



## ALWA smartPINS General Terms and Conditions of Sale

### 1. Scope of these 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 smartPINS shall be governed exclusively by these General Terms and Conditions. Any general terms and conditions provided by ALWA smartPINS' customers shall be inapplicable to ALWA smartPINS' product deliveries and services, unless the customer can show that a deviating or complementing regulation has been agreed upon in writing by both parties.

### 2. Conclusion of Contracts and Catalogue 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 smartPINS followed by an acceptance letter or by a purchase order of ALWA smartPINS' customer followed by ALWA smartPINS' confirmation, or in any other form.
- (2) In the case of export transactions, the orders are subject to the condition precedent that the agreed advance payment (usually fifty percent (50%)) is received without deductions on an ALWA account. Only then shall ALWA begin to process the order.
- (3) Unless customer's order fully conforms with the content of the offer issued by ALWA smartPINS, including these General Terms and Conditions, purchase orders will only be binding upon ALWA smartPINSs written confirmation and shall be subject to these General Terms and Conditions.
- (4) Oral agreements are only valid if the parties confirm them in writing immediately but no later than within four (4) weeks of their making.
- (5) Technical descriptions in ALWA smartPINS' brochures and catalogues are approximations customary in the industry. The same applies to images and drawings contained therein. Such approximations and technical details shall only be binding to the extent a customer can show that ALWA smartPINS catalogue descriptions, images were designated as contractually binding, expressly and in writing, e.g., as part of or referenced in an offer or an order confirmation.

### 3. Pricing, Price Changes

- (1) ALWA smartPINS' prices are quoted in Euro exclusive of value added tax, packaging, freight, postage, handling, transfer fees (when transferring from abroad) and insurance.
- (2) ALWA smartPINS' price calculations are based on the information provided by ALWA smartPINS' customer regarding quantity and time periods. 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 the event a substantial change in costs for personnel, material or energy occurs in connection with a long-term order (agreements of a duration of more than twelve (12) months), each party may claim an appropriate price adjustment in light of such changes.
- (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 smartPINS 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 smartPINS' 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 smartPINS may use quantities of comparable past time periods for the calculation of the specified amount. In the event ALWA smartPINS' customer does not issue call orders for the full amounts specified or the amounts which could reasonably be expected, ALWA smartPINS will be entitled to adjust its prices accordingly or claim damages. In the event ALWA smartPINS' customer orders more than the expected or specified quantity, ALWA smartPINS 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 when performance was fully completed, a mutual cancellation has been agreed upon or it was terminated in accordance with the law.

- (2) Long-term orders may be terminated by either party without cause by giving six (6) months prior written notice. 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 may use the documents (including samples, models and any data) as well as any information gained in the course of the business relationship solely for the joint purpose and keep such documents confidential, provided that the disclosing party either designates such information as confidential or has an apparent interest in its protection. In maintaining confidentiality, each party shall apply at least the degree of care with which the respective party protects its own confidential information. This obligation shall commence at the time such documents or information was first received and shall remain applicable for thirty-six (36) months after the conclusion of the entire business relationship between the parties (not merely the individual orders or contracts).
- (2) This obligation shall not be applicable to any document or information which the receiving party can show is generally known, is in the public domain, was known by the receiving party at the time of disclosure without breach of an obligation to non-disclosure, which is provided by a third party which had the right to pass on such information, or which the receiving party developed independently without using any confidential documents or information of the disclosing party.
- (3) Affiliated companies of ALWA smartPINS 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 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 section (5) of these General Terms and Conditions without any further designation.

## **7. Payment Terms**

- (1) Invoiced amounts will fall due fourteen (14) days after the date of the invoice, unless the parties have agreed otherwise in writing. In the case of export transactions, an advance payment of fifty percent (50%) is required.
- (2) Partial deliveries may be invoiced at the time of delivery.
- (3) In case of delayed payments, ALWA smartPINS 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 manufacturing equipment may be invoiced upon order confirmation, the other two thirds will fall due upon delivery or completion.
- (5) In the event ALWA smartPINS 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) The customer may only set off claims which have been undisputed by ALWA smartPINS or which have been granted to the customer in a final and binding judgment. The customer may only suspend the performance of its obligations toward ALWA smartPINS if such obligations arose under the same contractual relationship.
- (7) In the event of any delay in payment, ALWA smartPINS 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.

## **8. Delivery**

- (1) Partial deliveries may be carried out to the extent reasonable.
- (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 smartPINS shall deliver according to EXW (ICC Incoterms 2010).
- (4) Compliance with the delivery date or delivery period shall be based on ALWA smartPINS' notification of readiness for dispatch or collection.
- (5) The customer shall collect products without delay upon such notification. Failure to collect shall entitle ALWA smartPINS 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 smartPINS may select the transport method and routing at the customer's expense.

## **9. Transfer of Risk**

- (1) ALWA smartPINS 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 smartPINS undertook delivery.

## **10. 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 smartPINS.
- (2) Should ALWA smartPINS anticipate a delay in the delivery of the goods, ALWA smartPINS 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.

## **11. Reservation of Title**

- (1) ALWA smartPINS 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 met fully.
- (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 smartPINS and, if necessary, support ALWA smartPINS with any actions necessary to preserve ALWA smartPINS' retention of title.
- (3) The customer may neither pledge goods nor transfer ownership of them as security in contravention of ALWA smartPINSs reservation of title or to ALWA smartPINS' detriment. It is obliged to protect ALWA smartPINS' 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 smartPINS, any claims transferred to ALWA smartPINS or to any other securities, the customer shall notify ALWA smartPINS 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 smartPINS releases the exceeding securities of ALWA smartPINS' choice.

## **12. Defects Liability**

- (1) In the event a sample has been shipped or approved to the customer, the characteristics of such sample shall be considered the primary specification agreement. Any additional purpose, such as but not limited to the fitness for a certain purpose beyond the information provided by ALWA smartPINS is not warranted by ALWA smartPINS.
- (2) The conformity of the goods shall be determined by their condition at the time risk of loss passes.
- (3) The customer has to inform ALWA smartPINS' of any defects in its incoming inspection. The customer shall inform ALWA smartPINS of any defects, which were not detectable in the context of the incoming inspection, immediately upon becoming aware of them.
- (4) ALWA smartPINS shall subsequently be given the opportunity to investigate any alleged defect in the samples. Rejected samples shall be returned to ALWA smartPINS.
- (5) If a justified and timely defect complaint report has been received, ALWA smartPINS shall at its discretion either repair the article complained or supply a replacement in due time. Should ALWA smartPINS 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 smartPINS' cost. ALWA smartPINS shall, however, not be held liable for any costs (such as travel and shipment costs) resulting from the customer moving the products to a different location.
- (6) 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.
- (7) Claims for product defects shall become time-barred after twelve (12) months from the date of delivery. Claims for product defects shall be governed by the regulations regarding statutory limitation as stipulated by the applicable law, unless otherwise agreed in writing. 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.

### **13. Miscellaneous, Claims, Liability**

- (1) Unless otherwise specified, any additional or more extensive claims by the customer against ALWA smartPINS are excluded. This shall apply in particular to claims for damages for a breach of duties arising from the obligation or from unlawful acts. ALWA smartPINS shall not be liable for any damage not deriving from the delivered goods themselves, in particular any loss of profit or other financial losses by the customer.
- (2) However, section 14 (1) shall not apply in cases of intent or gross negligence on the part of ALWA smartPINS' legal representatives or senior employees. In the case of culpable breach of material contractual obligations ALWA smartPINS liability shall be limited - except for any cases of willfulness or gross negligence on the part of ALWA smartPINSs legal representatives or executive employees – only to any damage that could reasonably be expected, at the time of the conclusion of contract, to occur during the execution of the contract. The limitation of liability shall not apply in cases in which mandatory product liability laws are applicable, e.g. in the case of defects in goods supplied for private use. It is also not applicable in case of injury of life, body or health and, in the absence of guaranteed characteristics, if and to the extent the object of the guarantee was to cover the customer against any losses not deriving from the goods supplied themselves.
- (3) Insofar as our liability is excluded or limited, this shall apply accordingly to the personal liability of ALWA smartPINS' employees, workers, other personnel, legal representatives and vicarious agents.
- (4) The statutory provisions relating to burden of proof shall remain unaffected.

### **14. 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 parties interest in performance completely, such party as the right to cancel the contract.
- (4) The above applies also if such an impediment applies to a supplier of a party, if the party's failure to deliver results directly or indirectly from such impediment.

### **15. 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 smartPINS' premises.
- (3) ALWA smartPINS and the customer agree in accordance with the German Federal Data Protection Act (Bundesdatenschutzgesetz) that personal data may be stored, transmitted, used and deleted by both parties for the purpose of their business relationship and in connection therewith.
- (4) The place of jurisdiction for any and all disputes, including any action relating to bills of exchange or checks, shall be ALWA smartPINS' premises. However, ALWA smartPINS 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").
- (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.

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