



GENERAL TERMS AND CONDITIONS OF DELIVERY ALPHA PACKAGING B.V

- Alpha Packaging's Terms and Conditions of Delivery have been filed with the Breda Chamber of Commerce on 1 September 2018 under number 20169223.
1. **Definitions**

In these General Terms and Conditions of Delivery, the following terms have the following meanings:

General Terms and Conditions of Delivery: the current terms, conditions and stipulations governing Alpha Packaging's commercial sales transactions.

Alpha Packaging: Alpha Packaging B.V. with its registered office in Etten-Leur and the companies affiliated with it, doing business as Alpha Packaging.

Client: any natural or legal person assuming an obligation with Alpha Packaging.

Parties: Alpha Packaging and the Client jointly.

Order: the order placed by the Client for delivery of services and/or products by Alpha Packaging.

Agreement: an obligation between Alpha Packaging and the Client whereby Alpha Packaging undertakes to deliver services and/or products and the Client undertakes to purchase the services and/or products to be delivered.

In writing: communications by e-mail, fax or digital means (e.g. using an online interface), provided the identity of the sender and the integrity of the contents are sufficiently established.
 2. **Applicability**
 - 2.1. These General Terms and Conditions of Delivery are applicable to all Agreements, offers and quotations made by Alpha Packaging, unless otherwise has been agreed in writing.
 - 2.2. Alpha Packaging explicitly rejects any reference by the Client to its own general terms and conditions.
 - 2.3. These General Terms and Conditions of Delivery are also applicable to all Agreements with Alpha Packaging for the performance of which third parties are to be engaged.
 - 2.4. If Alpha Packaging allows any deviations from these General Terms and Conditions of Delivery for any short or long period of time, whether tacitly or not, this will not prejudice its right to demand immediate and strict compliance with these general terms and conditions at any time thereafter. The Client shall never be entitled to assert any right, or let any right be asserted, based on the fact that Alpha Packaging has applied these General Terms and Conditions of Delivery leniently.
 - 2.5. Deviations from and supplements to these General Terms and Conditions of Delivery shall only be valid if explicitly agreed in writing, for example in a written or oral Agreement or order confirmation. Such deviations and supplements only apply to the particular Agreement specified.
 - 2.6. Alpha Packaging reserves the right at all times to amend and/or supplement these General Terms and Conditions of Delivery. In the event of amending or supplementing the present General Terms and Conditions of Delivery, all previous General Terms and Conditions of Delivery shall be superseded.
 - 2.7. If one or more provisions of these General Terms and Conditions of Delivery are invalid or become void, the other provisions of these General Terms and Conditions of Delivery remain fully applicable. If any provision of these General Terms and Conditions of Delivery or of an Agreement is legally invalid, the parties will replace the invalid provision with a provision having equivalent meaning which approaches the intention of the original provision as much as possible.
 3. **Offers and Quotations**
 - 3.1. Offers and quotations made by Alpha Packaging are without obligation and remain valid for 30 calendar days following the offer date, unless the particular offer or quote explicitly specifies otherwise in writing in the offer or quotation at hand.
 - 3.2. If Alpha Packaging has incurred costs in connection with making an offer, it is entitled to charge these costs to the Client, provided it has informed the Client of this in writing in advance.
 - 3.3. Documents provided by Alpha Packaging, such as drawings, sketches, diagrams, samples, specimens, models, information, recommendations and other items, do not bind Alpha Packaging. Such documents are without obligation and remain the property of Alpha Packaging. Such documents may not be copied, presented to third parties, or made public in any other manner without Alpha Packaging's permission. Such documents must be immediately returned to Alpha Packaging upon request at the Client's expense.
 - 3.4. Alpha Packaging is at all times entitled to refuse an Order without stating reasons.
 4. **Formation of the Agreement**
 - 4.1. Agreements only arise following explicit acceptance in writing by the Client and Alpha Packaging, or after the Client has placed an Order in writing with Alpha Packaging and Alpha Packaging has accepted, or –in the absence of a written acceptance/order confirmation – at the time of delivery of Alpha Packaging's services and/or products.
 - 4.2. The order confirmation shall be taken as presenting the Agreement correctly and completely, unless the Client protests in writing within 2 days of the date the order confirmation was sent.
 - 4.3. Alpha Packaging shall be authorized to engage third parties for the performance of the agreement. Alpha Packaging is authorized to charge the costs involved to the Client.
 - 4.4. Alpha Packaging is entitled to have a creditworthiness check conducted with respect to the Client on the basis of which Alpha Packaging is authorized to revoke any offer already made or to suspend an Agreement. If circumstances become known to Alpha Packaging which cause Alpha Packaging to doubt the Client's creditworthiness, which is at the discretion of Alpha Packaging, Alpha Packaging is entitled to suspend the performance of its obligations until the Client has provided sufficient certainty at the request of and to the satisfaction of Alpha Packaging as to the performance of all the Client's obligations arising from the Agreement.
 5. **The product**
 - 5.1. If, in accordance with the Agreement, components are made available by or on behalf of the Client which must be applied or processed on, in or to the products produced by Alpha Packaging, these components must be delivered to Alpha Packaging by the Client on time, free of charge and carriage paid and in the correct quantity.
 - 5.2. The Client must ensure that components delivered allow application, assembly or processing by Alpha Packaging. Alpha Packaging may, without any assessment, assume that these components allow application, assembly or processing in, on or to the ordered products to be manufactured.
 - 5.3. If such components are not delivered on time or cannot be processed by Alpha Packaging and this leads to a production stoppage, the Client is liable for all damages suffered by Alpha Packaging as a result of this stoppage.
 - 5.4. Alpha Packaging will first put the product into production after the test series provided, with regard to modifications or development of a product by the Client, has been approved in writing by the Client, or when Alpha Packaging has confirmed that approval in writing.
 - 5.5. As Alpha Packaging is not aware of the exact formula used by the Client to fill the packaging produced by Alpha Packaging, nor the filling conditions, nor of the cases in which the product will be labelled, it is recommended that the Client test the compatibility of its products with (R)PET containers prior to ordering. Alpha Packaging, as a producer of packaging materials intended for, among other things, contact with foodstuffs, undertakes to comply with the applicable requirements of EU Directive 10/2011
 6. **Moulds**
 - 6.1. Moulds produced by Alpha Packaging to the Client's orders, or produced entirely or in part to Alpha Packaging's specifications, only become the Client's property after the Client has paid the costs of producing the mould and Alpha Packaging has assumed use of the mould for manufacturing the product and is no longer using the particular mould in production.
 - 6.2. Moulds that are not used for production will be stored by Alpha Packaging and not returned to the Client before the elapse of one year following delivery and/or payment of the final Order

- placed by the Client with Alpha Packaging which was manufactured with the particular mould.
- 6.3. The Client is required to submit a request in writing for the return of the mould produced.
- 6.4. The Client must retrieve used moulds from Alpha Packaging within 1 year of delivery of the final Order for which the particular mould was used. Should this retrieval not take place, Alpha Packaging is entitled to destroy the mould, with the relevant costs being for the account of the Client. Alpha Packaging shall never be liable for any compensation of damage if any mould is destroyed.
- 6.5. With regard to the use of a mould produced for the Client, the number of casts for that particular mould shall be agreed. After the agreed number of casts have been made, the mould shall be deemed no longer suitable for further production. If the number of casts has not been agreed with the Client, Alpha Packaging shall inform the Client when it becomes evident that a mould is no longer suitable for the purposes of economically responsible production. In such an event, the Client shall also be informed of the costs associated with repair or replacement. In evaluating whether production is economically responsible, consideration will also be given to technological advancements and the commercial applications thereof, both in regard to volume of production as well as to the labour intensive aspects. The mould that is no longer suitable for production, according to the standards stated above, may be destroyed without Alpha Packaging being held to any form of compensation of damage in relation to the Client. The costs of destroying the mould shall be calculated in consultation.
- 6.6. If a mould is still suitable for production according to the standards stated above and the mould is in storage at Alpha Packaging, the maintenance costs for a period of 2 years following first use are for the account of Alpha Packaging if orders are placed regularly for the products manufactured with said mould.
- 7. Stock**
- 7.1. Unless agreed otherwise, Alpha Packaging shall retain no stock for the Client and delivers manufactured products immediately. Any agreed storage period shall be a minimum of two weeks and a maximum of eight weeks.
- 7.2. If the product is not in stock, and no specific arrangements have been made with the Client, the order must be equal to the minimum production quantity determined by Alpha Packaging.
- 8. Prices**
- 8.1. Prices given in offers and quotations include packaging costs, the costs of pallets, but exclude VAT and other government levies, and any potential other costs such as transport, shipment and administration costs, unless stated otherwise.
- 8.2. The prices are given 'ex works' (Incoterms 2010), excluding VAT, other government levies and other packaging costs, unless stated otherwise.
- 8.3. Alpha Packaging has the right to make quarterly price adjustments for its products based on any changes to the ICIS raw materials indexation.
- 8.4. Alpha Packaging has the right to adjust the prices of the products annually based on increases to the costs of manufacturing the product other than raw material costs.
- 8.5. Alpha Packaging is entitled to refuse Orders with an order value of less than € 225. Orders with an order value of between € 225 and € 650 are subject to administration costs of € 35.
- 8.6. Alpha Packaging is entitled to charge € 15 per pallet per week for the storage of stocks for or from the Client.
- 8.7. Alpha Packaging is entitled to pass on price increases arising from legislation, government measures, or from increases to production costs or measures taken by suppliers, to the Client. Alpha Packaging shall immediately inform the Client of such price increases.
- 9. Delivery and time limits**
- 9.1. Unless agreed otherwise in writing, delivery is made 'ex works'. The products to be delivered are for the account and at the risk of the Client from the time of delivery.
- 9.2. The Client is required to take delivery of the products at the time when they are made available or presented. If the Client refuses delivery or has not provided sufficient instructions or information essential for delivery, then Alpha Packaging is entitled to store the products for the account and at the risk of the Client. In that case, Alpha Packaging is entitled to charge storage costs.
- 9.3. The delivery time commences after Alpha Packaging has received all the information/instructions essential for performance of the Agreement from the Client.
- 9.4. The agreed delivery periods are not strict deadlines, unless explicitly agreed otherwise. If a period is exceeded, the Client is required to serve Alpha Packaging with a notice of default, in respect of which Alpha Packaging must be offered a reasonable yet proper grace period to perform the Agreement. Exceeding the delivery period does not obligate Alpha Packaging to payment of compensation for damages and does not entitle the Client to neglect or suspend the obligations arising from the agreement. Exceeding the delivery period does not entitle the Client to cancel or terminate the Agreement, unless Alpha Packaging still does not meet its obligations following notice of default and the expiry of the reasonable period.
- 9.5. Alpha Packaging is entitled to extend the delivery period by the duration of the delay experienced by Alpha Packaging due to unforeseen emergencies.
- 9.6. Alpha Packaging is entitled to refuse an Order placed by the Client if the Order placed is below the minimum production capacity for that particular item, unless the Client is prepared to buy the minimum production capacity.
- 9.7. Unless agreed otherwise, Alpha Packaging is entitled to deliver more or less than was agreed to be delivered by weight to be further agreed for which a deviation of 5% is allowed, or it has been agreed that a specific number of units will be delivered for which a deviation of 5% is allowed.
- 9.8. Alpha Packaging is entitled to charge for transport costs, as well as (special) costs such as import and export duties, freight, stationing, storage, security, or clearance costs, and likewise the consequences of exchange rate adjustments.
- 9.9. Unless agreed otherwise, Alpha Packaging shall determine the method of packing, transport and shipment entirely at its own discretion.
- 9.10. Articles will be delivered exclusively per full pallet.
- 10. Warranty**
- 10.1. Before the Client uses or processes the products delivered by Alpha Packaging, the Client is required to check whether the products fulfil the Agreement. Any potential visible defects must be reported to Alpha Packaging within 2 working days of delivery of the products, and other defects within 7 days of such a defect occurring. Reports must include a detailed description of the defect with photographs of the defect. At least 10 items must be sent to Alpha Packaging as proof, so that Alpha Packaging is able to respond adequately. Any obligation to subsequent delivery lapses by operation of law if the Client declines to inform Alpha Packaging of the defect in a timely manner.
- 10.2. The Client is required to give Alpha Packaging the opportunity to investigate a complaint. Alpha Packaging aims to respond within 7 days of receiving all the necessary information stated in Article 10.1. The response may entail the provision of further information or assessment. Should it be established that a complaint is unfounded, the ensuing costs of the complaint shall be for the Client's account.
- 10.3. Upon receipt, the Client is required to check that the number of products delivered is correct, unless agreed otherwise. Should the number be incorrect, the Client is required to have this recorded by the transporter on the consignment note and to report it to Alpha Packaging in writing no later than within 2 working days.
- 10.4. On the condition that the Client has satisfied its payment and/or other obligations by virtue of the Agreement, Alpha Packaging shall, for its own account, replace, supply by subsequent shipment, or reimburse the invoice amount to the Client for the defective or missing products. The Client waives any right to terminate the Agreement due to a defect.
- 10.5. Alpha Packaging provides the same warranty and the same terms and conditions for products and product parts that Alpha Packaging has procured from third-party suppliers as the warranty that Alpha Packaging has stipulated for these third-party suppliers.
- 10.6. The warranty does not apply to: a) defects as a result of poor quality materials and/or parts that have been either made available or prescribed by the Client; b) defects as a result of incompetent use or neglect by or on the part of the Client or its service person; c) defects that can be attributed to normal wear and tear, incorrect handling, or excessive stress load.

- 10.7. After the end of the warranty period, all rectification or replacement costs will be charged to the Client.
- 10.8. Alpha Packaging is not obliged to offer any compensation or performance other than compliance with the obligations set out above. Any claim for damages is hereby excluded. Alpha Packaging is not liable for any potential consequential damage.
- 10.9. Should it be determined that Alpha Packaging is liable for damages, then the amount to be compensated shall never exceed the amount that Alpha Packaging's liability insurer is prepared to pay out in this regard.
- 11. Invoicing and payment**
- 11.1. Alpha Packaging is entitled, prior to performance of the Agreement, to require an advance payment from the Client, which advance shall be deducted from the final invoice. Advance payments must be paid immediately.
- 11.2. Invoices must be paid within 14 days of the invoice date in the manner stipulated by Alpha Packaging and in the currency invoiced.
- 11.3. Following the elapse of 30 days from the invoice date, the Client is in default by operation of law. At such time, the Client will owe interest at 3.5% per month, unless the statutory commercial interest is higher, in which case the statutory commercial interest applies.
- 11.4. If the Client fails to perform its obligations, or fails to do so in good time, all costs incurred to obtain satisfaction both in and out of court shall be for the account of the Client. These costs incurred to obtain satisfaction out of court shall be calculated in accordance with existing laws and regulations.
- 11.5. Alpha Packaging will be entitled to apply the payments made by the Client first to satisfy the costs, then to satisfy the interest that has become due and, finally, to satisfy the principal sum and the current interest. Alpha Packaging may refuse full repayment of the principal sum if at the same time the accrued and current interest and collection costs are not paid as well.
- 11.6. The Client shall never be entitled to set off anything owed by it to Alpha Packaging.
- 12. Retention of title**
- 12.1. All products delivered and yet to be delivered remain the property of Alpha Packaging until all claims Alpha Packaging has or will obtain against the Client, including in any event the claims stated in Book 3, Article 92(2), of the Dutch Civil Code, have been paid in full.
- 12.2. The Client who acts as reseller will be permitted to sell and resell all goods subjected to Alpha Packaging's retention of title insofar as this is customary within normal company practice.
- 12.3. If the Client creates new goods using, or also using, the products delivered by Alpha Packaging, the Client only creates such goods for Alpha Packaging, and the Client holds the newly created goods for Alpha Packaging until the Client has paid all the amounts owed arising from the Agreement. In that event, Alpha Packaging retains all rights as owner of the newly created goods until the time that full payment has been made by the Client.
- 12.4. When applicable, rights will always be granted or transferred to the Client, on the condition that the Client pays the fees agreed in that respect in a timely fashion and in full.
- 12.5. The Client is not permitted to establish restricted rights on goods which are subject to Alpha Packaging's retention of title. If third parties wish to establish restricted rights on goods subject to retention of title, the Client will inform Alpha Packaging immediately.
- 12.6. The Client is obliged to store the goods subject to retention of title delivered separately from other goods, and to mark them as originating from Alpha Packaging.
- 12.7. The Client is obliged to insure the goods for the duration of the retention of title against fire, explosion and water damage, as well as against theft, and to make the policies of this insurance available to Alpha Packaging for inspection upon first request. As soon as Alpha Packaging so desires, the Client shall pledge undisclosed all its claims against insurers of the goods by virtue of the above-mentioned insurance to Alpha Packaging by way of additional security for Alpha Packaging's claims against the Client.
- 13. Right of retention**
- 13.1. Alpha Packaging is entitled, within the framework of the Agreement, to retain all goods, products, property rights, information, documents, data files and results and interim results of Alpha Packaging's services that were received or generated, despite a standing obligation to return, until all monies owed to Alpha Packaging have been paid in full by the Client.
- 14. Intellectual property**
- 14.1. Unless explicitly agreed otherwise, Alpha Packaging retains copyright and all industrial property rights for the offers, designs, ideas, processes, products, components, data or data files, installations, equipment, depictions, drawings or other suggestions made or presented by Alpha Packaging, all in the broadest sense, including after delivery of such items to the Client.
- 14.2. The Client is liable for all damages caused by infringement of Alpha Packaging's intellectual and/or industrial property rights committed by means of the goods delivered to the Client by Alpha Packaging. The Client is obliged to notify Alpha Packaging immediately as soon as the Client becomes aware of any infringement of our rights.
- 14.3. If Alpha Packaging has received models or other instructions, in the broadest sense, from the Client or via the Client from a third party in connection with the performance of the Agreement, the Client guarantees that no patents, rights of use, trading models or any other (intellectual or industrial property) third-party right will be infringed by the use of such models and/or compliance with such instructions. The Client indemnifies Alpha Packaging against all such claims.
- 14.4. If a third party objects to production and/or delivery on the basis of any alleged right as referred to above, Alpha Packaging is entitled outright and solely on those grounds to immediately cease production and/or delivery and to demand compensation of the costs incurred from the Client, without prejudice to Alpha Packaging's entitlement to any further damages, and without Alpha Packaging being bound to pay the Client any damages.
- 15. Suspension and termination**
- 15.1. Alpha Packaging is authorized to suspend the performance of its obligations or to terminate the Agreement if the Client does not perform the obligations of the Agreement, or does not perform them fully or in a timely manner after the Agreement has been concluded, without Alpha Packaging incurring any obligation to pay any damages or compensation.
- 15.2. Furthermore, Alpha Packaging is authorized to terminate the Agreement, or to have it terminated, in the event of liquidation, suspension or temporary suspension of payments, or insolvency, or attachment against the Client. In such a case, Alpha Packaging's claims shall be immediately due and payable.
- 15.3. In the event of suspension or termination, Alpha Packaging retains the right to claim damages from the Client.
- 16. Force majeure**
- 16.1. If Alpha Packaging should experience a force majeure situation, which includes disruptions to the business or in the supply of products, materials, resources or auxiliary resources, as well as when certain circumstances arise which make delivery unreasonably onerous and/or disproportionately difficult, Alpha Packaging is entitled to postpone delivery for a reasonable period determined at its discretion, or – either following elapse of the reasonable period given or immediately – terminate the Agreement without judicial intervention by means of a written statement supported with reasons, all of which without the Client being able to derive any claim to compensation for damage suffered or to be suffered.
- 16.2. If in such a case there has been partial performance, the Client shall owe Alpha Packaging for the costs arising and/or a proportionate part of the total price, naturally against delivery of the products manufactured by Alpha Packaging.
- 16.3. Alpha Packaging is not liable for any direct or indirect damage, however named, incurred by the Client or third parties due to the suspension or cancellation as a result of the aforementioned force majeure.
- 17. Applicable law and dispute resolution**
- 17.1. These General Terms and Conditions of Delivery and all Agreements are governed by Dutch law.
- 17.2. Any and all disputes arising between the parties in connection with these General Terms and Conditions of Delivery, and Agreements, will be brought before the competent court in Breda.