

Alfa Laval Inc., Canada Standard Terms & Conditions of Sale



1. These Standard Terms and Conditions apply to all equipment, services, parts and materials ("Products") supplied by Alfa Laval Inc. ("Alfa Laval") to its Customers unless otherwise agreed to by Alfa Laval in writing with respect to a transaction.
2. In these Standard Terms and Conditions,
"Price" means the full amount to be paid to Alfa Laval in the transaction including any trade in or other special allowance in the transaction, quoted in Canadian currency, DAP Customer Site (Incoterms 2010), unless otherwise specified.
"Technical Specifications" means Alfa Laval's specifications for the Products being supplied.
3. TAXES. Unless otherwise specified, Price is exclusive of taxes, duties and charges. Customer will pay or reimburse Alfa Laval for same.
4. CREDIT APPROVAL/OVERDUE PAYMENTS. Each transaction is subject to approval of Customer's credit by Alfa Laval. If granted, credit terms are Net 30 Days, payable from date of invoice, unless otherwise specified. Overdue payments bear interest at 18% per annum. To secure payment of the Price, Customer grants and Alfa Laval retains a security interest in, and in Quebec hypothecates, the Products and the proceeds thereof for the amount of the Price, plus interest thereon at the aforementioned rate. Customer authorizes Alfa Laval to prepare and file any documents reasonably necessary to register this security interest and hypothec. In the event of default by the Customer, Alfa Laval may repossess and may deal with the Products as it sees fit and Customer shall be responsible for all costs and remain liable for any deficiency.
5. DELIVERY. Time for delivery of Products is approximate and starts to run at later of the date specified in the order confirmation, the resolution of all technical terms including approval of drawings and commercial terms, the receipt by Alfa Laval of any advance payment, credit approval and any requested security for the balance of the Price. Except for any late delivery penalty to which Alfa Laval may explicitly have agreed for a specific supply, Alfa Laval is not liable for losses of any kind incurred by Customer for delays in or failure to deliver all or any part of the Products. If prior to delivery Alfa Laval has concern regarding timely payment of the Price because of an adverse change in Customer's circumstances or otherwise, it may require payment of all or additional parts of the Price before shipment.
Delivery of Products is deemed complete upon shipment per agreed Incoterms. If Customer is unable or unwilling to accept physical delivery at the time specified, Alfa Laval may store Products at Customer's cost and delivery of such Products shall be deemed complete as of the date of storage. Unless otherwise specified in writing, risk of loss or damage to the Products including any repaired or replaced items and the responsibility for the payment of insurance premiums and freight passes to Customer upon delivery by Alfa Laval.
If Customer does not perform any material obligation, Alfa Laval may, in addition to any other remedy, suspend its performance until Customer has performed its outstanding obligations. All times for delivery of Products, but not the schedule for payment, will be extended accordingly. Customer will be responsible for Alfa Laval's costs and damages caused by Customer's failure to perform.
6. INSPECTION AND ACCEPTANCE. Customer will inspect Products immediately at delivery. Alfa Laval may, at its option, be present at such inspection. Customer shall immediately notify both the carrier and Alfa Laval of any missing, damaged or defective Products, failing which Customer is deemed to have accepted such Products as delivered and shall have no claim for same. Customer's notification of missing, damaged or defective Products does not constitute conclusive evidence of Products' condition at the time of delivery.
7. MECHANICAL WARRANTY. For all new and Fully Factory Refurbished equipment, Alfa Laval warrants to Customer that the Products meet the Technical Specifications in all material respects and are, together with any replacements of defective Products, free from defects in material and workmanship for a period, unless specified in writing, of one (1) year from the date of initial delivery of the Products. For all repairs, parts and services, Alfa Laval warrants to Customer that the Products meet the Technical Specifications in all material respects and are free from defects in material and workmanship for a period, unless otherwise specified in writing, of one hundred and eighty (180) days from the date of initial delivery of the Products.
Alfa Laval will, at its option, repair, replace or refund the Price of any Products found to be defective during the warranty period. This is Customer's only remedy for Products which do not meet this warranty. Customer must notify Alfa Laval in writing of the claimed defect promptly after the appearance thereof and in no event later than ten (10) days after the expiry of the warranty period. Customer will bear risk of loss of, or damage to, defective Products in shipment to Alfa Laval. Customer will reimburse Alfa Laval at Alfa Laval's customary rates for service personnel attending to any warranty claim at Customer's premises.
The warranty does not apply to ordinary wear and tear or to erosion or corrosion and shall be null and void if Products are used for unintended purpose, are misused, abused, improperly stored, installed, maintained, operated or repaired, are operated by Customer other than in accordance with Alfa Laval's instructions, if any, or under abnormal conditions or are exposed to radioactive materials.
8. OTHER WARRANTIES. Products will conform with applicable federal, provincial and local laws in effect on the date of acceptance of order. Alfa Laval may increase Price to reflect increased costs resulting from changes to laws or regulations. Products will not infringe any patent, copyright, trade secrets or other proprietary rights of any third party and, except as provided for under section 4 above shall be free from liens and encumbrances.
Alfa Laval will use its commercially reasonable best efforts to remedy or resolve at its cost any violation of the warranties in this section 8. If Customer is permanently unable to use any of the Products or their use is unreasonably restricted, Customer's sole remedy is the right to return such Products against a full refund of the Price.
9. NO OTHER WARRANTIES. CUSTOMER ACCEPTS THE LIMITED WARRANTIES SET OUT IN THESE STANDARD TERMS AND CONDITIONS OF SALE AS THE ONLY WARRANTIES PROVIDED BY ALFA LAVAL WITH RESPECT TO THE SALE, DELIVERY, INSTALLATION, PERFORMANCE AND SERVICING OF THE PRODUCTS. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, SPOKEN OR IMPLIED BY ALFA LAVAL OR ITS AGENTS, PRESCRIBED BY STATUTE OR OTHERWISE IMPLIED BY LAW INCLUDING WITHOUT LIMITATION AS TO FITNESS FOR CUSTOMER'S PURPOSE. NO OTHER MATERIALS, EXCEPT AN EXPRESS PERFORMANCE OR EXTENDED WARRANTY SIGNED BY ALFA LAVAL FOR A SPECIFIC SUPPLY, SHALL GIVE RISE TO ANY WARRANTY OF ALFA LAVAL.
10. WARRANTIES ON RESALE. Customer shall make no representation or warranty in any resale of the Products or sale of any product incorporating the Products other than those contained in these terms and conditions. Customer shall indemnify, defend and hold Alfa Laval harmless against any and all claims, actions and expenses (including all lawyers' fees) in connection with any unauthorized representations or warranties or in connection with any claim of process patent infringement relating to a process in which the Products are used as a component part.
11. LIMIT ON LIABILITY. Alfa Laval shall have no liability for any loss, damage or expense incurred including, without limitation, special, consequential or incidental damages or lost production, sales or profits caused directly or indirectly by the use, maintenance, repair, service, adjustment or repossession of the Products or any of them or by Alfa Laval's failure to provide any of them whether alleged in contract, negligence or otherwise.
12. PERMITS. Customer must obtain at its expense all licenses, permits and approvals for the purchase, delivery and installation of any Products.
13. FORCE MAJEURE ETC. Either party may be excused from the timely performance of its obligations in the sale or other supply of any Products if its performance is impeded or prevented by circumstances beyond its control and it is taking all reasonable steps to mitigate the effect of the delay. The party claiming relief from its obligations must notify the other party promptly upon the occurrence of and upon the termination of the circumstances giving rise to the claim. Either party may terminate the agreement for the supply of the Products affected if such circumstances continue for more than 6 months. Notwithstanding anything in this section 13, the Customer must extend any security for the payment of the Price for a period equal to the delay in Alfa Laval's performance and pay Alfa Laval for that portion of the Products manufactured or delivered to the date of the initial notice. If by no fault of Alfa Laval or its affiliates it is delayed in delivering any Products, it is entitled to increase the Price to reflect any actual costs incurred because of the delay.
14. SOFTWARE. If software is included in the Products, Alfa Laval grants to Customer a nonexclusive, royalty-free license only for use of the software provided with the Products. Under this license, Customer may (i) use the software only in machine readable object code and only in connection with the Products; (ii) copy the software in machine readable object code for backup purposes in support of the use of the Products; (iii) create one additional copy of the software for archival purposes only. This licence may not be assigned, sublicensed or otherwise transferred without the prior written consent of Alfa Laval. Customer hereby acknowledges that the software provided comprises a valuable trade secret and/or copyright property of Alfa Laval (or its licensor) and covenants that it will take all reasonable precautions against unauthorized access to or disclosure of the software.
15. INTELLECTUAL PROPERTY. All drawings, designs and specifications provided by Alfa Laval are the sole property of Alfa Laval, and are furnished in order to provide full documentation and on the condition that they shall not be reproduced or copied in any manner whatsoever, in whole or in part, nor shall they be used, in whole or in part, for furnishing information to others or for any purpose not specifically authorized in writing by a corporate officer of Alfa Laval Inc.
16. CUSTOMERS DRAWINGS AND TECHNICAL SPECIFICATIONS. All drawings and specifications provided by Customer must be submitted in English and conform with Alfa Laval's standard drafting procedures. Customer may not make any changes to drawings accepted by Alfa Laval without its prior written consent. Changes without Alfa Laval's consent may void any warranty adversely affected thereby.
17. CONFIDENTIAL INFORMATION. Proprietary or confidential information disclosed for supply of any Products must not be used or disclosed by the recipient other than for the express purpose for which it was disclosed.
18. ASSIGNMENT. Neither party may assign all or any part of an agreement for sale of Products without the prior consent of the other party, except Alfa Laval may assign any portion to an affiliated company without the prior consent of Customer.
19. WAIVER. No act or omission shall act as a waiver of an unperformed obligation of the other party or constitute an agreement to allow future breaches of the applicable provision.
20. ENTIRE AGREEMENT. Products are sold only pursuant to a written or verbal order on terms expressly accepted by Alfa Laval which, together with any schedules identified therein and these Standard Terms and Conditions contain the entire agreement of the parties with respect to the sale or other supply of the Products and supersedes all other statements, understandings or the like. Alfa Laval rejects any differing or supplemental terms which may be printed or otherwise found in any of Customer's purchase order or other documents. Any alteration of an agreement must be in writing and signed by an authorized representative of each party. Descriptive data found in any advertisement, catalogue, brochure, circular or the like are approximate and must not be considered as any warranty or legal obligation as to Technical Specifications unless specifically included in performance criteria expressly warranted in the transaction.
21. SUSPENSION OR CANCELLATION. Subject to section 13 hereof, any agreement for sale or other supply of Products may not be cancelled or suspended by Customer without the express written consent of Alfa Laval, such consent to be granted in Alfa Laval's sole discretion and upon such terms, including the payment of all costs incurred and profits foregone, as Alfa Laval may reasonably require.
22. INTERPRETATION. If there are contradictions or inconsistencies between statements made in any order confirmation and documents related to a specific sale and supply, all documents shall be read so as to give priority to the specific statement accepted by Alfa Laval by the signature of an authorized officer over the general statement, but if the contradiction is with any of these Standard Terms and Conditions of Sale, the Standard Terms and Conditions of Sale shall prevail unless Alfa Laval has expressly stated that the term or condition contradictory to the Standard Terms and Conditions of Sale shall prevail.
23. GOVERNING LAW. The sale of the Products and all contracts related thereto are governed by the laws of the Province of Ontario and the laws of Canada applicable therein.
24. LANGUAGE. *Cette convention est disponible en version française. This Agreement is available in the French language. Si vous choisissez de signer la version anglaise de cette convention, vous serez réputé avoir exigé que cette convention et tous documents y afférents soient rédigés en langue anglaise seulement.* If you choose to execute the English language version of this Agreement, you will be deemed to have required that the Agreement and all related documents be drafted in English only.