

# General sales and delivery terms

## 1. Field of application

- 1.1. These general sales and delivery terms are in principle conceived with legal transactions between companies in mind. If, by way of exception, they are also used as a basis for legal transactions concluded with consumers, as envisaged in the consumer protection act, they apply only insofar as they do not contradict mandatory statutory provisions.
- 1.2. Deliveries, services and offers of our company are based exclusively on these terms and conditions; we do not recognize any opposing terms and conditions or terms and conditions of the customer which deviate from our terms and conditions, unless we have expressly agreed to the validity of any such in written form.
- 1.3. Drawings, dimensions, tolerances, weights, temperatures and other specifications and performance data, and also design, function and application specifications relating to our products and the further processing thereof, are binding for us only if and to the extent that these have been expressly referred to in the written order placement and confirmed by us in writing.

## 2. Offers, conclusion of contract

- 2.1. Our offers are subject to alteration and are not binding.
- 2.2. A contractual offer of a customer requires written confirmation of order. The dispatch of goods ordered by the customer also has the effect of conclusion of contract. If offers are addressed to us, the party making the offer is bound by that offer for an appropriate period (which shall not, however, be less than 8 days) from receipt of the offer.
- 2.3. Information relating to our services and products as included in company and product information material of any kind is non-binding, unless it has been expressly declared as forming part of the contract.

## 3. Price

- 3.1. Unless otherwise expressly stated, all prices referred to by us are exclusive of value added tax, customs, special packaging costs, transport insurance and other insurances and any additional costs. In the event that AlfaVakuo provides prefinancing for the customer in respect of freight and insurance costs and special packaging costs, these will also be stated in the invoice, as will any additional costs.
- 3.2. We are entitled to increase prices accordingly if, after the contract has been concluded, there is any increase in the calculation principles applicable at the time of the issuing of the order, such as costs of materials, energy, transport or staff.

## 4. Payment conditions and reservation of ownership

- 4.1. In the absence of any agreement to the contrary, our accounts are to be paid upon presentation of invoice or under the conditions stipulated in the invoice and in the stated currency, without any deduction. Any deduction of discount must be agreed separately. In the event of any delay in payment, including part payments, any discount agreements will cease to apply. Customer payments are not regarded as having been effected until the date of receipt thereof on our business account.
- 4.2. In the event of delay in payment by the customer, we are entitled to demand reimbursement for the actual loss arising or interest for delay, at our choice. The percentage rate of interest for delay is set at three per cent above the current refinancing interest rate of the European Central Bank.
- 4.3. In the event that the customer is threatened with insolvency, or is no longer able to meet its payment obligations for any other reason, we are entitled to cease the provision of goods/services, unless the customer offers a bank guarantee or other security which secures the immediate settlement of the invoice.
- 4.4. Offsetting against counterclaims by the customer is only permissible if the claim has been finally and conclusively proved or has been recognized by us.
- 4.5. In transactions which are not consumer transactions, in the event of a justified complaint the customer is only entitled to retention of an appropriate portion of the gross invoice amount, and not of the entire amount, except in cases of rescission.
- 4.6. In principle, products delivered remain in our ownership until payment has been made in full (reservation of ownership), even if further processing is carried out on these products. Until payment has been received in full in respect of all of our claims, the product may not be pledged, handed over as security or encumbered with other rights of third parties. In the event of any seizure by third parties, the customer must point out our right of ownership and inform us immediately.
- 4.7. The customer bears the full risk in respect of reserved goods, in particular in respect of the risk of destruction, loss or deterioration.
- 4.8. The assertion of the reservation of ownership is only associated with withdrawal from the contract if withdrawal has been expressly declared. In the event of goods being taken back, we are entitled to invoice for any transport or handling expenses incurred.

## 5. Assignment of claims

- 5.1. In the context of goods being delivered subject to reservation of ownership, the customer as of now assigns to us its claims against third parties arising for it from the resale or processing of our goods, up to the final payment of our claims for payment.

- 5.2. The customer must name its customers to us at our request, and inform them of the assignment in good time. The assignment is to be entered in the customer's business records and is to be clearly stated to the customer's customer on delivery notes and invoices. If the customer is in delay with its payments to us, any proceeds of sale which are received at the customer's premises are to be kept separate, and the customer holds such proceeds only in our name. Any claims against any insurer are as of now assigned to us, within the limits of § 15 of the Austrian act on insurance contracts.

## 6. Withdrawal from contract

- 6.1. In the event of delay in acceptance or other important reasons, such as in particular the bankruptcy of the customer, or the dismissal of a bankruptcy application by reason of lack of assets, and also in the event of delay in payment by the customer, we are entitled to withdraw from the contract, insofar as it has not yet been entirely fulfilled by both sides. With respect to such withdrawal, in the event that the customer is at fault we have the choice of demanding either a lump sum compensation payment of 25% of the gross invoice amount or reimbursement of the loss actually arising.
- 6.2. In the event of delay in payment by the customer, we are released from all further delivery and service obligations, and are entitled to hold back any deliveries and services still outstanding, and to demand prepayments or the provision of security, or to withdraw from the contract after setting an appropriate additional time limit.
- 6.3. If the customer withdraws from the contract (without being justified in doing so), or if the customer wants the contract cancelled, we have the choice of either insisting on the performance of the contract or agreeing to its cancellation; in the latter case, the customer must either pay a lump sum compensation payment of 25% of the gross invoice amount or reimburse the loss actually arising.

## 7. Delivery conditions

- 7.1. Unless expressly otherwise agreed, delivery is undertaken as soon as the products are available. We are entitled to exceed agreed dates and deadlines for the delivery of goods and services by up to one week. Only after the expiry of this period may the customer withdraw from the contract, after the setting of an appropriate additional period.
- 7.2. In principle we deliver ex works, unless expressly agreed otherwise with the customer. Goods are only insured against transport risks upon the express request of the customer, and at the customer's costs
- 7.3. We are not under any obligation of delivery/service until the customer has met all its obligations as necessary for execution, and in particular all technical and contractual details and all relevant delivery instructions have been received. If these latter items have not been received, the delivery is undertaken in the manner we consider most expedient.

- 7.4. If the customer has not accepted the goods as agreed (i.e. in the event of default in acceptance), we are entitled, following the setting of an additional deadline without result, either to put the goods in store at our premises, for which we invoice a storage fee of 0,1% of the gross invoice amount per calendar day of part thereof, or to put them in store at the premises of an appropriately authorized commercial company, at the cost and risk of the customer. At the same time we are entitled either to insist on the performance of the contract or, following the settling of an appropriate additional deadline of at least 2 weeks, to withdraw from the contract and to realize the value of the goods by other means.

## **8. Place of performance, transfer of risk**

- 8.1. The place of performance is the production site of our company.
- 8.2. All risks associated with the product and the transports thereof are transferred to the customer as soon as we have the product ready for collection in the works or warehouse. Dispatch, loading and unloading, and transport, are always at the risk of the customer.

## **9. Force majeure**

- 9.1. If an event of force majeure occurs, we are released from observing the agreed obligations for the duration of the event of force majeure, so that no delay in the provision of goods or services arises in consequence, and the customer has no entitlement to any price reduction. An event of force majeure is understood as being an event outside the sphere of influence of our company.

## **10. Obligations of the customer**

- 10.1. In the event of any installation of products by us, the customer must ensure that the works can commence immediately following the arrival of our assembly staff.
- 10.2. Since some AlfaVakuo products require special care in their use and/or processing, or installation, the customer must read very carefully the relevant information as provided by our company, in particular the safety information sheets and the processing/installation guidelines, and also the recommendations for use, and must take all measures to ensure that these are observed and that the technically correct and safe use of our products is thereby ensured.
- 10.3. The customer must ensure that the contents of our safety information sheets, processing/installation guidelines, recommendations for use and other relevant safety provisions are brought to the attention of all employees and any persons who may subsequently use or process our products, and who are directly or indirectly concerned with the use, installation and processing of our products, or who come into contact with our products in any way whatsoever, and that these are observed by such persons.

- 10.4. It is essential that our products containing alkalis and alkaline earths must not come into contact with water.
- 10.5. The customer must ensure that the necessary technical preconditions for any installation of our products by us have been fulfilled. The customer must also ensure that the products in which our products are intended to be used are in technically perfect condition and ready for operation, and are compatible with the products to be manufactured by us. We are entitled, but not obliged, to check these preconditions and systems, in return for separate remuneration.
- 10.6. There is no obligation in respect of any testing, warning or the provision of information regarding any products, products for further processing, specifications, drawings or other technical documents, or transmitted data or instructions, such as may have been made available by the customer (and also in respect of all requirements of the customer), and any liability for us in this regard is excluded.
- 10.7. Any necessary official approvals and permits are to be obtained by the customer; any order placed with us for the provision of goods or services is independent of these.

## **11. Warranty**

- 11.1. The warranty period for our products is limited to 6 month; this provision does not apply in respect of consumer transactions as envisaged in the Austrian consumer protection act. The warranty period begins as of the transfer of the risk as defined in section 8 of these general terms and conditions, or, if the installation of the product has been agreed by us, following the installation of our products by our staff at the customer's premises; however, the warranty period ends in any event not more than 12 months after acceptance of the product by the customer.
- 11.2. Any complaints regarding defects, and any other objections of any kind, are to be notified to us in writing within 30 days following discovery thereof by the customer, subject to loss of warranty entitlements. We are not obliged to accept any complaints regarding defects which are submitted late, or which are issued verbally or by telephone. After any agreed acceptance procedure has been carried out, any complaint regarding defects which were detectable at the time of acceptance is excluded.
- 11.3. In the event of a claim being asserted under warranty, we have the right either to exchange defective products or to repair them, at our choice. Unless otherwise agreed, the customer bears all costs for sending back defective items, while the costs for the transport of replacement products or repaired goods are borne by us. In the event that both replacement and repair of the products regarding which a complaint has been made is associated with disproportionately high costs for us, the customer has the right for a price reduction or, unless the defect in question is minor, to repudiation of the contract. The same applies if we do not undertake the replacement or repair within an appropriate period, or if these remedies are unreasonable from the customer's point of view, for valid reasons.

- 11.4. We do not provide any warranty in the event of any of the following:
- (a) Improper treatment of the products during storage, handling and installation,
  - (b) Modifications of the product carried out by the customer
  - (c) Non-observance of our safety information sheets, processing guidelines and operating/installation requirements
  - (d) Incorrect installation or commissioning of the product by the customer or by third parties instructed by the customer,
  - (e) Misuse of the product, particularly in contradiction of the application requirements,
  - (f) Installation of operating conditions which impair functioning (e.g. incorrect temperature)
  - (g) Damage during transport,
  - (h) Product defects which are only discovered by the customer, or in respect of which the customer only asserts a claim, after the end of the warranty periods referred to above.
- 11.5. If products are manufactured on the basis of information, drawings, plans or other specifications of the customer, we only provide a warranty in respect of execution in accordance with the conditions specified.
- 11.6. The provision of a warranty is also excluded if the products in which our products are used are not in an otherwise perfect condition or are not compatible with the products to be manufactured by us.
- 11.7. If products are supplied or installed on the instruction of the customer for the purposes of a test operation of prototypes, any claims under warranty (except for delivery or installation in accordance with the order) are excluded.

## 12. Compensation and product liability

- 12.1. We are liable only in respect of damage caused by malicious intent or gross negligence; this does not apply in respect of personal injury or (in the case of consumer transactions) in respect of damage to items which have been accepted for processing. The existence of malicious intent or gross negligence has to be proved by the injured party, unless the transaction in question is a consumer transaction.
- 12.2. Any claims of recourse asserted against us by the customer, arising from claims under the product liability act (PHG, § 12 thereof), are excluded, unless the customer proves that the fault was caused within our sphere of responsibility and was at least the result of gross negligence on our part. The customer must take out adequate insurance in respect of product liability claims, and to that extent hold us harmless from damages and claims.

- 12.3. Our liability is generally excluded if our safety information sheets, processing guidelines, operating and installation requirements and recommendations for use have not been observed by the customer or third parties instructed by the customer.

## 13. Place of jurisdiction, choice and law

- 13.1. Austrian law shall apply. The applicability of the UN law of purchase (CISG) is expressly excluded.
- 13.2. The contracting parties agree on Austrian, domestic jurisdiction. Unless the transaction in question is a consumer transaction, the court competent to deal with such matters in Klagenfurt, Carinthia, has exclusive local jurisdiction to decide on all disputes arising from this agreement.

## 14. Data protection, copyright and changes of address

- 14.1. The customer gives its agreement that data (including personal data) contained in the purchase agreement may be electronically stored and processed by us in fulfillment of this agreement.
- 14.2. The customer must notify to us any changes to its residential or business address, and provide a full delivery address, until such time as the legal transaction forming the subject of the agreement has been entirely performed by both parties. If this information is not provided, declarations and deliveries are also regarded as having been effected if they are sent to the most recently notified address.
- 14.3. Plans, drawings and other technical documents remain our intellectual property at all times, as do samples, catalogues, brochures, illustrations and similar; the customer does not receive any license to use the work or commercial exploitation right of any kind whatsoever. Any reproduction, distribution, imitation, processing or commercial exploitation which has not been expressly agreed to is not permitted.

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With the issuing of a purchase order the customer declares that it has noted the present sales and delivery conditions in full and agrees to the entire content thereof.