

Terms and Conditions - AliaVita Engineering

All Terms and Conditions as described in this document applies to all offers and contract of AliaVita Engineering SàRL unless otherwise stated in the project description.

1 Definitions

- 1.1 In these general Terms and Conditions, the Terms below will be understood to have the following meanings, unless the contrary is explicitly indicated.
“Company” means AliaVita Engineering SàRL, 1 Rue des Romains, L-2443 Senningerberg.
“Customer” means the purchaser of services from the Company.
“Services” means all Services delivered by Company to the Customer.
“Terms” means these Terms and Conditions of sale.

2 General

- 2.1 These general Terms and Conditions will apply to all offers, quotations, assignments and agreements between the Customer and the Company, to the extent that these Terms and Conditions have not been explicitly deviated from by the parties in writing.
- 2.2 The current general Terms and Conditions will also apply to all agreements with the Customer for the performance of which the Customer employs the services of third parties.
- 2.3 The applicability of any other general Terms and Conditions of the Customer is hereby explicitly excluded, unless the parties have agreed otherwise in writing. If the parties’ general Terms and Conditions are both applicable, the provisions of the Customers general Terms and Conditions will prevail in the event of any conflict between the provisions of the user’s general Terms and Conditions and the provisions of the Customer.
- 2.4 The Company acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relations to the Services or the sale of Services other than as contained in these Terms.
- 2.5 If the Company concludes agreements with the Customer more than once, the present general Terms and Conditions will apply to all subsequent agreements, irrespective of whether or not they have been explicitly declared applicable.
- 2.6 If one or more provisions in these general Conditions are annulled or become invalid, the remaining provisions of these general Conditions will continue to apply.

3 Offers, assignments and agreements

- 3.1 All offers, in whatever form, will be free of obligation, unless a term for acceptance is stated in the offer.
- 3.2 Agreements to which the Company is a party will only be considered to have been concluded:
a) after an agreement drafted for that purpose has been signed by both parties; or
b) following receipt and approval of the written notice of acceptance by the Customer of an offer made by the Company;
c) in the absence thereof, pursuant to the delivery of the goods to the Customer and the Customer taking delivery of those goods.
- 3.3 In the event of an oral agreement, the invoice will be considered to contain a correct and complete representation of the agreement, unless a complaint is lodged within 30 days of the invoice date.
- 3.4 The Company reserves the right to refuse an order/assignment without stating its reasons.

- 3.5 If a natural person concludes an agreement on behalf of or for the account of another natural person, he/she will declare – by signing the agreement – that he/she is authorised to do so. This person, in addition to the other natural person, will be jointly and severally liable for all obligations ensuing from the agreement.
- 3.6 If the acceptance by the Customer deviates from the offer included in the quotation, the Company will not be bound to that acceptance. In that case, the agreement will not be concluded in accordance with that deviating acceptance, unless the Company states otherwise.
- 3.7 Subsequent supplementary agreements will only be binding if the Company confirms these supplementary agreements in writing.
- 3.8 The prices in the offers will be in euros and exclusive of Luxembourgish VAT and other Government levies, as well as exclusive of transport and packaging costs, unless expressly Agreed otherwise.
- 3.9 Offers or quotations will not apply to follow-up orders.

4 Performance of the agreement

- 4.1 The Company will perform the agreement to the best of its knowledge and ability and in Accordance with the requirements of good workmanship.
- 4.2 The Company will determine the manner in which the agreement is to be performed, to the Extent that no provisions to the contrary have been explicitly agreed upon in writing by the parties.
- 4.3 If and in so far as necessary for a satisfactory performance of the agreement, the Company will be entitled to engage third parties for certain activities.
- 4.4 The Company will not be liable for damage, of whatever nature, resulting from the fact that The Company has operated on the basis of incorrect and/or incomplete data provided by the Customer, unless the Company should have been aware of this incorrectness or incompleteness.

5 Force majeure

- 5.1 Either party will not be obliged to fulfil any obligation if it is prevented from doing so due to a circumstance which cannot be attributed to gross negligence or an intentional act or omission on its part, nor be for its account pursuant to the law, a juristic act or generally prevailing opinion.
- 5.2 In these general Terms and Conditions, the term '*force majeure*' will be taken to mean – in addition to its definition in law and legal precedents – all external causes, foreseen or unforeseen, which the Company cannot influence, but as a result of which the Company is unable to perform its obligations. This will include strikes at the Company's company, power and computer failures, traffic congestion, fire, theft, export impediments and delays in the supply of raw materials by suppliers.
- 5.3 The parties may suspend the obligations ensuing from the agreement during the period that the *force majeure* continues. If this period lasts longer than two months, either party will be entitled to dissolve the agreement without being obliged to pay the other party damages.
- 5.4 In so far as the Company has partly performed or will be able to partly perform its obligations arising from the agreement at the time when the *force majeure* occurs, and that part performed or to be performed is of independent value, the Company will be entitled to invoice the part performed or to be performed separately.

6 Suspension and dissolution

- 6.1 The Company will be entitled to suspend performance of its obligations or to dissolve the Agreement if:
- the Customer fails to perform the obligations ensuing from the agreement or fails to Perform them in good time or in full;
 - circumstances of which the Company has learned following the agreement's conclusion Provide good reason to fear that the Customer will not perform its obligations, or will not perform such in good time or in full; if there is good reason to fear that the Customer will only perform its obligations in part or will not perform such properly, suspension will only be permitted to the extent that such is justified by the relevant failure; or
 - the Customer was requested to provide security upon the agreement's conclusion for the performance of its obligations arising from the agreement and such security has not been provided or is insufficient.
- 6.2 In addition, the Company will be entitled to dissolve the agreement or have it dissolved if circumstances arise of such a nature that performance of the agreement is impossible or can no longer be required pursuant to standards of fairness and reasonableness, or if any other circumstances arise of such a nature that continued un-amended maintenance of the agreement can no longer reasonably be expected.
- 6.3 If the agreement is dissolved, the Company's claims vis-à-vis the Customer will become Immediately due and payable. If the Company suspends performance of its obligations, it will retain its rights and claims pursuant to the law and the agreement.
- 6.4 The Company reserves the right to claim damages at all times.

7 Amendments to the Agreement

- 7.1 If the parties amend and/or supplement the agreement, the performance completion time may be influenced as a result. The Company will inform the Customer of any such completion time change as soon as possible.
- 7.2 If an amendment and/or the supplement to the agreement has financial and/or qualitative consequences, the Company will inform the Customer thereof in advance.

8 Payment

- 8.1 Payments are to be made to the Company without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement.
- 8.2 The payment will take place in the following terms:
50% of the invoice price directly after accepting the offer and before starting the project;
50% of the invoice after finishing the project.
- 8.3 Extra Services will be paid after completing these extra Services.
- 8.4 Payment of the invoices to the Customer by the Company must be paid within 15 days after the invoice date.
- 8.5 If the Customer fails to pay within the 15-day period, the Customer will be in default by operation of Law. The Customer will then owe 1.5% in interest per month or part of a month, unless the statutory interest or the statutory commercial interest is higher, in which case the highest interest will apply. The interest with respect to the exigible amount will be calculated from the time that the Customer is in default until the time of full payment.
- 8.6 In case of the development of a website and/or web application Customer will get all necessary login codes after paying the last invoice.

- 8.7 If the Customer fails to pay for the work mentioned in article 8.6 within the 15-day period, AliaVita Engineering is entitled to change the login codes of the website and/or web application.
- 8.8 If the Customer fails to pay for the work mentioned in article 8.6 after 2 reminders, AliaVita Engineering is entitled to put the website and/or web application offline.
- 8.9 If the Customer is wound up, is declared bankrupt or files for bankruptcy, the Company's claims vis-à-vis the Customer will become exigible forthwith.
- 8.10 Payments will first be used to cover the costs, then to cover any interest due and finally to cover the principal sum and the accrued interest.

9 Liability and indemnification

- 9.1 If the Company is liable, this liability will be limited to the provisions laid down in this article.
- 9.2 Under no circumstances will the Company be liable for: deviations, damage, faults and defects that have gone unnoticed in the tests approved by the Customer;
- deviations, damage, faults and defects caused by incorrect use;
 - for indirect damage, including consequential loss, loss of profit, missed savings and damage due to a halt in business operations;
 - damage resulting from rejected raw materials and coloring agents as a result of amended Or unclear environmental legislation or standards following the date of the agreement;
 - wrongful, improper or unprofessional use of the goods supplied by the Customer or third parties;
 - damage resulting from impracticability and inapplicability; and
 - damage as a consequence of improper storage, processing and mixing.
- 9.3 Should the Company be liable for damage; this liability will be limited to the amount paid by its insurer, or at least to the amount of the invoice, or to the amount of that part of the invoice to which the liability pertains.
- 9.4 The Company will under no circumstances be liable for damage ensuing from any advice given. Advice will always be given on the basis of the facts and circumstances known to the Company and in mutual consultations, in which respect the Company will always take the Customer's intention as a guideline and starting point.
- 9.5 Any claims for damages must be submitted to the Company in writing immediately after the Damage has occurred.
- 9.6 The limitations of liability for damage laid down in these general Terms and Conditions will Not apply if the damage is attributable to an intentional act or omission or gross negligence on the Company's part or on that of its employees.
- 9.7 The Company can never be held liable in any way beyond the amount of the contract.

10 Intellectual property and copyrights

- 10.1 Without prejudice to the provisions in these general Terms and Conditions, the Company Reserves the rights and powers vested in it pursuant to intellectual property law and the Luxembourgish Copyright
- 10.2 All Services sold and/or manufactured by the Company, as well as any designs, sketches, drawings, samples and brochures provided by the Company, are exclusively intended for use by the Customer, and may not be multiplied, resold, adapted, changed, copied, reproduced, made public or brought to the attention of third parties by the Customer without the Company's prior permission, unless the contrary ensues from the nature of the goods sold or the documents provided.

11 Confidentiality

- 11.1 Each party agrees that it shall not disclose to any third party any information concerning the customers, trade secrets, methods, processes or procedures or any other confidential, financial or business information of the other party which it learns during the course of its performance of this project, without the prior written consent of such other party. This obligation shall survive the cancellation or other termination of this project.

12 Disputes and Jurisdiction

- 12.1 Any disputes arising from the agreement concluded between the parties will be settled in the First instance by the competent Luxembourgish court in the place where the Company has its registered office or the one in Luxembourg-city.
Nevertheless, the Company will be entitled to submit the dispute to the court competent according to the law.
- 12.1 The Customer acknowledges that the Laws of the State of Luxembourg shall govern this Contract, and the Customer hereby agrees to submit to the non-exclusive jurisdiction of the Courts of Luxembourg.