

# GENERAL TERMS AND CONDITIONS of SALE and DELIVERY

effective from June 3, 2020

## 1. Scope

The terms and conditions stated herein (hereinafter the "Terms") apply to all quotations, sales, supplies and services of QUESTALPHA GmbH & Co. KG (hereinafter "QUESTALPHA") to its customers (hereinafter "Purchaser"). These Terms shall only apply if the Purchaser is an entrepreneur (Sec. 14 BGB/German Civil Code), a legal person under public law (*juristische Person des öffentlichen Rechts*) or a special fund under public law. (*öffentlich-rechtliches Sondervermögen*) These Terms shall apply as a framework in its current version to all future contracts regarding the sale and/or delivery of movable goods with the same Purchaser, without the need for QUESTALPHA to re-notify Purchaser of these Terms in any single case. Any conflicting, deviating or additional conditions of the Purchaser shall not be binding notwithstanding any failure by QUESTALPHA to specifically object to them. Individual agreements with the Purchaser shall prevail over these Terms. The content of such individual agreements shall be determined by the written contract or the written confirmation of QUESTALPHA.

## 2. Formation of Contract

**2.1** A quotation by QUESTALPHA shall not constitute a binding offer. A contract shall be formed only by QUESTALPHA's written acceptance of, or by QUESTALPHA's delivery pursuant to, the Purchaser's purchase order and shall be governed exclusively by the terms of the relevant acceptance or delivery documents and by these Terms which shall be deemed accepted by the placing of a purchase order or by the acceptance of delivery by the Purchaser.

**2.2** Title and copyright in all cost calculation, drawings and other documents shall remain with QUESTALPHA. All such documents and all other information and data received by the Purchaser from QUESTALPHA which are not common knowledge in the industry shall be held in confidence by the Purchaser and shall not be disclosed to third parties without QUESTALPHA's prior written consent.

**2.3** The Purchaser's purchase order for the goods shall be deemed to constitute a binding offer. Unless the purchase order provides otherwise, QUESTALPHA shall be entitled to accept a purchase order within 14 days from receipt.

## 3. Prices, Terms of Payment

**3.1** All of QUESTALPHA prices are stated exclusive of customs duties, if any, and of value added tax in the relevant statutory amount. They are stated ex works ("EXW QUESTALPHA's German warehouse" according to Incoterms 2010) and net of costs for packaging, insurance or transportation.

**3.2** Agreed prices shall apply to all deliveries within four (4) months from the date of QUESTALPHA's order acknowledgement. Thereafter, the price set out in the then current price list of QUESTALPHA shall apply and be invoiced.

**3.3** In case of net purchase orders of less than EUR 250.00 - a surcharge of EUR 25.00 shall apply. QUESTALPHA shall be entitled to adjust the purchase order upwards or downwards in order to grant the Purchaser more favourable conditions.

**3.4** Unless agreed otherwise, all payments to be made by the Purchaser shall be due without deduction within ten (10) days from the invoice date and delivery or acceptance of the goods, respectively. All payments shall not be deemed made until QUESTALPHA has received the payment in cleared funds. Notwithstanding any instructions of the Purchaser to the contrary, all payments will first be applied against interest and cost and then against the oldest amounts outstanding. Bills of exchange and cheques will be accepted only upon specific agreement, subject to receipt of the proceeds and without any cost or expense to QUESTALPHA.

**3.5** Upon expiration of the payment term (Section 3.4) the Purchaser shall be in default of payment, without the need for a prior reminder. In this case QUESTALPHA shall be entitled to demand default interest in the applicable statutory rate. The right to assert claims for further damages due to the default of payment shall remain unaffected.

**3.6** The Purchaser shall only be entitled to set off claims if his counterclaim is uncontested or has been established in a final judgement. In the event of defects, the Purchaser's counterclaims remain unaffected. The Purchaser shall only be entitled to assert rights of retention to the extent that his counterclaim is based on the same contract and is uncontested or has been established in a final judgement.

**3.7** If QUESTALPHA becomes aware of a significant deterioration in Purchaser's financial situation following the conclusion of the contract (for example because the Purchaser is in default of payment) QUESTALPHA shall be entitled to carry out any outstanding deliveries only against advance payment or the provision of collateral; if such advance payments or collateral have not been provided even after the expiry of a reasonable grace period QUESTALPHA may cancel the contract wholly or in part; QUESTALPHA shall remain entitled to assert any other rights. In case of contracts regarding the manufacturing of non-fungible goods (custom-made according to the customer's specification), QUESTALPHA shall be entitled to cancel the contract immediately.

## 4. Delivery

**4.1** Delivery dates and delivery periods shall not be binding unless confirmed by QUESTALPHA in writing and further provided that the Purchaser has furnished QUESTALPHA with all information and documents necessary for making delivery.

**4.2** If a delivery date or a delivery period is not met, the Purchaser shall first request QUESTALPHA to make delivery within a reasonable grace period and notify QUESTALPHA that after the end of grace period delivery will be rejected. The Purchaser shall be entitled to rescind the contract only if delivery has not been made within such grace period; in case of default with respect to a partial delivery or partial performance this shall apply only if, objectively, as a consequence thereof, the Purchaser has no interest in such partial delivery or performance.

**4.3** In case delivery cannot be made for reasons for which the Purchaser is responsible, or in case the Purchaser refuses to accept delivery without sufficient cause, QUESTALPHA shall be entitled to store the products appropriately at the risk and expense of the Purchaser. Without prejudice to any other rights it may have, QUESTALPHA may rescind the contract when the Purchaser does not accept delivery before the lapse of a reasonable grace period set by QUESTALPHA.

**4.4** In case delivery or other performance is delayed due to unforeseeable and unavoidable events for which QUESTALPHA is not responsible such as war, natural disasters, lack of energy or resources, manufacturing and operating disturbances, strike and/or lockout, or resulting from orders of authorities, delivery and performance periods shall be reasonably extended. QUESTALPHA and the Purchaser shall be entitled to rescind the contract if the disturbing event or circumstance has lasted for four (4) months and if it becomes unreasonable to wait until the relevant event or circumstance ceases to exist.

**4.5** QUESTALPHA shall be permitted to make partial deliveries and to otherwise deviate from the purchase order, e. g., with respect to form and colour, to the extent this is reasonable for the Purchaser. QUESTALPHA shall further be entitled to make delivery in greater or lesser quantities within the tolerances that are customary in the industry.

**4.6** Delivery shall be made ex works QUESTALPHA Germany ("EXW Germany" according to Incoterms 2010). This is also the place of performance for the delivery or performance and any Remedial Action. If the Purchaser wishes the goods to be sent to another destination (sale involving the carriage of goods), shipment will be made in an appropriate way determined by QUESTALPHA using customary packaging. Shipments will be insured against transport risks only upon request and at the expense of the Purchaser.

**4.7** The risk of accidental loss of or damage to the goods shall, at the latest, pass to the Purchaser upon delivery of the shipment to the carrier. In case the parties agreed that acceptance of the goods is required, the risk shall pass upon acceptance. If delivery or shipment is delayed for reasons for which the Purchaser is responsible or if the Purchaser notifies QUESTALPHA prior to the delivery of the goods of his intention not to accept delivery of the goods, the risk shall pass to the Purchaser on the day of QUESTALPHA's notice that shipment can be made.

## 5. Duty of Inspection, Warranty (*Mängelgewährleistung*)

**5.1** The Purchaser shall inspect the deliverables upon receipt without delay with respect to damages or defects. Shipments marked "fragile" shall be inspected for damages immediately upon receipt, and if possible in the presence of the carrier. In any event, the deliverables shall be inspected within one (1) week from receipt; in case of defects which cannot be discovered within this period, even in case of diligent inspection, QUESTALPHA shall upon discovery be informed without delay in writing.

**5.2** QUESTALPHA warrants that upon delivery the delivered product is of the agreed quality. The agreed quality will exclusively be determined by the specific written agreements or confirmations by QUESTALPHA concerning the characteristics, features and specifications of the products. QUESTALPHA accepts no liability for public statements (e. g. advertisements) of third parties who have not been previously authorised by QUESTALPHA. The legal provisions on the burden of proof in case of defects remain unaffected. Descriptive or explanatory statements regarding the products or their intended use as well as public statements shall under no circumstances constitute a guarantee for any specific quality of the delivered goods; for such specific quality guarantee only a written agreement or confirmation of QUESTALPHA shall be decisive. Unless specifically agreed otherwise, deviations which are customary in the industry are permitted.

**5.3** All defects subject to warranty shall be remedied at QUESTALPHA's option by way of repair or replacement (together "Remedial Action") (*Nacherfüllung*). The Remedial Action shall not include either the removal of the defective goods or the reinstallation of the goods, if QUESTALPHA was not originally obliged to install the goods. The Purchaser shall bear the installation and removal costs. Upon request the Purchaser shall remit the defective Products to QUESTALPHA and shall grant QUESTALPHA the time and opportunity required for the Remedial Action. The cost of material, transportation and labour accruing in connection with the Remedial Action shall be borne by QUESTALPHA provided that the warranty claim is justified. In case the Purchaser's warranty claim is unjustified and this was known to the Purchaser or negligently unknown, the Purchaser shall reimburse QUESTALPHA for any expenses incurred as a consequence thereof.

**5.4** The Purchaser shall only have the right to remedy the defect himself or through a third party in case of emergency, to avert disproportionately greater damage or if QUESTALPHA is in default of remedying the defect, always provided that the Purchaser has previously given QUESTALPHA prompt notice thereof. The Purchaser shall immediately inform QUESTALPHA of any such remedy, in advance whenever possible. Such right to remedy the defect itself shall not exist if QUESTALPHA were entitled to refuse the Remedial Action according to the statutory provisions. QUESTALPHA shall not be liable for defects result from inappropriate or improper use, faulty handling or by normal wear and tear provided that QUESTALPHA does not bear any responsibility for the damage.

**5.5** In case a Remedial Action fails to remedy the defects within a reasonable period, the Purchaser may with respect to the defective part of a shipment rescind the contract or may request that the purchase price be reasonably reduced (*Minderung*). Further claims of the Purchaser for compensation or reimbursement of expenses due to defects only exist in accordance with Clause 6 and are otherwise excluded.

**5.6** The limitation period for warranty claims shall be twelve (12) months from receipt of the goods by the Purchaser. For damage claims due to other reasons than defects of the delivered product (Clause 6) or for rights of Purchaser with respect to defects concealed in bad faith or defects caused intentionally the statutory period of limitations shall apply.

**5.7** The Purchaser shall only be entitled to cancel or terminate the contract due to a breach of contract that is not a defect if QUESTALPHA is responsible for such breach of contract. Apart from that the legal prerequisites and consequences shall apply.

## 6. Liability

**6.1** QUESTALPHA shall be liable for damages as follows:

- (I) for damages which have been caused by QUESTALPHA or its servants intentionally or in a grossly negligent manner;
- (II) for breach of material contractual obligations in a slightly negligent manner, but only up to the amount of the foreseeable damages which are typical for such contracts;
- (III) pursuant to the provision of the Product Liability Act and any other mandatory statutory liability;
- (IV) if and to the extent QUESTALPHA has assumed a guarantee.

**6.2** If none of the cases listed in section 6.1 is fulfilled QUESTALPHA shall not be liable for damages.

**6.3** Clause 6.1 and 6.2 shall apply to all claims for damages of the Purchaser irrespective of their legal reason, in particular also tort, breach of contract and breach of pre-contractual obligations. They also apply to claims of the Purchaser for the reimbursement of expenses.

**6.4** The Purchaser is obliged to take appropriate measure to avert and limit any damage.

## 7. Resale

**7.1** The Purchaser may resell QUESTALPHA special goods only in their unaltered original packaging.

**7.2** If the Purchaser resells the delivered goods unchanged or after processing, transformation, mixing or blending with other goods, the Purchaser shall hold QUESTALPHA harmless from claims of third parties for product liability, if and to the extent the Purchaser is responsible for the defect causing the liability.

## 8. Retention of Title

**8.1** Title to the goods delivered shall remain with QUESTALPHA until all amounts owed to QUESTALPHA from or in connection with the business relationship between the Purchaser and QUESTALPHA have been paid. In case of current accounts, the retained title shall secure all respective balances due to QUESTALPHA.

**8.2** The Purchaser may resell the goods subject to retention of title only within the ordinary course of its business and only as long as the Purchaser is not in default with payments. The Purchaser shall not be entitled to pledge, transfer title to or dispose of the goods subject to the retention of title in any other way affecting QUESTALPHA's title. The Purchaser hereby assigns to QUESTALPHA all accounts receivable from such a sale of the products; QUESTALPHA accepts such assignment. If goods subject to retention of title are sold after their processing or combination, mixing or blending with other products or together with other products, the assignment of accounts receivable shall be agreed only to the extent reflecting the purchase price agreed between QUESTALPHA and the Purchaser plus a safety margin of 10% of such price. The Purchaser shall irrevocably be authorized to collect the accounts receivable assigned to QUESTALPHA in his own name. QUESTALPHA may revoke the Purchaser's authority and its authorization to sell the goods subject to retention of title if the Purchaser is in breach of its obligations towards QUESTALPHA.

**8.3** The Purchaser shall treat the goods subject to retention of title with care for the duration of the retention of title. Upon request of QUESTALPHA the Purchaser shall insure the goods subject to retention of title in a reasonable manner, provide QUESTALPHA with proof of insurance, and assign its claims arising from the insurance contract to QUESTALPHA.

**8.4** Any processing or transformation of the goods subject to retention of title by the Purchaser shall be deemed to have been made for QUESTALPHA. If the products are processed together with other items, QUESTALPHA shall acquire a pro-rata co-ownership interest in the new items considering the value of the goods subject to retention of title and that of the other processed items at the time of processing. In case the goods subject to retention of title are mixed or blended with other items so that no separation is possible, QUESTALPHA shall acquire a pro-rata co-ownership interest in the new items considering the value of the goods subject to retention of title and that of the other items at the time of mixing and blending. If the mixing or blending will have the effect that the items owned by the Purchaser are to be considered the main item, it shall be deemed agreed that the Purchaser transfers a pro-rata co-ownership interest to QUESTALPHA. Any goods thus created with sole title or a co-ownership interest of QUESTALPHA shall be held in custody for QUESTALPHA by the Purchaser.

**8.5** The Purchaser shall at any time furnish QUESTALPHA with all desired information with respect to the goods subject to retention of title and to the rights assigned to QUESTALPHA hereunder. The Purchaser shall notify QUESTALPHA immediately of all seizures of or claims advanced in respect of the goods subject to retention of title by third parties, and shall at the same time furnish QUESTALPHA with all necessary documents. The Purchaser shall also at the same time advise the third party of QUESTALPHA's retention of title. The cost of defending against such seizures and claims shall be borne by the Purchaser if the defence was successful and QUESTALPHA has tried to enforce its costs claim unsuccessfully towards the third party.

**8.6** In case the value of the security exceeds QUESTALPHA's aggregate receivables by more than 10%, the Purchaser shall be entitled to request a release with respect to such excess.

**8.7** In case the Purchaser defaults with performance of its obligation towards QUESTALPHA, QUESTALPHA may, without prejudice to any of its other rights, request return of the goods subject to retention of title after rescission of the contract and may dispose of the goods subject to retention of title otherwise in order to obtain satisfaction of the Purchaser's outstanding debts.

**8.8** In case deliveries are made to other jurisdictions where the foregoing rules relating to retention of title will not afford the same protection as in Germany, the Purchaser shall take all action necessary to provide QUESTALPHA with corresponding security. The Purchaser shall cooperate with respect to all steps which are necessary or beneficial for the validity and enforceability of such security as, e.g., registration, publication, etc.

## 9. Return of Products

Unless goods are returned in case of justified warranty claims, the Purchaser shall not be entitled to return goods to QUESTALPHA. In such a case QUESTALPHA reserves the right to return any goods returned to it to the Purchaser at the expense of the Purchaser.

## 10. Data Protection

**10.1** If and to the extent that QUESTALPHA processes personal data on behalf of the Purchaser this is done on the basis of an agreement on processing of data in accordance with Art. 28 GDPR.

**10.2** If QUESTALPHA and the Purchaser do not enter into an agreement on the processing of data complying with the requirements set forth in Art. 28 GDPR although QUESTALPHA processes personal data on behalf of the Purchaser, QUESTALPHA shall be entitled to refuse the processing of such personal data. This shall not affect any other rights of QUESTALPHA in this regard.

**10.3** Personal data which do not fall within the scope of Art. 28 GDPR shall be processed by QUESTALPHA as controller pursuant to the applicable legal regulations. Information in this regard is provided by QUESTALPHA within the respective privacy statements. With respect to its responsibilities in relation to personal data, QUESTALPHA takes all measures necessary to comply with applicable legal regulations.

**10.4** If QUESTALPHA appoints a subcontractor to process data on behalf of the Purchaser and the Purchaser, in compliance with the conditions specified in the agreement on the processing of data, has raised an objection against this appointment, QUESTALPHA reserves the right to terminate the respective agreement for cause without giving prior notice (*fristlose Kündigung aus wichtigem Grund*).

## 11. Miscellaneous

**11.1** Without prejudice to any other exclusive place of jurisdiction, the courts of Eschenburg, Germany shall have exclusive jurisdiction to decide any and all disputes arising out of or in connection with the business relationship. QUESTALPHA shall, however, be entitled to bring legal action against the Purchaser at any other place of competent jurisdiction.

**11.2** The entire legal relationship between QUESTALPHA and the Purchaser shall exclusively be governed by German law; the United Nations Convention on Contracts for the International Sale of Good (CISG) shall not apply.

**11.3** If one of these Terms turns out to be invalid or unenforceable, the validity of the remaining provisions shall remain unaffected. The invalid or void provision shall be replaced by the parties by such valid provision which comes closest to the economic purpose of the invalid provision.

**11.4** The Purchaser shall not be entitled to assign any rights from agreements with QUESTALPHA to a third party. Sec. 354a HGB shall remain unaffected.