

# General Terms and Conditions for installation and service work

Dated: 04/05 These terms and conditions do not apply to business dealings with private persons

## 1. General and validity

- 1.1. All repairs, installation and maintenance work carried out by ALPMA Alpenland Maschinenbau GmbH and LTH Dresden, subsidiary of ALPMA Alpenland Maschinenbau GmbH (hereafter called ALPMA), are to be carried out according to the following conditions. These terms and conditions apply to all services provided by ALPMA in respect to installation, commissioning, acceptance (if due, the statutory regulations for acceptance in the works contract apply), maintenance, servicing, repairs and dismantling of machines and plants. Other business conditions are binding for ALPMA only if agreed individually or if specified in the customer service contract. Any verbal agreements supplementary to the contract and/or these terms and conditions with regard to installation services, as well as any changes to orders, must be confirmed in writing by ALPMA. Delivery of ALPMA machines and equipment is subject to our general terms and conditions for the delivery of machines, plants and accessories.
- 1.2. ALPMA warrants the problem-free function of all installations delivered by ALPMA only if the installation work was performed by an ALPMA installation engineer or by one of our authorised representatives.
- 1.3. ALPMA installation engineers only install machines and plants specified in the contract. In the event that ALPMA installation engineers, after prior agreement with ALPMA, are enlisted to carry out additional work required in conjunction with the installation of our plants, ALPMA can accept no liability for said work.
- 1.4. These terms and conditions also apply to all future business dealings between ALPMA and the customer.

## 2. Installation Work Rates

- 2.1. Installation rates, travel expenses, living expenses and supplementary charges are generally calculated ex works Rott am Inn or Dresden as per agreement.
- 2.2. Normal working hours: - see Appendix - . Applicable public holidays are the paid public holidays of the Federal Republic of Germany and the Free State of Bavaria, or, in the case of LTH, Saxony.
- 2.3. Work that involves overtime and/or working on Sundays will only be permitted in urgent cases and at the specific request of the customer (see point 13).  
Hourly rates, including social charges: - see Appendix -
- 2.4. Surcharges: - see Appendix -
- 2.5. Any taxes or similar fiscal charges, in particular installation wages or living expenses, incurred as a result of installation work carried out at installation sites abroad are to be borne by the customer.
- 2.6. A surcharge will be payable for work performed under particularly difficult, dirty, aggravating or dangerous circumstances. The amount due in this respect is to be agreed between ALPMA and the customer.

## 3. Travelling Expenses

- 3.1. The travelling expenses of the installation staff (including the costs of transport and transport insurance for their personal luggage and tools that are brought along too) will be invoiced according to the outlay of the staff. Also included in the travelling expenses are the standard journeys home during the installation period as well as journeys at Easter, Whitsun and Christmas.
- 3.2. The necessary time spent travelling and waiting will be calculated as working time, without surcharges.
- 3.3. Costs for the use of public transport are generally invoiced.
- 3.4. If the customer provides flight tickets, ALPMA reserves the right to decline to travel with certain airlines.
- 3.5. If the fitter travels with his private motor car or a service vehicle, the driven kilometers will be the basis for the calculation of travelling expenses. Kilometer rates - see appendix.
- 3.6. If the fitter is unable to stay in accommodation near to the installation site, the travelling expenses between his accommodation and the installation site and the time spent travelling (without surcharges) will be invoiced. The travelling hours are regarded as working hours.

## 4. Living Expenses

- 4.1. We will invoice living expenses for food and lodging for each calendar day that the fitter is absent from ALPMA, incl. Sundays and public holidays (see appendix).
- 4.2. The customer must ensure- if specified in the contract - that suitable accommodation with shower and WC (Western European standards) is provided, and that there is sufficient availability of places at which the fitters may dine.
- 4.3. If the installation site is located in such a place where it is impossible for ALPMA staff to find adequate accommodation at the agreed rate of daily living expenses incl. the cost of breakfast and other expenses, (e.g. in spa towns, large cities etc.), the rate of living expenses increases by the additional costs. Our technical staff have to provide receipts of these additional costs for the customer.

## 5. Prices

- 5.1. ALPMA reserves the right to adjust hourly rates and the level of living expenses accordingly in the event of any changes to the cost situation. Additional costs incurred due to customer-specified changes shall be invoiced to the customer.
- 5.2. All amounts stated/calculated are net prices and without VAT.
- 5.3. ALPMA installation and service invoices are payable within 30 days of receipt, without deduction. In the event of failure to pay on the due date, ALPMA shall be entitled to default interest due to late payment as prescribed by law.
- 5.4. If, on completion of the agreement, ALPMA is made aware of circumstances that cast doubt on the creditworthiness of the customer, ALPMA shall be entitled to request surety in the form of a bank guarantee or withdraw from, or terminate, the agreement.

## 6. Preliminary work required to the Customer's personnel prior to installation

- 6.1. If the installation work is to include personnel from the customer company (by agreement) they can be given the appropriate instructions and training at ALPMA. The customer guarantees the quality of said personnel with regard to qualifications and motivation and gives express assurance that the same personnel will subsequently be available for the installation in question. If the customer is unable to provide personnel on the agreed training dates, the training course is still deemed to have taken place and, in the case of so-called "Senior Installations", entitles ALPMA to decline to perform the installation. Any repetition of the course shall be invoiced to the customer and is usually subject to considerable scheduling difficulties. The deadlines for commissioning, acceptance, etc. shall be extended accordingly due to these delays for which the customer is responsible.

## 7. Tools, Equipment and Consumable Goods

- 7.1 Tools and equipment:  
The stated installation rates include – provided that there is no other specific agreement - the provision of standard tools including welding and cutting tools and their accessories, as well as equipment and portable machinery (e.g. a hand drill, welding convertor, pipe cutter). Heavy lifting devices and stationary machinery will be invoiced separately.
- 7.2 Consumable Goods:  
Consumable goods will be invoiced according to the amount used. Welding gases have to be provided by the customer.
- 7.3. All parts of the installation service remain the property of ALPMA until payment has been effected irrevocably, unconditionally and in full. This reservation of title also applies to any future claims from ALPMA against the customer in connection with the business relationship. 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. If "reservation of title" is not recognized as a means of providing security at the location where the subject matter of the contract is located, the means of providing security that comes closest to the meaning of "reservation of title" under applicable law at that location, or represents the typical means of security under that law (e.g. "pledge" or "security interest, attached and perfected") should be agreed. 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.
- 7.4. 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. The customer retains the right to collect the claim to which ALPMA's extended reservation of ownership relates for as long as the customer is not in arrears with payment. 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.
- 7.5. In order to provide security for all claims made against the customer by ALPMA, the customer assign 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.
- 7.6. 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 20 %, ALPMA will release security on request from the customer if there is a case to made of excess security. ALPMA will decide which security can be released.
- 7.7. If the customer should fall into arrears with payments, ALPMA retains the absolute right to enter the customer's building site/production plant and business premises for the purposes of dismantling and removing the subject matter of the contract.
- 7.8. If the customer is in breach of the contract, particularly in terms of the improper handling of the delivered subject matter of the contract or payment arrears, ALPMA is entitled, after giving prior notice, to demand the return of the subject matter of the contract. The demand for the return of the subject matter of the contract will not constitute withdrawal from the contract, unless ALPMA has expressly declared its intention to withdraw from the contract. ALPMA is entitled to sell the subject matter of the contract once it has been returned; the

proceeds from the sale will be credited against the customer's liabilities – less reasonable costs of selling. Until all claims by ALPMA have been fully settled, the customer is required to insure the delivered goods against the risk of loss or deterioration at his own expense.

- 7.9. The customer is required to inform ALPMA immediately of any interference by third parties in the rights of ALPMA and to provide ALPMA with all required information pertaining there to.

## 8. Obligations of the Customer

- 8.1 The customer must provide the installation staff with suitable, theft-proof working and recreation rooms at the installation site, which are equipped with heating, sanitary installations and first aid equipment. Furthermore, a dry, lockable storage room for tools and installation material must be provided in the direct vicinity of the installation site.
- 8.2. If, through no fault of ALPMA, tools or equipment provided by ALPMA are damaged in transit or at the installation site, or if they are lost, the customer undertakes to replace them or make good the damage. This excludes any damage incurred due to normal wear and tear.
- 8.3. The customer shall inform the ALPMA installation manager of all current safety and hygiene regulations pertinent to the installation personnel. Further, the customer undertakes to duly inform the installation manager immediately of any violation of said safety regulations by any member(s) of the installation personnel.
- 8.4 Besides this, the customer is obliged to provide the following technical assistance at his own cost and risk:
- a) a sufficient number of personnel for the amount of time necessary. This personnel must also be prepared to work any overtime necessary. Extra work for the ALPMA staff resulting from a lack of customer personnel is generally invoiced. The customer is obliged to provide insurance of these persons with the appropriate professional association as well as disability and health insurance.
  - b) the necessary energy and water supplies in a sufficient amount, at positions stipulated by ALPMA personnel.
  - c) the carrying out of all excavation, building, foundation, console and scaffolding work, the propping and construction of ceilings and wall openings for the installation of electricity supplies and other necessary work including the provision of all necessary materials.
  - d) the provision of the necessary devices, e.g. fork-lift truck with a min. fork length of 2000 mm, heavy lifting devices, propping timber, wedges, bases, cement, fuel, welding and protective gases, plaster, grease, heating, lighting and transport. Safe and appropriate approaches at the installation site. The necessary supporting strength of the fork-lift truck will be specified by ALPMA
  - e) in addition, any necessary platforms, walkways, steps, ladders or bridges leading to existing installations (which are not already stated in our installation description) are to be provided by the customer.
  - f) the use of the customer's workshop and any lathes and milling machines at any time.
  - g) support of ALPMA with disposal of packaging material.
  - h) free provision of telephone and fax equipment and Internet access, where it is necessary for the smooth running of the installation work.
  - i) provision of materials (e.g. energy and raw materials) and undertaking of all other tasks necessary for installation and the execution of any trials as specified in the contract.
  - j) transport of installation parts at the installation site, protection of the installation site and materials against harmful influences of any kind, cleaning of the installation site. The installation site must be protected against the wind and kept sufficiently warm in order not to impair tasks, such as welding work.
- 8.5 The customer must name a contact person to ALPMA who is responsible for the installation.
- 8.6. If the ALPMA staff travel to the installation site by means of public transport, the customer has to provide a means of transport for them which guarantees a sufficient level of mobility.
- 8.7. Any tools, materials or spares delivered by ALPMA for the support of the installation, start of production or acceptance remains ALPMA's property. As soon as the works are finished the a.m. items will be returned
- 8.7. If repair or maintenance work is to be carried out, the customer undertakes to hand over the plant in a clean and orderly state; personnel are to be made available, in order to enable trial operations.
- 8.8. The customer undertakes to carefully read and observe ALPMA's operating instructions, instructions for use and maintenance instructions.

## 9. Waiting Time

If the start of the installation work and/or its continuation is delayed as a result of the customer having failed to fulfil his obligations, incl. the preparations for the installation, the time spent waiting by the ALPMA fitters will be invoiced to the customer as hours worked. ALPMA staff may not work for other persons or themselves during the time which is spent waiting, and during the remainder of the installation work.

## 10. Constructional Alterations to the Seller's Machines

Alterations to the construction and function of the ALPMA machines may only be made during the installation period after consultation with ALPMA and after having received ALPMA's permission. If this is not the case, ALPMA is not obliged to adhere to its guarantee.

## 11. Exchange of Installation Personnel

ALPMA reserves the right to exchange its installation staff at any time at its own expense. If personnel has to be exchanged due to reasons beyond the control of ALPMA the costs of doing so will be invoiced to the customer.

## 12. Installation Time

- 12.1. The estimated installation time is based on the installation offer provided by ALPMA unless expressly agreed otherwise. The installation time is complied with if, in said period, the installation is completed and is ready for acceptance by the customer and, if so specified in the agreement, the installation is ready for trial operation.
- 12.2 The installation time is extended accordingly in the case of industrial action which is taken, especially in the form of strikes and lock-outs as well as in the case of any unforeseeable obstacles which are beyond ALPMA's control, in as far as these obstacles have considerable influence upon the completion of the installation work. ALPMA will not be liable for the mentioned circumstances if they occur during an existing delay. ALPMA will inform the customer of the beginning and ending of such obstacles as soon as they are able to do so.
- 12.3 Compliance with the installation time assumes fulfilment of the contractual obligations by the customer. These include provision of all necessary plans, documents, licences, releases, permits and receipt of all agreed payments
- 12.4 If a date for the completion of the installation work was agreed, it is up to ALPMA to work the required amount of overtime.
- 12.5. If the customer suffers loss or damage due to a delay in installation for which ALPMA is responsible, the customer shall be entitled, to the exclusion of any further claims, to claim compensation for loss occasioned by delay. This compensation shall be 0.5 % for every full week of delay, but shall not exceed 5 % of the value of the price of the unusable ALPMA-installation section.
- 12.6. If, through no fault of ALPMA, the installation is subject to loss or deterioration, ALPMA shall be entitled to request the price of the installation less the costs of work not carried out. This also applies if the installation should prove impossible through no fault of ALPMA. The customer can request the installation to be repeated if and in as far as this can be reasonably expected of ALPMA, in particular with regard to ALPMA's other contractual obligations. For the repeat installation, payment must be made again to ALPMA on the basis of the contractual price.

## 13. Acknowledgement

The customer or his representative, i.e. the responsible person stated under 8.5, must confirm the hours worked and the materials used by the ALPMA fitters upon completion of the installation works and before their departure, on the work reports provided. Any possible incorrectness must be noted. Should the customer refuse to complete this confirmation, he forgoes the right to object to the invoice. The fitter is to provide the customer with a copy of the work report.

## 14. Commissioning, acceptance

- 14.1. For the purpose of commissioning, the customer undertakes to provide qualified personnel for the control, operation and maintenance of the plant. If personnel have been previously trained for operation by ALPMA, it is imperative that they be made available for commissioning. If only personnel with no training or insufficient training are available, ALPMA reserves the right to decline commissioning of the installation; any subsequent training will be invoiced separately. Any operation of the plant by ALPMA personnel subsequent to commissioning will be invoiced separately.
- 14.2. Until the installation has been accepted, in the case of "Senior installations", ALPMA engineers have sole supervisory authority for all installation procedures. The customer undertakes to duly carry out commissioning or acceptance immediately on notification that the installation work has been completed.
- 14.3. Acceptance can only be refused in the event of major defects, and only until these defects have been remedied. Acceptance can also be as a result of implied intent by the customer. If the installation object is largely functional and can be used according to the intended purpose by the customer, the installation object shall be considered accepted by the customer one month after its first ascertainable usage to the intended purpose.
- 14.4. On acceptance of the installation, the customer and ALPMA shall draw up an acceptance report. Any defects must be immediately stated and described in the acceptance report. The report should also include any modifications or delivery of additional parts as requested by the customer.
- 14.5. If it is proven that the installation has not been carried out in accordance with the contract, ALPMA will put right any shown faults at its own cost within a reasonable period of time, providing that the fault has not been caused by circumstances beyond ALPMA's control. If a fault, which is to be put right by

ALPMA, is of no great consequence to the customer's interests, the customer may not decline acceptance, except if ALPMA has expressly recognized its duty to put the fault right.

#### **15. Liability of ALPMA**

After acceptance, ALPMA shall accept liability, to the exclusion of any further claims, for any installation faults that occur within 12 months of completion of installation provided these are proven to be the fault of ALPMA's installation personnel. The extent of this liability is as follows:

- 15.1. The customer must duly submit a statement of all installation faults in writing. These shall be eliminated by ALPMA within a reasonable period of time. Of the costs directly incurred due to the correction of faults, ALPMA shall bear the cost of the spare parts including dispatch. In addition, ALPMA shall bear the cost of removal and installation, as well as the cost of providing the necessary engineers and assistants, including travelling expenses, provided that this does not represent a disproportionate burden on ALPMA. So the customer carries out reasonable disassembly and assembly activities himself.  
ALPMA shall accept no liability whatsoever in the event of improper and/or unauthorised changes or repair work carried out to the installation by the customer or a third party. Only in urgent cases where the operational safety of the installation is at risk and to prevent a disproportionate level of damage does the customer have the right to correct the fault, or have it corrected by a third-party, and to demand restitution of the costs from ALPMA.
- 15.2. If ALPMA supplies the customer with its own personnel for installation work which has not been promised by ALPMA, ALPMA is only liable for the selection of its members of staff.
- 15.3. If ALPMA is unable to correct a fault, to which it has a contractual obligation, or is unable to fulfil this obligation within a reasonable period of time, the customer is entitled to claim the reduction of the installation price as prescribed by law. The customer's right to claim the reduction of the installation price also applies in all other cases where ALPMA fails to rectify any faults. Only if the installation is proven to be no longer of value to the customer in spite of said reduction, is the customer entitled to withdraw from the agreement.
- 15.4. ALPMA accepts no liability in the event of slight negligence. For gross negligence of ordinary vicarious agents, ALPMA shall only be liable if the ordinary vicarious agent has violated cardinal obligations. In any event, ALPMA shall only be liable for damage typical of the types of business in question. In as far as ALPMA subsequently accepts liability for damages and, in so far as permissible, any indemnification shall be limited to a maximum of 10 % of the installation price.  
These limitations of liability do not apply to damages arising from injury to life and limb due to reckless neglect of duty on the part of ALPMA or to reckless or wilful neglect of duty by one of ALPMA's legal representatives or ordinary vicarious agents. Nor do they apply to claims in accordance with §§ 1, 4 of the product liability law or in the event of acceptance of a guarantee or fraudulent concealment in accordance with §§ 444, 639, BGB.

#### **16. Liability of the customer**

- 16.1. The customer is liable for damages to all persons and property caused by personnel provided by him. Furthermore, the customer is also liable for damages caused by constructions, materials and software provided by him.
- 16.2. It is the responsibility of the customer to ensure that all materials provided by him in accordance with Point 8 (obligations of the customer) comply with the pertinent accident prevention regulations.
- 16.3. If the customer fails to accept the installation, or violates any other obligation of participation, the risk of accidental loss or accidental deterioration of the machine or plant installed by ALPMA is passed to the customer the instant acceptance is delayed.
- 16.4. Any damages or additional costs incurred by ALPMA due to the customer's violation of its obligation to participate shall be proven to the customer and invoiced.

#### **17. ALPMA's Right of Withdrawal, the Customer's Right of Withdrawal**

- 17.1. The customer is able to withdraw from the contract if ALPMA's fulfilment of it becomes conclusively impossible. The same applies if ALPMA is incapable of performing.
- 17.2. If the inability to fulfil the contract occurs during the default in acceptance or as a result of a fault of the customer, the customer remains obliged to counter-performance.
- 17.3. Within the framework of legal provisions, the customer can only withdraw from the agreement if any delay in installation is due to gross or wilful negligence on the part of ALPMA. In this case, the limitation of liability as specified in Point 15 applies accordingly
- 17.4. In the event of unforeseen circumstances, such as those defined in Point 12 (installation time) – in so far as they substantially affect the economic consequences or the contents of the services for ALPMA – and in the event that execution then proves impossible, ALPMA reserves the right to withdraw, either partially or completely, from the agreement should any amendment to the agreement fail to make it economically viable.
- 17.5. Claims for compensation from the customer in the case of such a withdrawal may not be made. If ALPMA wishes to make use of its right to withdraw, it has to inform the customer immediately after recognition of the consequences, even if an extension of the delivery date had been agreed upon with the customer.

#### **18. Place of Jurisdiction and Place of Performance**

- 18.1. The place of performance shall be Rott am Inn - or Dresden, if the agreement was made with the ALPMA subsidiary, LTH Dresden.
- 18.2. The place of jurisdiction shall always be Munich. ALPMA is also entitled to bring legal action at the domicile of the customer.
- 18.3. German law applies exclusively. The UN Sales Convention does not apply.