

Terms of Sale and Delivery



Revised and valid as of November 8, 2018

1. General Terms.

1.1 These Terms and Conditions of Sale ("Terms of Sale") of DAFA US Inc. ("DAFA") apply to the sale and delivery of any product ("Products") to buyer ("Buyer"), unless expressly deviated from or modified by other written agreement.

1.2 None of any past practice, industry standards, course-of-dealing or usage of trade shall constitute a modification of any term or condition contained herein, nor shall same add any term not contained herein. No additional or different terms or conditions will be binding upon DAFA unless specifically agreed to in a writing signed by an authorized representative of DAFA. Failure of DAFA to object to conditions contained in any other writing or other communication from Buyer shall not be construed as a waiver of this Terms of Sale nor acceptance of any such other provisions. This Terms of Sale also serve as notice of DAFA's objection to and express rejection of any terms and conditions of purchase included in Buyer's order or other writing that are different from or additional to these Terms of Sale. Buyer's payment for the Products shall constitute unequivocal acceptance of these Terms of Sale.

1.3 DAFA reserves the right to revise and discontinue Products at any time and without prior notice. DAFA will ship Products that have the same or similar functionality and performance of Products ordered, but changes, including, but not limited to, changes with regard to measurements and weight, due to technical requirements between what is shipped and what is described in specification sheets, catalogs, or the like, are possible.

2. Quotation / Order; Intellectual Property Rights.

2.1 Agreements between DAFA and the Buyer shall not be deemed concluded until DAFA has confirmed such agreement by a written order confirmation ("Order Confirmation"). In the event of discrepancies between an order confirmation and the Buyer's order or acceptance, the order confirmation shall apply. Sales orders accepted by DAFA shall always be subject to the Products being unsold.

2.2 All intellectual property rights in drawings and products (including, but not limited to, trademarks, copyrights, design rights, inventor's rights, patent rights, utility model rights, technical specifications, product handbooks, etc.) supplied by DAFA to Buyer shall at all times remain with DAFA. This shall apply regardless of whether the drawing or product concerned has been developed on behalf of or for Buyer and/ or is based on the Buyer's special specifications or drawings. Buyer shall only acquire normal right of use in regards to the purchased products. Buyer shall not be entitled to pass on drawings or specifications to others or make them available to others, just as Buyer shall not be entitled to produce or have others produce the products supplied by DAFA or copies thereof.

3. Handling Charge; Delivery from Opened Cartons.

3.1 Orders below \$150 exclusive of sales tax are subject to a handling charge for shipment to Buyer.

4. Terms of Payment and Security Interest.

4.1 The purchase price for the Products is due for payment on the date of maturity stated on the Order Confirmation (the "Due Date"). For payments received within eight days of the Due Date, DAFA grants a discount of 1.0 % on the net price exclusive of sales taxes, if applicable.

4.2 Overdue amounts shall bear a delinquency charge of interest is charged at the lower of (a) 1.5% per month; or (b) the maximum rate permitted by applicable law on the open amount or fraction thereof from the Due Date.

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4.3 The Buyer may not set-off claims pertaining to other legal matters against the purchase price and shall have no right of retention or non-payment due to any delay, complaint or counterclaim in respect of the delivery in question. Any assignment of Buyer's counter-claims to a third party without DAFA's prior written consent shall be void.

4.4 If the Buyer does not comply with DAFA's terms of payment, DAFA reserves the right to withhold further deliveries, including withholding deliveries already entrusted with a transport company until all outstanding accounts have been settled in full.

4.5 Buyer hereby grants to DAFA a security interest in Products sold hereunder together with the proceeds therefrom to secure payment of the purchase price of such Products and agrees, and appoints DAFA its agent, to take all such action and to execute and file all such documents and instruments (including, but not limited to, UCC-1 financing statements) as may be necessary or reasonably requested by DAFA to perfect and continue DAFA's security interest hereunder.

5. Delivery.

5.1 Delivery will take place ex works **DAFA A/S in Brabrand, Denmark or DAFA US Inc. warehouse Chicago, IL** (Incoterms 2010), unless otherwise agreed in writing by the parties in each separate case. It is Buyer's sole responsibility to pay for and to obtain any governmental or other licenses, certificates or documentation as may be required. If Products are not shipped within 30 days after notification to Buyer that they are ready for shipping, including Buyer's failure to give shipping instructions, DAFA may store such Products at the Buyer's sole risk in a warehouse or other storage facility or upon DAFA's premises and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices therefore.

5.2 Any time of delivery stated by DAFA shall be approximate and thus not be binding on DAFA, unless a fixed time of delivery has been expressly agreed to in writing by DAFA. DAFA shall not be liable for any damages as a result of any delay or failure to deliver due to any cause beyond DAFA's reasonable control, including without limitation, any act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, terrorism, riot, delay in transportation or inability to obtain necessary labor, materials or manufacturing facilities or delays in deliveries by sub-contractors or suppliers by any such circumstance as referred to above. DAFA reserves the right from time-to-time to substitute a Product with a product that has the same function as such Product, or to delete a Product. Further, unless expressly agreed in writing by DAFA, the estimated date of delivery shall never be regarded as a deadline.

5.3 If a fixed time of delivery has been expressly agreed, DAFA may extend such time by 10 working days from expiry of the fixed time of delivery. Where DAFA exceeds the extended time of delivery, Buyer is entitled to a penalty from the expiry of the extended time of delivery. The penalty totals 0.5% of the part of the agreed purchase price for the delayed service for each full week of the delay. The penalty cannot exceed 5% of the agreed purchase price for the subject Products. Where DAFA exceeds the extended time of delivery by more than 45 working days, the Buyer may terminate the proposed sale with immediate effect.

5.4 Where Buyer chooses to terminate the proposed sale with immediate effect, Buyer shall only be eligible to repayment of the price paid for the delayed Products, but not to repayment of any other amounts paid for other Products. Buyer shall have no other remedies for breach caused by the delay in question and shall thus be barred from making any claim for damages.

5.5 With respect to Buyer specific items, DAFA reserves the right to make an excess delivery or a short delivery of up to 10 % compared with the specific number of items ordered by Buyer.

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6. Prices.

6.1 Deliveries are made at the prices applicable at the time of delivery and specified in DAFA's price lists and subject Order Confirmations etc. Quotations and prices specified in Order Confirmations are exclusive of any tax, assessment, duty, custom or other fee of any nature imposed upon the Products, their sale, transportation, delivery, use or consumption imposed by any governmental authority, domestic or foreign, on or measured by the transaction between DAFA and Buyer shall be paid by Buyer in addition to the price quoted or invoiced. In the event that DAFA is required to pay any such tax, duty, fee or charge, Buyer shall reimburse DAFA therefore unless otherwise agreed upon in writing.

6.2 DAFA reserves the right to change its prices without notice as a consequence of extraordinary price increases on raw material and increases in wages and salaries.

7. Returned Products.

7.1 Returned goods are only accepted subject to prior agreement (goods to a value of less than DKK 500 cannot be returned), and only with a deduction of 20 percent of the value. Furthermore, the buyer must pay the return freight. Invoice or order numbers must always be stated. The buyer is liable for the freight. Custom-made goods or goods purchased specifically for the buyer cannot not be returned. The packaging must be the original package and must be undamaged, and the product must be marketable, undamaged, complete, and saleable.

The return shipment must be labeled with a return order number, which can be obtained from DAFA A/S. The return order number must always be placed on the return packaging. This ensures rapid and effective processing. Returned goods without return order number will be rejected. The return shipment must always be specified and sorted according to product type. The products can be returned for up to 1 year from the date of purchase. Products with limited shelf life (such as tape, joining tape, adhesives and sealants) cannot be returned.

8. Liability for Defects.

8.1 DAFA warrants that Products produced by DAFA shall be free from defects in material and workmanship for a period of two (2) years from the date of delivery. DAFA's obligations under the aforesaid warranty shall be discounting, repairing or replacing Products, which if properly used and maintained, prove defective in material or workmanship. Such discount, repair or replacement shall be DAFA's sole obligation and Buyer's sole remedy hereunder and shall be conditioned upon (a) Buyer's inspection of Products within fourteen (14) days of delivery to Buyer, (b) DAFA's receipt of written notice of any alleged defect within ten (10) days after such inspection, and (c) at DAFA's option, return of such defective Products. Any Product repaired or replaced pursuant to this warranty will be warranted for the remainder of the original warranty period. Upon DAFA's request, Buyer shall promptly provide samples and other evidence of, and shall allow DAFA's representatives access to the alleged defective Products. Claiming an alleged defect does not relieve Buyer of any of its payment obligations to DAFA.

8.2 DAFA's obligations under Section 8.1 shall not apply to any part of Products sold hereunder, which (a) are not used in accordance with its instructions or if it is used for a purpose not indicated on the labeling; (b) are consumed by normal wear and tear; (c) are disposable Products and have a normal life time inherently shorter than the herein stated warranty period; (d) have been damaged due to negligent or faulty use, alteration, maintenance, storage or handling by Buyer and/or third parties; or (e) result from failure to use approved components for maintenance and replacement parts. Any suggestions by DAFA or DAFA's agents regarding use, application or suitability of Products shall not be construed as an express warranty unless confirmed to be such in writing by DAFA.

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8.3 Except for the warranties expressly set forth in writing herein, DAFA MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED. ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEEDS THE WARRANTIES HEREIN EXPRESSLY SET FORTH IS HEREBY DISCLAIMED BY DAFA AND EXCLUDED FROM THESE TERMS OF SALE, ANY RELATED CONFIRMATION ORDER, QUOTATION OR ANY OTHER AGREEMENT RESULTING THEREFROM.

8.4 DAFA's liability on any claim of any kind including negligence, for any loss or damage arising out of, or connected with, or resulting from any Confirmation Order issued with respect to these Terms of Sale, or from the performance or breach by DAFA of any contract, Confirmation Order or other agreement resulting from these Terms of Sale, or from the sale, delivery, resale, repair or use of any Products sold by DAFA covered by or furnished under any Confirmation Order, contract, agreement resulting from these Terms of Sales shall in no case exceed the total price paid by Buyer for the Products sold by DAFA which gives rise to the claim. FURTHER, IN NO EVENT SHALL DAFA BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS.

9. Buyer Indemnity.

9.1 Buyer agrees to indemnify, defend and hold harmless DAFA, its officers, directors, employees, agents and insurers of each of them, from and against any and all third party claims, demands, actions, damages, expenses, costs, claims, judgments and liabilities (including, without limitation, interest, penalties and reasonable attorneys' fees and investigative costs) incurred by DAFA, arising from, in connection with or as a consequence of (a) any negligent, or wrongful act or omission by Buyer; (b) Buyer's transfer, use or sale of any Product, except to the extent that such suit or demand arises out of the failure of such Product to meet DAFA's express warranties; and/or (c) Buyer's possession, operation, maintenance, delivery or return of Product. Such protection shall include, without limitation, claims for personal injury or death or property damage arising out of any act or omission of Buyer or its customers. This Section 9 shall survive the termination or expiration of these Terms of Sale.

10. Severability.

10.1 If at any time any one or more of the provisions of these Terms of Sale become invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions of these Terms of Sale shall not be in any way impaired.

11. Applicable Law and Arbitration.

11.1 DAFA and Buyer agree that any purchase order, contract, agreement or other contractual relationship established as a result of this quotation shall be deemed executed and intended to be performed in the State of Illinois and that the laws of the State of Illinois shall govern the construction and application of any contractual relationship between DAFA and Buyer resulting from this quotation.

11.2 Any dispute, claim or controversy arising out of or relating to these Terms of Sale or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration in Chicago, Illinois, before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures to the extent allowed under such rules and if not allowed then JAMS' Comprehensive Arbitration Rules and Procedures shall apply. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. The arbitrator's decision shall be reduced to writing. Further, the award by the arbitrator shall be final and binding on the parties, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.