

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY - ALTA SKIFERBRUDD B.V.

Filed at the Chamber of Commerce under number 02086757

1. DEFINITIONS

In these conditions:

"Seller" means Alta Skiferbrudd B.V. Company no. 02086757 whose registered office is at Eemshornweg 9, 9979 XK Eemshaven, The Netherlands.

"Buyer" means the party which enters into a contract with the Seller or to whom an offer or proposal is or has been made.

"Goods" means all goods, which are supplied, to the Buyer by the Seller under any contract between them.

"The Price" means the charge payable for the supply of the Goods as more particularly described in Condition 4.1 hereof.

"Terms and Conditions" means the standard terms and conditions of sale set out in this document and including any other written conditions of the Seller notified in writing by the Seller to the Buyer.

"Contract" means any contract between the Seller and the Buyer for the purchase and sale of the Goods.

"In writing" means by letter, fax or e-mail.

2. GENERAL

2.1 These Terms and Conditions shall apply to all quotations, offers, sales and deliveries. No variation or purported variation (including in particular any terms and conditions on the Buyer's contract or order form), whether before or after the making of the contract, shall have effect unless expressly agreed to in writing by the Seller.

2.2 The applicability of general terms and conditions of the Buyer is hereby expressly rejected.

2.3 Individual agreements between Seller and Buyer made in writing in a particular case shall take priority in case of contradictions between the individual agreement and these Terms and Conditions.

2.4 Insofar as these Terms and Conditions are also drawn up in a language other than English, in the event of any conflict the English text shall always prevail.

3. OFFERS AND CONCLUSION OF CONTRACT

3.1 There shall be no contract between the Seller to the Buyer until the Seller accepts the Buyer's order in writing. Any quotation, offer and details in price lists, brochures and so on given by the Seller to the Buyer is made without obligation and does not bind the Seller. The Prices contained in any such quotation and so on are provided on the basis that the Seller's Terms and Conditions apply.

3.2 Any product samples or examples shown or given by the Seller are considered to be indicative only. The qualities of Goods ordered may differ from the sample or example unless it has been explicitly agreed in writing that delivery will be in accordance with the sample or example provided.

3.3 In the event that agreement is reached to effect payment by means of a letter of credit, the Contract concerned shall only come into effect once the Seller accepts the relevant irrevocable (confirmed) letter of credit in writing according to UCP 600. This letter of credit will be opened by a bank subject to the acceptance in advance by the Seller and will be opened at the latest five (5) working days after the Seller has sent the order confirmation.

3.4 Any Contract will be concluded under the resolutive that the Buyer, solely according to the credit insurance company, will be sufficient creditworthy.

3.5 Any offer made or undertaking given by a representative of the Seller shall only be binding insofar as the latter confirms this in writing.

4. PRICES

4.1 The Price shall be the Seller's quoted price or where no price has been quoted the price listed in the Seller's price list current at the date of delivery and shall be exclusive of VAT and any other applicable taxes, levies or duties and cost of any import or other licenses or clearances all of which shall be payable by the Buyer.

4.2 The Seller reserves the right at any time prior to delivery of the Goods to adjust the Price to take account of any increase in any cost price factors such as costs of materials, labour, services, transport or of any currency fluctuations.

4.3 If any new Export, Import, Customs and/or Excise duty or levy shall be imposed on any of the Goods or if the rate of any existing duty or levy of any of the Goods shall be increased and should such duty or levy be payable under this Contract by the Seller, or if by reason of import embargo or restriction or curtailment of governmental or EEC subsidies, the Seller is obliged to pay an increase price for the supply of the Goods after taking into account such embargo restriction or curtailment, the Seller shall be entitled to increase the Price by such amount as may be necessary to compensate them for such imposition or increase.

4.4 If applicable: the Price is based on freight rates and any surcharges ruling at the date of the Contract. Any new surcharge payable or any increase in an existing surcharge, shall be payable by the Buyer.

4.5 If prices are in another currency than euro and, after fourteen days from the date of conclusion of the Contract, there is a change in the euro exchange rate, thereby putting the Seller into an unfavourable financial position, prices will be increased accordingly by the Seller so that the equivalent in euro's will then be equal to the value at the time of the conclusion of the Contract.

5. DELIVERY

5.1 Any times quoted for delivery are estimates only and can never be considered a fatal date. The Seller shall not be in default in respect of such delivery time until the Buyer notifies it in writing that it is in default, in doing so stipulates a reasonable period of time within which the Seller has the opportunity to effect delivery, and the latter still fails to do so.

5.2 Delivery takes place Ex Works at the Seller's depot in Eemshaven, the Netherlands, in accordance with the ICC Incoterms® rules in force at the moment of conclusion of the Contract, unless otherwise agreed upon in the Contract. Other terms and conditions of delivery shall be agreed per transaction.

5.3 Delivery periods shall be determined per transaction. The delivery period shall commence at such time as the relevant agreement is concluded in accordance with the provisions of Condition 3 and the Seller has also accepted any security for payment which may have been agreed, whether this be in the form of an open, irrevocable (confirmed) letter of credit or not.

5.4 The Seller shall be entitled to make partial deliveries or deliveries by instalments and the terms and conditions herein contained shall apply to each partial delivery. The Seller shall be entitled to demand payment for each partial delivery before proceeding with any other.

5.5 Shortage in quantity of Goods (representing no more than 15 per cent by value) from that stated in the Contract shall not give the Buyer any right to reject the Goods or claim damages and the Buyer shall be obliged to accept and pay at the contract rate for the quantity of the Goods delivered. Where there is any deviation in the quantity of Goods delivered from that stated in the Contract, the Buyer shall notify the Seller within five days of receipt of the Goods.

5.6 If the Buyer fails to take delivery of the Goods at the time stated of delivery the Seller, without prejudice to any other rights or remedy available to the Seller, may store the Goods at the risk of the Buyer until actual delivery and charge the Buyer for the reasonable costs (including handling and insurance) of storage.

5.7 If the Buyer fails to take delivery of the Goods within fourteen days of the time stated for delivery the Seller may sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price.

5.8 If the Goods are to be delivered by instalments, each instalment shall be considered a separate contract and any failure in respect of delivery, quantity, condition or specification of any one instalment shall not affect the Contract as to other instalments to be delivered.

5.9 If by reason of any circumstances referred to in Condition 13 the Seller does not have or is unable to obtain sufficient available supplies of the Goods to enable them to fulfil all their contracts, the Seller may allocate their available supplies amongst any or all purchasers on such basis as the Seller

deems fair and practical, without any liability for failure to comply with the provisions of this Contract.

5.10 Notwithstanding any provisions of law or regulation to the contrary it shall be the responsibility of the Buyer to dispose of all packaging materials of all descriptions in accordance with the provisions of all laws and regulations of the place at which the Goods are delivered to the Buyers and the Buyer shall hold harmless and indemnify the Sellers against any liability which may arise from their failure or refusal to effect such disposal.

5.11 The Seller shall not be liable for any harm due to late delivery if and insofar as this is attributable to circumstances beyond Seller's control and sphere of risk, which is deemed to include late or non-compliance on the part of its suppliers or the transport company it engages.

5.12 If the time for delivery is exceeded, the Buyer shall not be entitled to cancel or terminate the agreement, without the Buyer being entitled to any compensation.

5.13 The Buyer's failure to comply with his duty to effect payment (or to do so on time), shall have the effect of suspending the Seller's duty to effect a delivery.

6. RISK OF LOSS OR DAMAGES

6.1 The risk of loss and damage to the Goods shall pass to the Buyer immediately upon delivery.

6.2 From when the risk in the Goods passes to the Buyer until the Seller is paid in full for the Goods, the Buyer Shall:

6.2.1 indemnify and keep indemnified the Seller against all loss of and damages to the Goods, and against any reduction in the re-sale value thereof below the price;

6.2.2 insure and keep insured the Goods in an amount at least equal to the Price; and

6.2.3 hold upon trust for the Seller absolutely all proceeds of such insurance.

7. PAYMENT

7.1 Payment will take place against a confirmed irrevocable letter of credit or according individual agreement.

7.2 The Buyer shall pay the Price in full in accordance with Condition 7.1 notwithstanding that the Buyer may not have collected the Goods or that the property in the Goods has not passed to the Buyer. The Buyer shall not be entitled to make any deduction from such payment or exercise any right of set-off or contribution howsoever arising. The time of payment of the Price shall be of the essence of the Contract.

7.3 Payment shall be made by the Buyer to the Seller by transfer to such bank account as the Seller may from time to time notify in writing to the Buyer or by such other means as may be agreed by the Seller.

7.4 In the event that payment is not effect on time, the Buyer shall be deemed to be in default without the need for any notice of default or judicial intervention, and the Buyer shall be charged the statutory commercial interest rate on overdue payments. Such interest shall be payable on demand and may be charged and added to the balance of overdue payments, and thereby compounded with monthly rests.

7.5 All judicial and extrajudicial costs incurred by the Seller because payment was not made (in good time), shall be paid by the Buyer. The extrajudicial costs are deemed to amount to at least 15 per cent of the amount which is claimed.

7.6 Nothing in this Condition 7 shall be taken as limiting the Seller's rights under Condition 9 or otherwise.

7.7 Upon or after entering into the Contract and before its implementation, the Seller will be entitled to demand a guarantee from the Buyer that both the payment obligations and any other obligations arising from this Contract will be fulfilled. Refusal by the Buyer to provide the required security gives the Seller the right to suspend its obligations and ultimately without any notice of default or legal intervention, the right to dissolve the contract wholly or partially, without prejudice to his right to compensation for any damages suffered by him.

8. RETENTION OF TITLE (a different article applies to German buyers, see Condition 17)

8.1 The property in the Goods shall remain in the Seller until the Seller has received payment of all the sums invoiced, plus any interest, penalty and costs, as well as claims as a result of the Buyer's failure to perform its obligations towards the Seller under this Contract or any other. Any prepayments already paid for by the Buyer shall remain acquired by the Seller to compensate possible losses when reselling. As long as the delivered Goods are subject to a retention of title, the Buyer shall not nor shall it allow any third party to acquire an interest in the Goods or title to them and without prejudice to the generality thereof the Buyer shall not pledge or part with possession of them or allow any charge lien or other encumbrance to affect them or allow them to be installed as a fixture of any property.

8.2 The Seller will be entitled to immediately take back the Goods supplied if the Buyer remains in default in any way whatsoever with regard to the fulfilment of payment obligations. In that case, the Buyer will be obliged to allow the Seller access to the Buyer's land and buildings for this purpose.

8.3 In the event that the Buyer receives any payment from any third party relating to the Goods such sum or sums so received shall, until the Price has been paid in full, be held by the Buyer in a fiduciary capacity as agent for the Seller.

8.4 If so required by the Seller the Buyer shall hold any sum received by it as described in Condition 8.3 in a separate account on trust for the Seller.

8.5 If so required by the Seller the Buyer shall assign to the Seller its right to recover from any third party any sum due relating to the Goods and the Buyer shall appoint the Seller its attorney for the recovery of any such sum.

8.6 Nothing in this Condition 8 shall confer any right upon the Buyer to return the Goods. The Seller may maintain an action for the Price notwithstanding that property in the Goods shall have vested in the Buyer.

8.7 If the Goods are admixed with the property of the Buyer or are processed with or incorporated therein such that it is not possible to extract or dismount the Goods from the resulting product of such admixture, process or incorporation, the said resulting product shall become and/or shall be deemed to be the sole and exclusive property of the Seller. If the Goods are admixed with the goods which are the property of any third party other than the Buyer the said resulting product shall become or be deemed to be owned in common with that third party.

8.8 If the Seller repossesses the Goods including any admixed goods as referred to in Condition 8.7, and resells the same, it shall account to the Buyer or any relevant third party for any proceeds of sale in excess of the aggregate of amount owned by the Buyer to the Seller under this Contract, any other contract or otherwise which aggregate shall include the costs incurred in repossessing and reselling the Goods including legal costs, incurred in connection therewith.

9. SUSPENSION AND TERMINATION

9.1 If the Buyer:

9.1.1 fails to comply with any term of the Contract (including stipulations as to payment); or
9.1.2 commits an act of bankruptcy, makes an arrangement or composition with creditors or suffers any distress or execution or if there is any change in the type of company or in its management; or
9.1.3 resolves or is ordered to be wound up or has a receiver appointed, or if the Seller is in reasonable doubt as to the Buyer's ability to pay for any order,
then in any such event, the Seller shall have the right without notice of default or legal intervention being required, (without prejudice to any other remedies) to consider the Contract invalid, to cancel any uncompleted order and withhold or suspend delivery of further Goods, and to demand payment forthwith of all sums due by the Buyer to the Seller.

9.2 In the event that the Seller exercises any rights it may have to stop delivery of the Goods the Seller may at its options resell such Goods at public or private sale without notice to the Buyer and without affecting the Seller's demand payment forthwith of all sums due by the Buyer to the Seller.

9.3 In case the Buyer annuls the Contract, the Seller is entitled to charge the expenses, damages and lost profit and, to Seller's own choice and depending on the already performed supplies, 30 per cent to 100 per cent of the Contract Price.

10. INFRINGEMENT

The Buyer shall indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done or the supply of Goods in accordance with the Buyer's specifications, which involves the infringement of any letters patent, registered design, copyright, trademark or trade name or other rights of confidentiality of information or industrial commercial or intellectual property.

11. THE GOODS

11.1 The Seller gives no warranty that the Goods will be fit for any specific purpose or use.

11.2 The Goods are not warranted free from defect rendering same unmerchantable, which would not be apparent on reasonable examination, any statute or rule of law to the contrary notwithstanding.

11.3 Any claims by the Buyer regarding specification, analysis, condition, quality or otherwise in relation to the Goods must be noted on the waybill and shall be notified to the Seller in writing within 5 days after receipt of the Goods by the Buyer. Failing such notification, all claims against the Seller in relation to the Goods of whatsoever kind and howsoever arising, shall be waived and absolutely barred. The Buyer shall be responsible for notifying carriers and insurers of claims, and making such formal claims as are necessary. In the event of the Buyers' failure to notify or make claims within appropriate time limits, all claims against the Seller in relation to the Goods of whatsoever kind and howsoever arising shall be waived and absolutely barred.

11.4 In the event of such notification, the Seller shall be entitled to arrange for the Goods to be inspected as soon as reasonable practicable. Any handling of, or interference or dealing with, the Goods whatsoever or howsoever by the Buyer prior to such inspection shall automatically be deemed to be unconditional acceptance of the goods.

11.5 In the event of it being proved and certified by an independent Surveyor or analyst that the Goods were not in conformity with the requirements of the Contract and the Buyer has reported a claim in a timely manner, the Seller's liability shall be limited, at the Sellers' option, to the delivery of replacement material provided that the Buyer shall first have re-delivered the Goods to the Seller or to the granting of an appropriate credit or allowance against the Price. Any other rights or claims of the Buyer are expressly excluded.

11.6 It is the Buyers' responsibility at and from the time of delivery to ensure that the Goods are in all respects properly marked and packaged, and the Seller will not be liable in respect of improper marking, packaging, loading, stowage, or other preparation for transport.

11.7 Save where a contrary intention is expressed in any other written conditions of the Seller notified in writing by the Seller to the Buyer, weight condition and quality shall be final upon shipment according to the certificate of the Sellers or their suppliers or their superintendents.

12. LIABILITY

12.1 The Seller shall in no event be liable to the Buyer for special, consequential or other indirect damages of any kind, including but not limited to loss of profit, missed savings, business interruption loss, de-staffing, penalties and charges owed to third parties and impaired goodwill.

12.2 In case the Seller is obligated to pay compensation for damage, this shall never exceed the invoice value of the Goods in connection with which the damage was caused.

12.3 In case of product liability claims, Seller's liability will be at all times limited to the amount collected from the producer of the concerned Good(s).

12.4 The Buyer shall indemnify the Seller against claims of third parties that are related to the execution of the Contract by the Seller and in respect of which the Seller is not liable under these terms.

13. FORCE MAJEURE

13.1 The Seller shall not be under any liability of whatever kind for non-performance in whole or in part of its obligations under the Contract due to causes beyond control of the Seller including, but not limited to war, riot or other act of civil disobedience, act of a third party, failure or delay in transportation, act of any Government or any agency or sub-division thereof, Government regulations, judicial actions, labour disputes, strikes, embargoes, illness, accident, fire, explosion, flood, tempest or other Act of God, delay in delivery to the Seller or the Seller's suppliers or shortage of labour, fuel, raw material or machinery or technical failure. In any such event, the Seller may, without liability, cancel or vary the terms of the Contract including, but not limited to, extending the time for performing the Contract for a period at least equal to the time lost by reason of such causes.

13.2 Any duly authenticated certificate issued by any recognised Chamber of Commerce, trade association, government or other body with knowledge of the relevant facts in any country in which the above-mentioned circumstances occur shall be accepted by the Buyer as conclusive proof of the occurrence and duration of such circumstances as shall any published report of the circumstances.

13.3 Where the Seller has already executed part of a Contract, the Buyer shall pay the purchase price for any Goods that have been delivered.

14. ASSIGNMENT

The Buyer shall not be entitled to assign or transfer or purport to assign or transfer to any third party the Contract or benefit thereof.

15. HEADINGS

The headings of these Terms and Conditions are for convenience only and shall have no effect on the interpretation thereof.

16. GOVERNING LAW, FORUM AND DISPUTES

16.1 All offers by the Seller and the Contracts to be concluded by it shall be solely governed and construed in accordance with the law of The Netherlands.

16.2 All disputes which may arise in the execution of or in connection with a Contract will be brought before the competent judge in Groningen, The Netherlands, without affecting the right of the Seller to have the dispute heard by another competent court.

The following article is applicable to German buyers in stead of Condition 8:

17. Eigentumsvorbehalt

Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die uns aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Käufer zustehen. Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Käufer stellt die neue Sache unter Ausschluss eigenen Eigentumserwerbs für uns her und verwahrt sie für uns. Hieraus erwachsen ihm keine Ansprüche gegen uns.

Bei einer Verarbeitung unserer Vorbehaltsware mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwerben wir zusammen mit diesen anderen Lieferanten – unter Ausschluss eines Miteigentumserwerbs des Käufers – Miteigentum an der neuen Sache zu deren vollem Wert (einschließlich Wertschöpfung) wie folgt:

a) Unser Miteigentumsanteil entspricht dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu dem Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren.

b) Verbleibt ein von Eigentumsvorbehalten zunächst nicht erfasster Restanteil, weil andere Lieferanten den Eigentumsvorbehalt nicht auf die Wertschöpfung durch den Käufer erstreckt haben, so erhöht sich unser Miteigentumsanteil um diesen Restanteil. Haben jedoch andere Lieferanten ihren Eigentumsvorbehalt ebenfalls auf diesen Restanteil ausgedehnt, so steht uns an ihm nur ein Anteil zu, der sich aus dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu den Rechnungswerten der mitverarbeiteten Waren dieser anderen Lieferanten bestimmt.

Der Käufer tritt bereits jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus unseren gegenwärtigen und künftigen Warenlieferungen mit sämtlichen Nebenrechten im Umfang unseres Eigentumsanteils zur Sicherung an uns ab. Bei Verarbeitung im Rahmen eines Werkvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages unserer Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten.

Solange der Käufer seinen Verpflichtungen aus der Geschäftsverbindung mit uns ordnungsgemäß nachkommt, darf er über die in unserem Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an uns abgetretenen Forderungen selbst einziehen. Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Käufers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen, jedoch liegt ein Rücktritt vom Vertrag nur dann vor, wenn wir dies ausdrücklich schriftlich erklären. Übersteigt der Wert der uns eingeräumten Sicherheiten unsere Forderungen um mehr als 10%, so werden wir auf Verlangen des Käufers insoweit Sicherheiten nach unserer Wahl freigeben.

Scheck-/Wechsel-Zahlungen gelten erst nach Einlösung der Wechsel durch den Käufer als Erfüllung.

Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschließlich deutsches Recht.