

General terms of sale and delivery for Aluflam A/S

The present terms of sale and delivery shall apply to all activities undertaken by Aluflam A/S and all of Aluflam A/S' consolidated companies, unless otherwise agreed. This means that, among other things, all quotes, order confirmations, agreements on the delivery of goods and/or services and all consultancy shall be given, made and provided on the terms and assumptions stated herein

1. Definitions

Aluflam shall mean the company that a) has entered into an agreement with the Buyer on the delivery of goods and/or services, or b) has committed an act or an omission or made a declaration.

Buyer shall mean the person who a) has entered into an agreement with Aluflam on the delivery of goods and/or services, or b) has been subject to an act or an omission committed by Aluflam or the recipient of a declaration from Aluflam.

2. Contractual basis

Individual agreements on derogation from Aluflam 's terms of sale and delivery shall be subject to an unambiguous and explicit indication to this effect on the order confirmation or other modifying agreement entered into after the submission of the order confirmation.

An agreement on the delivery of goods or services shall be final when Aluflam has received an order confirmation signed by the Buyer, including any drawings requested. Aluflam shall only be entitled to deliver the goods or services stated in the order confirmation.

Aluflam shall be entitled to revoke a quote or an order confirmation without charge until such time as such quote or order confirmation has been accepted by the Buyer. Aluflam shall further be entitled to cancel an agreement without charge in the event that Aluflam 's sub-suppliers refuse to accept an order.

The Buyer shall forthwith check that the content of the order confirmation is in accordance with the agreement made; and if not, immediately notify Aluflam thereof. The Buyer shall be entitled to request that changes be made to the order confirmation up to 12 noon, Danish time, on the second day following the date of the order confirmation. If Aluflam accepts the Buyer's notice of error or request for changes, Aluflam shall make all the required changes and submit a new order confirmation, which the Buyer shall sign and return.

3. Prices and payment

The prices listed are exclusive of VAT, duties and other charges, insurance and transport costs. The Buyer shall be obliged to pay in advance for pallets and other transport packaging. Such pallets and transport packaging shall continue to be the property of Aluflam and shall be returned by the Buyer for his own account and risk as soon as possible, after which time the amount prepaid shall be returned to the Buyer.

Aluflam shall reserve the right to adjust any price without notice, in the event that its production or purchase costs, including sub-suppliers' prices and exchange rates, are increased by more than five (5) per cent during the period from the making of the quote and until either a) an agreement has been made, or b) the time of delivery. Aluflam shall only be entitled to make such adjustments if the changes are not attributable to Aluflam. The adjustments shall never exceed an amount corresponding to the documented changes.

Payment shall be made upon delivery/part-delivery. Aluflam shall always be entitled to invoice a proportionate amount of the price, determined on the basis of the scope of work performed, materials purchased or goods or services delivered relative to the total delivery. If a schedule of payments has been agreed, payment shall be made on the agreed dates. The Buyer shall have 14 days of grace, after which time a rate of interest of two (2) per cent shall be charged per month or fraction of a month.

Upon the formation of the agreement, the Buyer shall be obliged to furnish an on-demand guarantee or a letter of credit in accordance with Aluflam 's instructions.

All goods shall be sold with retention of title with the effect that Aluflam shall be entitled to take back the goods in the event that the Buyer fails to pay, fully or in part.

The Buyer shall not be entitled to set off against or withhold payment of the purchase price in respect of any claims of defects or the like.

4. Delivery

Services shall be regarded as having been delivered when the work has been completed.

Goods shall be delivered ex works at Aluflam's address. Consequently, delivery shall be regarded as having been made upon Aluflam 's notice that the goods are ready for collection. The Buyer shall bear all costs incidental to collection.

In the event that Aluflam has undertaken to ship the goods, delivery shall be regarded as having been made upon the earliest of either a) the surrender of the goods to the carrier or third party designated by the Buyer, or b) the surrender of the goods to the Buyer. The Buyer shall assist with the unloading of the goods, which shall be for the Buyer's own account and risk.

In the event that the Buyer fails to collect the goods, Aluflam shall be entitled to charge warehouse rent of three (3) per cent of the price per month or fraction of a month as well as costs incidental to extra delivery etc. In the event that the Buyer's delay may be regarded as material breach, Aluflam shall be entitled to terminate the agreement and claim compensation.

5. The Buyer's obligations

The Buyer shall be obliged to perform all such acts as may reasonably be expected in order to enable Aluflam to deliver the goods or services in accordance with the agreement.

In addition, the Buyer shall be obliged to arrange for the collection of the goods forthwith, just as the Buyer shall notify Aluflam of the collection method to be used in good time before the agreed time of delivery.

Upon delivery, the Buyer shall check the goods or services in accordance with commercial custom. Such check shall be performed again immediately prior to the time when four (4) years have elapsed since delivery. All demonstrable defects in the goods or services as well as any deviations from the order confirmation shall be noted and Aluflam shall immediately be notified thereof in writing.

6. Remedies

The Buyer shall only be entitled to assert his remedies in respect of delay in the event that such delay exceeds 14 working days. It shall be a condition that the Buyer has submitted a written reminder and given Aluflam a reasonable extension of time for delivery. In addition, the delay shall be attributable to circumstances for which Aluflam is responsible.

In exceptional cases, Aluflam shall be entitled to elect to make part-delivery and/or to postpone any time of delivery by up to twenty (20) working days, by giving a notice of two (2) working days. This shall not be regarded as delay. All subsequent times of delivery shall automatically be postponed accordingly, unless otherwise stated.

In the event that the Buyer fails to pay or furnish guarantees in due time, Aluflam shall be entitled to stop the work and postpone any time of delivery with the number of days of the delay plus 25 (twenty-five) per cent as well as to claim compensation for loss.

In the event of defects, the Buyer shall be entitled to seek remedial action within a reasonable time, considering, among other things, Aluflam 's and its sub-suppliers usual times of delivery. Aluflam shall be entitled to elect to remedy the breach by repair and/or replacement delivery. Non-material defects shall not entitle the Buyer to remedies for defective performance. When assessing whether the defect is material, account shall be taken of the type, nature and extent of the defect relative to the total delivery/part-delivery affected.

In the event that Aluflam fails to remedy a material breach, the Buyer shall be entitled to terminate the agreement covering the delivery/part-delivery affected. It shall be a condition that the Buyer has submitted a written reminder and given Aluflam a reasonable extension of time for remedial work. In addition, Aluflam 's failure to remedy the breach shall be attributable to circumstances for which Aluflam is responsible.

Once Aluflam has remedied the breach, the Buyer shall not be entitled to other remedies or to claim compensation.

The following shall not be regarded as defects: a) Deviations in shades in glass, including shades in coated glass and interference in sealed insulating glass units, b) changes to the performance characteristics of the glass due to incorporation of the glass in a given structure, c) concave or convex deflection in hermetically sealed glass due to changes in the extraneous pressure, e.g. due to the weather, installation height above sea level etc., and d) deflection of up to 5 mm per running metre and coloured rings, "irisation" or other optical deviations in heat-treated glass.

In the event that the Buyer wishes to assert his remedies for breach, he shall inform Aluflam thereof in writing immediately following the time when the breach was or should have been discovered. In addition, the Buyer shall inform Aluflam of which remedy the Buyer wishes to assert without undue delay. If the Buyer fails to do so, he has lost his right to assert his remedies.

The Buyer shall not be entitled to assert his remedies for breach in the event that a) the Buyer has failed to perform proper maintenance, failed to assemble the product correctly, changed the product without the written consent of Aluflam and/or repaired the product himself or through a third party designated by the Buyer, b) the product has not been stored correctly, used correctly or used for the usual purpose by the Buyer, or c) any materials or semi-finished goods delivered or prescribed by the Buyer are not suitable for the purpose.

The Buyer shall be entitled to assert his remedies for defective performance up to five (5) years after delivery. In the event that the Buyer is not able to document that he has checked the delivery four years after delivery, at the latest, cf. Clause 5, the aforementioned period shall expire four (4) years after delivery.

Upon delivery to ships and oil rigs in the offshore sector, the Buyer shall be entitled to assert his remedies for defective performance up to one (1) year after delivery. Replacement delivery shall be made to the place where the defective goods were originally delivered.

7. Compensation and product liability

Aluflam 's liability for damages is conditional upon the Buyer being entitled to assert remedies for breach, cf. Clause 6, and a) the breach being attributable to wilful or grossly negligent actions committed by Aluflam or third parties for which Aluflam is responsible, or b) Aluflam being liable pursuant to the legislation on product liability.

Aluflam shall assume no liability for indirect losses or consequential damage, including operating loss, increased operating costs, loss of profit, costs for lawyers or professional counsel and loss of income. In addition, Aluflam shall not be liable for losses – direct or indirect – attributable to damage caused by the delivery on property or movables.

Aluflam 's total accumulated liability vis-à-vis the Buyer per agreement shall be limited to an amount corresponding to the price payable by the Buyer for the delivery concerned; however, such amount shall not exceed the amount stated in the order confirmation as the total price for delivery of the goods and/or services. Aluflam 's total accumulated liability vis-à-vis the Buyer shall under no circumstances exceed DKK 1,000,000 per agreement.

In the event that a third party asserts a claim for compensation against the Buyer under the present provision, Aluflam shall be notified forthwith.

8. Force majeure

Aluflam shall not be liable for its failure to fulfil its obligations in the event that such failure is attributable to an event that is beyond Aluflam 's control, such as strike, lockout, export or import ban, embargo, late delivery or non-delivery of materials from sub-suppliers, production standstill, lack of energy or means of transportation. In such event, Aluflam shall be entitled to postpone the time of delivery indefinitely or to terminate the agreement. As soon as the event barring delivery has come to an end, Aluflam shall notify the Buyer when delivery can be made.

9. Sub-suppliers

Aluflam shall reserve the right to use sub-suppliers and to hire external consultants to perform its obligations.

10. Assignment

Aluflam shall be entitled to assign its rights and obligations to a consolidated company without the written consent of the Buyer.

11. Protection of rights

The Buyer shall not acquire any rights to Aluflam 's intellectual property rights. The Buyer shall not be entitled to abuse information on Aluflam 's production and/or the product, and Aluflam shall reserve the right to claim compensation in the event of infringement of its rights.

12. Reference

Aluflam shall be entitled to use the Buyer as reference in general terms and without obligations being incurred by the Buyer.

13. Governing law and venue

The relationship between Aluflam and the Buyer shall be governed by the general rules of Danish law, including CISG.

The Courts of Denmark shall have exclusive jurisdiction, and any disputes between the parties shall be settled with binding effect by the Danish Court of Arbitration for Building and Construction Work in Copenhagen.