

ALPHA MOS INTERNATIONAL CONDITIONS OF SALE – INSTRUMENTS AND RELATED SERVICES

Application of general conditions

In the absence of a contract agreed upon between the Customer and Alpha MOS or of arrangements agreed in writing, any sale carried out by Alpha MOS will be subjected to the general conditions here present, whatever the clauses appearing on the Customer documents and in particular the general conditions of purchase. Any clause or particular condition of purchase appearing on the Customer purchase order which may be in opposition to the conditions here present would be regarded as null.

Quote and Price

The products or services will be provided at the current price at Alpha MOS at the time of order. The prices appearing on the offer communicated to the Customer by Alpha MOS are given in euros unless otherwise stated. They include the material taken to the place of delivery indicated by the Customer, standard packing, and depending on the instruments, the installation and standard training. The prices are fixed and non-revisable, provided that the order arrives at Alpha MOS before the expiry of the period of validity indicated on the price quotation. In the absence of an indicated time of validity, this will be 30 days.

The price proposals made concern only one named Customer. The information thus provided can be applicable to no other Customer, as the sale of Alpha MOS instruments and their corresponding installation presents a specific case particular to each Customer.

Delivery

The term "delivery" means the material handing-over of products to the Customer or to his agent or the execution of the performance of services. The foreseen delivery periods are given as an indication. Delays can in no case justify cancellation of the order, any compensation or application for late penalties. The delivery will be carried out to the address indicated on the purchase order by the Customer. Except in the case of express stipulation to the contrary appearing in the order, Alpha MOS reserves the right to carry out partial deliveries with corresponding partial invoicing.

Alpha MOS ensures the delivery of its goods to the destination by the means of transport of its choice, except if the Customer has expressly chosen a means of transport and a conveyor in his order.

Transfer of risks and ownership

- The transfer of risks is carried out during the handing-over of the goods to the conveyor, the goods always travel at the risks and dangers of the purchaser.
- The transfer of ownership of the instruments and other materials is carried out after payment in totality of the price of the order.
- The Customer is held responsible for checking the apparent state of the products during the delivery and, in the event of damage, to itemize any doubts as to the state of the merchandise with precision on the delivery order of the last conveyor. He will have to reiterate them to the conveyor by letter registered within 3 days of the delivery and to inform Alpha MOS of them in writing within 8 days of the delivery. In the event of disrespect to these formalities, no complaint will be accepted by Alpha MOS. The damaged material will have to be retained for expert inspection. In the event of disrespect to the whole or part of this procedure the responsibility of Alpha MOS will be completely removed.

Start-up

The start-up of Alpha MOS instruments includes the installation of the material and the necessary training for its correct use.

All complementary work necessary to the fulfillment of the installation can be carried out and invoiced to the Customer without prior agreement within a one-day limit. If this complementary work were to last more than one day, a new agreement would have to be drawn up between the Customer and the supplier.

The startup does not include the startup of accessories when they are sold individually. If, by request of the Customer, the startup of accessories was to be carried out care of Alpha MOS, it would be invoiced on the basis of the tariff in force at the time of the execution of work according to the timespent.

Terms of payment

The invoices are emitted on the delivery date or after rendered service. All invoices are payable to the following address: Alpha MOS, Immeuble Le Colombus, 4 rue Brindejanc des Moulinais, 31500 Toulouse, France according to the payment conditions stated in the quote emitted by Alpha MOS.

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Non-payment/retention of ownership

Alpha MOS retains ownership of the products sold until the integral payment of their price, the handing-over of a check alone not counting as payment. In the absence of Customer payment or disrespect to the terms of payment appearing above, Alpha MOS reserves the right to suspend the delivery and/or the execution of the pending orders or to cancel them. Alpha MOS will be able to repossess the delivered material, this recovery not being exclusive from other legal procedures that Alpha MOS will be able to exert. The installment paid by the Customer will remain acquired by Alpha MOS by way of compensation.

Return of products

Before any return of product, the Customer must obtain the written agreement of Alpha MOS. Except by specific agreement, the costs of transport and replacement in stock are the responsibility of the Customer.

Guarantee

The instruments manufactured by Alpha MOS are guaranteed for 12 months starting from the delivery date. If an intervention were to prove essential, this guarantee includes the free supply of the defective parts and labor.

The parts showing a manufacturing defect will be replaced under guarantee, excluding consumable, customer-maintained components or wearing parts, including but not limited to electrodes, sensors, glassware, chromatography columns, filters, tubing, syringes, seals, ignitors, items in the sample path and other similar parts with limited life expectancy referenced in the Product's applicable operating manual, or any other item intended to be replaced by a customer. The electrolytic cell of the hydrogen generators is not covered by warranty if it is used out of specifications or stopped for more than 3 months. All parts that are in direct contact with chemicals are not covered by this warranty and are considered consumable due to normal wear.

Determination for making the repair onsite versus at Alpha MOS or authorized service center will be made by Alpha MOS at time of warranty repair scheduling. Customer will be responsible for shipping and insurance expenses from the equipment location to the Alpha MOS Service Center. Product damage incurred during the shipment to Alpha MOS Service Center is the responsibility of the Customer. Import custom local fees of parts under warranty remain at customer's charge.

Warranty only remains valid on the condition that the recommended preventive maintenance service, as described in the documentation, is provided by Alpha MOS or an authorized Alpha MOS service company.

The guarantee cannot be applied to defects resulting from materials provided by the Customer, from a conception imposed by him, from a maintenance or a defective maintenance, unsuitable conditions of storage, deteriorations or accidents resulting from an erroneous assembly by reference to the instructions given by Alpha MOS, from negligence, defects of monitoring, an abnormal use or under abnormal conditions for this instrument, from a modification of this instrument neither mentioned nor specified by Alpha MOS, from a repair made by the Customer or third party at Alpha MOS, from normal wear and tear of the goods or fortuitous occurrences, or from force majeure.

Force majeure

Force majeure is defined by any event independent of the will of Alpha MOS or partially escaping its control and rendering the specific execution of its delivery obligation by Alpha MOS more expensive. Notably, the elements constituting a case of force majeure would be any measurement taken by a government agency rendering manufacture more difficult or affecting freedom of movement of the products, or any disturbance affecting transportation or circumstances particular to Alpha MOS affecting its normal functioning, among others connected to labor or supplies. Force majeure will cause suspension of the execution of the sale for six months, active as of the day following the date on which Alpha MOS notified the Customer of its intention to invoke. If the effects exceed six months, each party has the capacity to cancel that fraction of the order whose delivery has been thus delayed.

Rights of use

The studies, plans, drawings, and documents given to the Customer remain the property of Alpha MOS and are confidential. The Customer can neither use them outside of the contractor nor communicate them intentionally or otherwise to third parties, and it is committed to taking measurements to this end with respect to both third parties and his own employees.

In the event of non-contract signature, the studies, and documents, delivered or sent, must be restored to Alpha MOS.

With respect to Alpha MOS software products, any terms relating to the sale or purchase of such products, shall be understood as referring exclusively to the grant of a right to use the software to the Customer, to the exclusion of any transfer of ownership of the software itself. This right is granted under a separate software license agreement (the Alpha MOS End User License Agreement (EULA)). The Customer acknowledges and agrees that installation of the software constitutes full and unconditional acceptance of the terms and conditions of this license agreement, which shall remain binding on the Customer throughout the entire period of use of the software. The license agreement is made available to the Customer during the software installation process and remains accessible at all times on the Alpha MOS website. The Customer undertakes to comply with all the provisions of this license agreement. Except in case of stipulation to the contrary, the Customer is prohibited from:

- copying or reproducing in whole or in part the products and/or documentation by any means and in any form
- translating or transcribing the products and documentation into any other language using the software for a use other than that envisaged in direct relation to Alpha MOS instruments.

Law of intellectual ownership

A) If the Customer is the subject of a complaint according to which a product sold by Alpha MOS counterfeits a patent right belonging to a third party, Alpha MOS will assume the defense of the Customer against such a complaint at its own expense and will pay the possible interests charged to the Customer by a final court decision. These engagements are expressly subject to the following obligations which must be carried out by the Customer.

1. To warn Alpha MOS in writing as soon as he is informed of the existence of such a complaint.
2. To leave the direction of defense in any judicial action and/or any negotiation entirely to Alpha MOS to end in an amicable settlement of the complaint, and to afford all his assistance to this purpose.
3. To leave to Alpha MOS the choice between the following options:

- to obtain for the customer the right to continue using the product which is the subject of the complaint.
- to replace or modify it so that the complaint becomes without object, without compensation borne by Alpha MOS.
- to accept the return of the product and the reimbursement of its price under deduction of a certain amount which will be determined jointly, and which will take into account the utilization period of the product by the Customer and the services that it will have provided him with, without compensation borne by Alpha MOS.

B) Alpha MOS does not assume any obligation towards the Customer in the event of a complaint based on the use of the product sold by Alpha MOS in combination and/or with one or several products not sold by Alpha MOS; the use of the product in a way or with an aim other than that for which it was conceived by Alpha MOS; the use of supplies not provided by Alpha MOS; the use of a product manufactured by Alpha MOS based on instructions, drawings, specifications or other elements provided by the Customer.

Avoidance clause

Once established, the sale can be revoked at the request of the Customer only if Alpha MOS agrees to it, expressly and in writing. If the Customer does not carry out, completely or partially, any of the obligations which fall to him, Alpha MOS will be able at any time, by registered letter with notification of receipt, to declare the sale terminated in whole or in part. Once exerted, without loss of damages and interest, the right of annulment will be effective as of reception of the stated letter by the recipient.

Applicable law

The general conditions of sale here present as well as the acts which will be the consequence thereof are subjected to French law. For any litigation likely to occur in connection with the general conditions here present or the acts which will be the consequence thereof, express attribution will be made at the Commercial Court of Toulouse.