

BALLUFF APS TERMS AND CONDITIONS OF SALE AS AT 11/2020

BALLUFF

1. General

In the event of any inconsistency between these Terms and Conditions of Sale and any other terms and conditions including (but not ApS to) those in your purchase order, these Terms and Conditions of Sale prevail.

The placing of an order (including telephone or electronic orders) with Balluff ApS constitutes an implicit acceptance of these Terms and Conditions of Sale, also available on www.balluff.dk.

2. Prices

All prices quoted by Balluff ApS are based upon manufacturers' list prices (excluding value added tax) and are subject to change without notice. Unless otherwise stated, prices are quoted for a single consignment to a single address. Where agreed that call offs or scheduled orders are not adhered to by the purchaser, Balluff ApS reserves the right to amend the price structures in accordance with the terms of the quotation without reference to the purchaser.

Whilst every effort has been made to ensure price list accuracy, Balluff ApS is not responsible for any errors or omissions therein.

The price charged is the price applicable on the date of dispatch subject to VAT.

3. Payment

Time of payment is of the essence. All outstanding accounts are payable on demand, however, in any case payable within 30 days from date of invoice, at the latest. Balluff ApS reserves the right to suspend delivery if payment is not received in accordance with the above or in accordance with any alternative arrangement to be agreed in writing between the parties. Further, Balluff ApS reserves the right to withdraw the credit terms stipulated above in this clause and substitute them for cash instant payment. In case of late payment in reference to the due date stated in the invoice, Balluff ApS is entitled to claim interest. The invoice amount will be subject to addition of monthly interest at the rate of 1.5% for every month or part of a month until payment of the amount due.

The purchaser is not entitled to set off any outstanding amounts against invoices from Balluff ApS unless Balluff ApS has given its prior consent in writing.

4. New Accounts

Customers wishing to open ledger accounts are requested to furnish a banker's and two trade references.

5. Telephone Orders

Orders are only acceptable by telephone if an official order number is quoted by the purchaser. If a telephone order is confirmed in writing, the purchaser must mark such written order with any confirmation reference given by Balluff ApS when accepting the order by telephone. Balluff ApS assumes no liability for any duplication of delivery that may occur due to orders placed in that manner.

6. Title

6.1 All goods delivered by Balluff ApS to a purchaser are at the purchaser's risk from the time of delivery.
6.2 Ownership of goods will not pass to the purchaser until Balluff ApS has received payment in full of all amounts outstanding for goods delivered by it to the purchaser and all other amounts due now or at a later date to Balluff ApS by a purchaser on any account.

6.3 Until ownership of any goods has passed to a purchaser, the purchaser undertakes to:

- store such goods securely and adequately;
- store the goods (at no cost to Balluff ApS) and to keep them separated from all other goods belonging to the purchaser or any third party in such a way that they at any time be immediately identifiable as being the property of Balluff ApS;
- not destroy, deface or obscure any identifying mark or packaging on or relating to goods supplied by Balluff ApS;
- maintain the goods in a satisfactory condition and keep them insured on Balluff ApS's behalf for the full price thereof;
- hold the proceeds of insurance referred to in paragraph (d) above on trust for Balluff ApS.

6.4 A purchaser may only on the following cumulative conditions re-sell the goods delivered by Balluff ApS prior to the passing of ownership:

- any sale must be effected in the ordinary course of the purchaser's business at full market value; and
- any such sale must be effected for the purchaser's own account and risk.

6.5 Balluff ApS is entitled to recover payment for any delivery of goods notwithstanding that ownership of such goods has not passed from Balluff ApS.

7. Delivery

Any delay in delivery due to Balluff ApS's conduct will never be deemed to be material. All goods are supplied Ex Works (Incoterms 2000) and unless otherwise stated, carriage and packing are charged as extra services. Special deliveries (e.g. Securicor, Red Star, etc) are charged to the purchaser at cost. Overseas delivery costs will be charged to the purchaser in full. While Balluff ApS will take all reasonable steps to deliver the goods by the agreed date of delivery, Balluff ApS assumes no liability for any omission or failure in that respect.

Balluff ApS reserves the right to deliver by instalments at its discretion.

In the event of delay in delivery due to the purchaser's conduct, Balluff ApS is entitled to invoice the purchaser for its reasonable storage charges.

8. Cancellation

Any cancellation of orders on the part of the purchaser will not be accepted unless notified in writing to Balluff ApS at least 25 working days prior to the date of dispatch. All cancellations will be subject to a cancellation charge calculated as 50% of the price of each individual item.

9. Inspection

The purchaser shall inspect any goods received from Balluff ApS within 3 days upon receipt. If Balluff ApS has not within 3 days received any written notice of lack of conformity or damage in transit from the purchaser, the purchaser forfeits the right to submit any claim for damages against Balluff ApS, see clause 10 below.

10. Loss and Damage in Transit

In case of any defect or damage to the goods in transit until the agreed place of delivery, see clause 7, Balluff ApS may at its option either (i) reimburse the purchase price; or (ii) effect a replacement delivery or (iii) repair of the goods sold. The purchaser has no further remedies in case of loss or damage in transit.

The purchaser is, however, only entitled to advance a claim against Balluff ApS in the above situation, provided the damage is proved to have occurred at a time during transit when the goods were at Balluff ApS's risk.

If the goods are lost during transit, the purchaser shall at least 10 working days upon receipt of the invoice notify both Balluff ApS and the carrier in writing about the loss of the goods, stating the character and the extent thereof.

11. Defects after Delivery

In case of defects in the goods within the first 12 calendar months from the time of delivery under clause 7, Balluff ApS will either (1) remedy the defects established; or (2) effect a replacement delivery, if the defects are proved to originate from the period prior to the time of delivery. The purchaser has no further remedies in case of defects after delivery.

However, this does not apply in situations where Balluff ApS has waived liability or where the defects are due to the purchaser's conduct in full or in part.

If remedy of defects is required, Balluff ApS will reimburse the freight charges for the parts returned to Balluff ApS, and the parts repaired will be delivered to the purchaser, free of charges.

12. Limitation of Liability

12.1 Balluff ApS gives no guarantee whatsoever for the goods sold. However, Balluff ApS grants a 12 months' right of complaint for any hidden defects under clause 11.

Accordingly, the purchaser is solely responsible for ensuring that the goods sold comply with the purchaser's requirements and assumptions for the purchase, and any subsequent defects in the products are irrelevant to Balluff ApS.

12.2 Nothing in these conditions excludes or limits the liability of Balluff ApS for a purchaser's death or injury caused by negligence or fraudulent misrepresentation on the part of Balluff ApS.

12.3 Subject to clause 12.2:

- Balluff ApS's full liability in damages, tort, fraudulent misrepresentation, submission of incorrect or misleading information, restitution or otherwise arising in connection with the performance or contemplated performance of any contract between Balluff ApS and a purchaser is limited to the contract price payable by the purchaser; and
- Balluff ApS is not liable to any purchaser for any indirect or consequential loss or damage (e.g. loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused), arising out of or in connection with any contract between Balluff ApS and the purchaser.

13. Termination

Without prejudice to any other rights or remedies which the parties may have, Balluff ApS may terminate the contract executed under these Terms and Conditions of Sale with immediate effect without liability to the purchaser on giving notice to the purchaser, provided:

- that the purchaser fails to pay any amount due for payment and remains in default for at least 7 days upon receipt of a written demand for payment; or
- that the purchaser commits a material breach of any of the provisions of these Terms and Conditions of Sale and (provided such breach is remediable) fails to remedy the breach within 30 days upon receipt of written notice of the breach; or
- that the purchaser is repeatedly in breach of any provisions of these Terms and Conditions of Sale in such a way that may reasonably justify the opinion of anticipated breach; or
- that the purchaser enters into liquidation, is subject to insolvency or bankruptcy proceedings, makes an arrangement with its creditors (or other equivalent situations).

Upon termination of such contract, howsoever caused, the purchaser shall immediately pay to Balluff ApS all outstanding invoices, including interest, due for goods or services delivered by Balluff ApS.

14. Technical Data and Input Material

Whilst every effort has been made to ensure the accuracy of technical data, Balluff ApS assumes no liability for any loss or damage arising from errors or omissions or by virtue of any data or information provided to it, which turns out to be incorrect.

15. Return of Electronic Devices

Return of Packaging The purchaser is to dispose of delivered products after the end of their use at his own expense in accordance with the statutory provisions, in particular those of the WEEE Directive 2012/19/EU, the Danish Environmental Act (2019-11-25 nr. 1218) and corresponding regulations in non-EU member states.

The purchaser releases Balluff ApS from the take-back obligations as a manufacturer in accordance with Article 3) of the WEEE Directive and from any related third-party claims. The purchaser shall contractually oblige commercial third parties to whom he passes on the delivered products to ensure that these third parties properly dispose of the products at the end of their use and at their own expense in accordance with the statutory provisions, in particular those of the WEEE Directive 2012/19/EU and the Danish Environmental Act (2019-11-25 nr. 1218) and to impose a corresponding further obligation in the event that the products are passed on again.

If the purchaser violates his obligation to pass on the obligations to his customers, he is obliged to take back the delivered products at his own expense after the end of their use and to dispose them in accordance with the above said legal regulations.

If Balluff ApS is obligated in accordance with statutory law Balluff ApS will return on the purchasers demand the transport packaging. The purchaser bears the costs for the return transport of the transport packaging.

16. Intellectual Property

In the relationship between the purchaser and Balluff ApS, all intellectual property rights in goods and services delivered by Balluff ApS remain the sole property of Balluff ApS.

17. Force Majeure

Should Balluff ApS be prevented from delivering at the agreed date due to strikes, lockouts, acts of God, war, fire, tempest, flood, accident or damage to goods, or delay in obtaining or inability to obtain due to scarcity of materials or for any other reason beyond Balluff ApS's control, Balluff ApS may either suspend delivery until a reasonable time after the end of any such event and for as long as is reasonable for the resumption of normal production or sale, or terminate or change the contract without compensation.

18. Governing Law

Any disputes arising out of or in connection with deliveries from Balluff ApS are to be governed by Danish law without regard to any principles of private international law specifying any other choice of law. Further, a jurisdiction agreement is to be executed, according to which all disputes must be brought before the District Court of Aalborg, Denmark.

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