

General Terms and Conditions of Sale and Delivery for ALFA GmbH

I. Definitions

From here onwards:

1. Seller: is ALFA GmbH
2. Buyer: is each physical or legal entity, who buys or expresses its intention to buy Products or Services offered by the Seller.
3. Parties: are the Seller and the Buyer named together.
4. Contract: is the specific sales conditions between the parties which will be in effect after the placement of purchase order and subsequent order acknowledgment by the seller and conclusion of the payment terms by the Buyer. Any condition deviating from or additional to the articles of General Terms and Conditions of Sale shall be laid out in the Contract and are subject to mutual agreement of both parties.

II. Scope of application

1. Terms and conditions of the Buyer deviating from these terms and conditions must only apply if expressly accepted by the Seller in writing and thereafter included in the Contract. In all other cases such terms and conditions of the ordering party are expressly rejected.
2. These Terms and Conditions apply only to persons who, on concluding a legal transaction with the Seller, are acting in their vocational capacity as trades persons or self-employed persons and entities under public law.

III. Conclusion of the contract

The Seller shall send the Buyer a pro- forma invoice upon receipt of a purchase request. On the basis of the pro- forma invoice, the buyer places a binding purchase order on the seller. The seller will accept this order by order acknowledgment. The contract shall not be concluded until the order has been Acknowledged by the seller and payment terms is concluded by the Buyer.

IV. Characteristics of the goods

1. It is agreed that any information relating to the goods and their use, such as weights, dimensions, capacities, prices, colors and other data contained in catalogues, prospectuses, circulars, advertisements, illustrations of the Seller, shall not take effect as terms of the Contract unless expressly referred to in the Contract.
2. Unless otherwise agreed, the Buyer does not acquire any property rights in software, drawings, etc. which may have been made available to him.

V. Inspection of the goods before shipment

If the parties have agreed that the Buyer is entitled to inspect the goods before shipment, the Seller should notify the Buyer within a reasonable time before the shipment that the goods are ready for inspection at the agreed place and time. In case the Buyer fails to appoint an inspector within agreed time period as per contract. The Seller is entitled to charge the Buyer of any incurred additional costs (Including, but not limited to, warehousing costs).

VI. Prices

1. If no price has been agreed, the Seller's offered price at the time of the conclusion of the Contract shall apply.

2. Unless otherwise agreed in writing, the price does not include VAT.

3. The price indicated in the Contract includes any costs which are at the Seller charge according to the Contract. However, should the Seller bear any costs which, according to the Contract, are for the Buyer's account (e.g. for transportation or insurance under EXW or FCA), such sums shall not be considered as having been included in the price (contract price) and shall be compensated by the Buyer.

VII. Payment conditions

1. Unless otherwise agreed in writing or implied from a prior course of dealing between the parties, payment of the price and any other sums due by the Buyer to the Seller shall be received by the Seller in the same time as purchasing order is signed by the buyer. The amounts due shall be transferred, unless otherwise agreed, by tele transmission to the Seller's bank account and the Buyer shall be deemed to have performed its payment obligations when the respective sums due have been received by the Seller's bank in immediately available funds.

2. If the parties have agreed on payment in advance, without further indication, it will be assumed that such advance payment, unless otherwise agreed, refers to the full price, and that the advance payment must be received by the Seller's bank in immediately available funds at specified date in the contract, before the agreed date of delivery or the earliest date within the agreed delivery period. If advance payment has been agreed only for a part of the contract price, the remaining sum must be balanced before the shipment of the goods.

3. If the parties have agreed on payment by documentary credit, then, unless otherwise agreed, the Buyer must arrange for a documentary credit in favor of the Seller to be issued by a bank that is acceptable by the seller, subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, and to be issued within price validity. Unless otherwise agreed, the documentary credit shall be payable at sight. Partial shipments and transshipments should be allowed if it was mutually agreed upon by both parties.

4. If for any reason the documentary credit arranged by Buyer in favor of the Seller, become unworkable and thus the payment procedure is halted (i.e. the Seller becomes unable to receive its full or remaining payment from the documentary credit), then the Buyer must arrange for a replacement method of payment within maximum of 15 days from the date the Seller informs the Buyer of an unworkable default in documentary credit payment. If the buyer fails to meet this obligation during the 15-day period, the Seller is entitled to interest upon the remaining sum. Interest rate is laid out in clause VIII.2.

5. If the parties have agreed on payment by documentary collection, then, unless otherwise agreed, documents will be tendered against payment (D/P: Documents Against Payment) and the tender will in any case be subject to the Uniform Rules for Collections published by the International Chamber of Commerce.

6. If the Buyer fails to meet any of his obligations in any form whatsoever with the payment procedure, then the Seller shall have the right either to suspend the delivery of goods or to dissolve the agreement by serving a notice in writing to the Buyer. In such circumstances, the Buyer shall not be entitled to any kind of compensation for any kind of loss sustained by him.

7. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

8. If Buyer disputes any invoice or portion thereof, it shall notify Seller in writing within thirty days of receipt of said invoice, detail the reason for the dispute, and pay all undisputed amounts. All charges not timely disputed in writing shall be deemed to be undisputed and shall be due and payable as set forth above.

VIII. Interest in case of delayed payment

1. If the buyer does not pay a sum of money when it falls due, the seller is entitled to interest upon that sum, from the time when payment is due until the time of complete payment.
2. Unless otherwise agreed, the rate of interest shall be 2% above the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place of payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

IX. Cancellation of Purchase Order

1. If the Buyer wishes to dissolve or cancel the order then the Buyer must obtain prior written consent of the Seller. All cancellations will be subject to payment to Seller (i.e. compensation for any expenses or losses incurred). No return of goods is possible unless explicitly laid out in the Contract.
2. No returns of special, custom, or made-to-order Products will be permitted. No returns will be permitted more than sixty (60) days after delivery.

X. Transport

1. The Seller shall transport & deliver the goods to the Buyer at the address of the Buyer as shown in the contract/order form. The transportation and delivery, including freight, handling and insurance, of goods by the Seller shall be at the Buyer's expense and risk unless specifically agreed between the parties.
2. If the Buyer agrees to purchase the goods, then it shall purchase it forthwith regardless of the mode of transport. In case it fails to meet this requirement then the Seller shall be entitled either:
 - 2.1 To store the goods in the warehouse at the Buyer's expense and risk and to invoice the Buyer without the possibility of refusal in payment; or
 - 2.2 To dissolve the agreement without any judicial intervention, without prejudice to Seller's right to compensation for any expense or loss incurred.
3. The buyer shall be responsible to manage all necessities and formalities for unloading the goods at destination according to the Contract. If the Buyer fails to meet this requirement, any expenses arisen for the Seller (Including but not limited to; carrier penalties and charges), must be compensated by the Buyer.
4. If Buyer causes or requests a shipment delay, or if Seller ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, then in such circumstances storage and all other additional costs and risks shall be borne solely by the Buyer.
5. In no event shall Seller have any liability in connection with transportation or shipment, nor shall the carrier be considered as an agent of the Seller. Claims for products damaged or lost in transit should be made by the Buyer to the carrier and or the insurer entity.
6. If any goods to be delivered under this Contract cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer, Seller may ship the goods to a storage facility, including storage at the place of manufacture, or to an agreed freight forwarder. If Seller places goods into storage, the following will apply:

6.1 Risk of loss immediately pass to Buyer, if they have not already passed, and delivery shall be deemed to have occurred;

6.2 Any amounts otherwise payable to Seller upon delivery or shipment shall be due;

6.3 Any expenses arisen for the Seller due to storage of the goods must be compensated by the Buyer.

6.4 When conditions permit and upon payment of all amounts due, Seller shall make goods available to Buyer for delivery.

7. If the Buyer provides the means of transport, then it shall be responsible for its availability on time. Seller shall immediately be informed of any delays. Any costs arising therefrom shall be at the expense of the Buyer.

8. Our delivery obligation shall at all times be subject to timely and orderly receipt of the goods from our own suppliers.

9. Unless otherwise expressly agreed in writing, any indicated time of delivery or unloading shall be non-binding.

10. Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed time for delivery and unloading. They shall entitle us to also withdraw from the Agreement which shall not result in any compensation claims of the Buyer.

XI. Retention of title

The Seller has the exclusive ownership on the goods delivered to the Buyer till the Buyer meets all his obligations, including penalties, release of advanced payment guarantees (If any), interests and/or costs, arising from or associated with these Terms & Conditions under which the Seller has undertaken to make the delivery. Till such period, the Buyer shall keep the delivered goods separately so that it can clearly be identified as Seller's property and he shall also take adequate measures to insure such goods.

XII. Documents

Unless otherwise agreed in the contract, the Seller shall provide the documents (if any) indicated in the applicable Incoterm or, if no Incoterm is applicable, documents should be according to any previous course of dealing and or be based on the agreement made between the parties.

XIII. Non-Conformity of the goods

1. The Buyer shall inspect the goods for any variances from the agreed requirements immediately after their arrival at destination and shall notify the Seller in writing of any lack of conformity of the goods within 30 days from the date of delivery to the agreed destination. On the expiry of such period, the Buyer shall be deemed to have, irrevocably and unconditionally, accepted the goods. Lodging a complaint shall not suspend the Buyer's payment obligation in respect of the goods in dispute.

2. Goods will be deemed to conform to the Contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the parties.

3. The Seller shall not be liable to the Buyer or any third party for any loss of profit, consequential or other economic loss suffered by the Buyer arising in any way from this agreement or as a result of improper installation or misapplication of the goods.

4. Except for individual written warranties supplied with the goods, the Seller does not accept and will not be liable for any warranties whether oral, express or implied.

XIV. Force Majeure

1. Should the Seller be prevented wholly or in part from fulfilling any of its obligations under the Contract or Purchase Order for reasons of Force Majeure, such obligation shall be suspended to the extent and for as long as such obligation is affected by Force Majeure.

2. Force Majeure hereunder shall include for example but shall not be limited to any of the following events: flood, typhoon, earthquake, tidal wave, landslide, fire, plague, epidemic, quarantine restriction, perils of the sea; war or serious threat of the same, civil commotion, blockade, arrest or restraint of government, rulers or people, requisition of vessel or aircraft; strike, lockout, sabotage, other labor dispute, explosion, accident or breakdown in whole or in part of machinery, plant, transportation or loading facility; governmental request, guidance, order or regulation; unavailability of transportation or loading facility; curtailment, shortage or failure in the supply of fuel, water, electric current, other public utility, or raw material including crude oil, petroleum or petroleum products; bankruptcy or insolvency of the manufacturer or supplier of the Goods or services; substantial change of the present international monetary system; or any other causes or circumstances whatsoever beyond the reasonable control of the Seller.

3. If after 6 months from the date of commencement of such delay, the Seller should still be prevented, for reasons of Force Majeure according to clause XIV from performing its obligations under the Contract or the Purchase Order, the Seller shall be entitled to terminate the Contract and/or Purchase Order with a notice period of 15 days to the end of each month.

XV. Assignment

Buyer shall not assign any of its rights or delegate any of its obligations under this Contract without the prior written consent of Seller. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Contract.

XVI. Resolution of disputes

1. Any dispute arising in connection with the contract or with respect to its validity shall be finally settled by the Court of Arbitration of the Hamburg Chamber of Commerce, to the exclusion of the ordinary courts of law. The substantive law of Germany shall be applicable to such dispute.

2. If a provision of the contract is or becomes legally invalid or if there is any uncovered contractual provision, the validity of the remainder of the contract shall not be affected thereby. Invalid provisions shall be replaced by common consent with such provisions which come as close as possible to the intended result of the invalid provision. In the event of uncovered provision, such provision shall come into force by common consent which comes as close as possible to the intended result of the contract, should the matter have been considered in advance. Any changes of or amendments to the contract must be in writing to become effective.

3. The formation of the contract, its validity, termination, interpretation, execution and the settlement of any dispute hereunder, as far as the Rules of Arbitration do not apply, shall be governed by the law of Germany, excluding its Private International Law and excluding the United Nation's Convention on the International Sale of Goods (CISG).

4. For all disputes arising out of or in connection with the contract, the courts competent for the seller's place of business in Hamburg, Germany, shall have exclusive jurisdiction. However, the seller shall have the right to file lawsuits against the buyer before the courts competent for the buyer's place of business.