deviated from EXW (ICC Incoterms 2010) in writing, any lead times or delivery periods will commence at the time the order confirmation is issued by ALWA.
- (2) Should ALWA anticipate a delay in the delivery of the goods, ALWA will immediately inform the customer in writing of the reasons therefor, and if possible indicate the likely delivery date.
- (3) In the event of delivery being delayed due to one of the circumstances set forth in Article 15 below, or as a result of any action or omission on the part of the customer, an extension of the delivery period appropriate under the circumstances shall be considered granted.
- (4) Should ALWA's delivery be delayed and should a customer suffer damages as a direct result thereof, the customer is entitled to claim liquidated damages. Liquidated damages are calculated by allowing one half per

cent of the net value of the (partial) shipment for each full week of delay to a maximum of five (5) percent of the net value of that (partial) shipment.

## **12. Reservation of Title**

- (1) ALWA reserves transfer of title in respect of the goods supplied until such time as all claims of the supply contract with the partner have been fully met.
- (2) If the goods are transported across borders, and if the jurisdiction in which the goods are then located require anything further for the validity or effectiveness of the reservation of title, the customer shall so inform ALWA and, if necessary, support ALWA with any actions necessary to preserve ALWA's retention of title.
- (3) The customer may neither pledge goods nor transfer ownership of them as security in contravention of ALWA's reservation of title or to ALWA's detriment. It is obliged to protect ALWA's rights if goods which are subject to reservation title are resold on credit.
- (4) In the event of any seizure, lien or enforcement of third parties with regard to the goods owned by ALWA, any claims transferred to ALWA or to any other securities, the customer shall notify ALWA immediately and hand over all documents necessary for an intervention with such action. This shall also apply in the event of any other threatened frustration of the purpose of such securities.
- (5) If the value of the existing securities exceeds the secured claims in total by more than ten (10) per cent, ALWA releases the exceeding securities of ALWA's choice.

## **13. Defects Liability**

### **a) General Regulation**

- (1) Upon delivery to the customer or to the third party designated by the customer, the delivered goods shall be inspected carefully without undue delay. They shall be deemed to have been accepted if ALWA has not received a written notice of defect with respect to obvious defects or such defects which would have been apparent upon prompt, careful examination within seven (7) business days after delivery of the goods or after discovery of the defect or any earlier time at which the defect would have been apparent to the customer upon normal use of the goods without closer examination. Upon ALWA's request, the rejected goods shall be returned to ALWA freight prepaid.
- (2) If a justified and timely defect complaint report has been received, ALWA shall at its discretion either repair the article complained or supply a replacement in due time.
- (3) Should ALWA neither repair nor replace the defective product within a reasonable time in accordance with the terms of the contract, the customer may set a final written deadline. In the event of this period expiring without result, the customer may demand reduction of the price, withdraw from the contract, or carry out the remedy itself or by having the necessary remedy carried out by a competent third party at ALWA's cost.
- (4) Reimbursement of costs shall be excluded insofar as the expenses increase because the delivery was taken to another location, unless this was expressly agreed in writing.
- (5) Claims for product defects shall become time-barred after twelve (12) months from the date of delivery. This shall not apply where the law determines longer periods of time as mandatory, particularly for defects in a building and in a product which has been used in accordance with its customary form of use for a building and has caused the latter to be defective. Unless otherwise agreed in writing, the limitation period for material defect claims shall be governed by the law.

### **b) Samples / Initial Samples**

- (1) If acceptance of a sample (initial sample) for production was agreed upon, the customer shall not be entitled to base a complaint on such sample after their acceptance if and to the extent the cause for the complaint could have been discovered in the course of a careful inspection as customary in the respective industry.
- (2) The customer has to inform ALWA's specified department of any defects discovered at any point immediately upon becoming aware of them in writing.
- (3) ALWA shall be given the opportunity to investigate any alleged defect in the samples. Rejected samples shall be returned to ALWA.

### **c) Serial Deliveries**

- (1) The quality of the goods is only based on their conformance with the agreed technical supply specifications. Any additional purpose, such as but not limited to the fitness for a certain purpose, use or integration into a different product, is not a contractual obligation of ALWA.
- (2) The conformity of the goods shall be determined by their condition at the time risk of loss passes.

- (3) Any material defects arising from unsuitable or improper use, defective assembly or operation by the customer or third parties, normal wear and tear, defective or negligent handling, shall not be considered a material defect. The same applies for defects arising as the consequences of unsuitable modifications or repairs undertaken by the customer or third parties without our approval.

#### **14. Miscellaneous, Claims, Liability**

- (1) Preceding limitations of liability shall not apply in case of intent and gross negligence on the part of ALWA and its legal representatives, vicarious agents or executives (hereinafter under this clause collectively: ALWA) as well as in case of culpable breach of material contractual obligations. In the event of culpable breach of material contractual obligations, ALWA shall only be liable - except in cases of intent or gross negligence - for reasonably foreseeable damage typical for the contract.
- (2) Furthermore, the limitation of liability shall not apply in cases of mandatory liability under the Product Liability Act. It shall also not apply in the event of injury to life, body or health, which is based on an intentional or negligent breach of duty by ALWA, as well as in the absence of expressly guaranteed characteristics of quality, if and to the extent that this was precisely intended to protect the contracting party against damage which did not occur to the delivered goods themselves.
- (3) Insofar as our liability is excluded or limited, this shall apply accordingly to the personal liability of ALWA's employees, workers, other personnel, legal representatives and vicarious agents.
- (4) The statutory provisions relating to burden of proof shall remain unaffected.

#### **15. Impediment & Force Majeure**

- (1) Force Majeure, industrial labor disputes, disturbances, official measures, non-arrival of deliveries from our suppliers and other unpredictable, unavoidable and serious events will release the contracting partners from their duty to perform their respective obligations for the duration of the disturbance and to the extent of their effect. This even applies in case these events occur at a time during which the respective contracting partner is in default, unless such default was caused intentionally or due to gross negligence.
- (2) The contracting parties are obliged, as can reasonably be expected, to provide the necessary information immediately and in good faith to adjust their obligations to the changed conditions.
- (3) Should the event continue, and should such continuance impair a party's interest in performance fundamentally, or should such continuance destroy a party's interest in performance completely, such party has the right to cancel the contract.
- (4) This clause also applies to the failure of ALWA's suppliers to deliver if this is directly or indirectly due to one of the reasons mentioned in (1) or by applying the long version of the ICC clause on force majeure mentioned in (5).
- (5) In cases of doubt, the requirements for force majeure and the hardship clauses of the International Chamber of Commerce (ICC) shall be deemed agreed between ALWA and the customer. The ICC clause on force majeure is thus included in the long version in the respective contracts in each case. The clause is available at: <https://iccwbo.org/content/uploads/sites/3/2020/03/icc-force majeure-hardship-clauses-march2020.pdf>

#### **16. Miscellaneous**

- (1) For the purpose of these General Terms and Conditions, the term "in writing" shall mean documents transmitted in paper, via postal service, via EDI, WebEDI, E-Mail or facsimile.
- (2) Unless otherwise agreed in writing, the place of performance shall be ALWA's premises.
- (3) For information on the processing of the data of the Customer and its employees, ALWA's data protection information is available at the following link: <https://alwa-gmbh.de/datenschutzerklaerung/>
- (4) The place of jurisdiction for any and all disputes, including any action relating to bills of exchange or checks, shall be ALWA's premises. However, ALWA may also bring an action at the place of business of the customer.
- (5) Should the seat of the customer be outside the Federal Republic of Germany, the exclusive jurisdiction shall rest with an arbitration tribunal in accordance with the following regulation: Any dispute, controversy or claim arising out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be one; The seat of the arbitration shall be Zürich; The arbitral proceedings shall be conducted in English, unless both parties have their seats in German Speaking Countries, in which case the proceedings shall be conducted in German. The contractual relationship and any disputes in relation therewith shall be subject exclusively to the laws of the Federal Republic of Germany, expressly including the United Nations Convention on Contracts for the

International Sale of Goods of 11 April 1980 (CISG-“Vienna Sales Convention”). In the event that the customer has its registered office in a member state of the European Union, German law shall also apply exclusively, including the UN Convention on Contracts for the International Sale of Goods, whereby mandatory provisions of the state in which the customer has its registered office shall remain unaffected.

- (6) Should any regulation in these General Terms and Conditions or of any contract concluded thereunder be, in whole or in part, incomplete, void, inapplicable, or ineffective, the remaining regulations shall remain in full force and effect. The statutory provisions of the relevant law shall apply in lieu thereof. Instead of an incomplete, void or ineffective provision, ALWA and the customer shall negotiate on an effective provision which is comparable to the economic purpose of the incomplete, void or ineffective provision. This shall also apply if the contract contains an omission.

Registered office and address for service:

**ALWA GmbH & Co. KG**

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