

AlphaGary Standard Terms and Conditions of Sale

The sale of goods described on the face side hereof (“Goods”) is made on the express condition that Buyer assents to the promises, terms, and conditions set forth below, whether or not they are additional to or different from any terms and conditions proposed by Buyer. AlphaGary (“AlphaGary”) objects to buyer’s additional or different terms.

1. Deliveries. The Goods will be delivered FOB place of shipment unless otherwise specified on Buyer’s order, shipment may be made by the method or carrier deemed most feasible by AlphaGary. Freight allowances, if any, are based on rates prevailing on the date of price quotation; Buyer shall pay increases due upon due date for payment of Goods.
2. Risk of Loss. After delivery of the Goods to the carrier, and in other circumstances as provided by law, Buyer shall bear all risks of loss, whether or not the products so delivered are conforming or non-conforming, whether or not a right of rejection exists in Buyer’s favor, and whether or not Buyer rightfully revokes acceptance. The occurrence of any such risk shall not release Buyer from its obligations hereunder.
3. Warranties. AlphaGary warrants only that the Goods conform to AlphaGary’s published specifications, if any, and the description on the face hereof. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY WITH RESPECT TO NON-INFRINGEMENT OF THE PATENT RIGHTS OF OTHERS OR ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE.
4. Credit. Any credit is subject to final approval by an authorized officer of AlphaGary at its main office.
5. Payment Terms. Payment is due 30 days after invoice, unless otherwise stated.
6. Service Charge. Buyer agrees to pay a service charge of the lesser of 1-1/2% per month or the maximum allowed by applicable law on all unpaid amounts after due date.
7. Modification. No modification of any promise, term or condition of sale shall be of any force or effect unless signed by an officer of AlphaGary.
8. Claims of Buyer. As a condition precedent to recovery of any claim of any kind, Buyer must comply with the following. All claims of any kind, except nonreceipt, must be made to AlphaGary within five days after receipt of shipment. Claims for non-receipt must be made in writing delivered to AlphaGary within twenty days after receipt of an invoice. AlphaGary’s liability for breach of warranty or contract shall arise only upon prompt return of the products claimed to be defective at Buyer’s expense and after due notice to AlphaGary of the claimed breach, as set forth in this paragraph 8.
9. Buyer’s Exclusive Remedies: Exclusion of Remedies. Any claim for nonreceipt of all or part of Buyer’s order or any other claim of any kind except breach of warranty shall be limited to the purchase price of the goods affected, as shown on the invoice. AlphaGary’s liability for breach of warranty shall be limited to the furnishing of a like quantity of the same products free from defects or, at AlphaGary’s option, to the refunding of the purchase price of the defective product. The foregoing shall constitute Buyer’s exclusive remedies. ALPHAGARY IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. Buyer waives all right of the offset for any alleged obligation of breach of contract and breach of warranty (except as set forth herein), negligence, strict liability in tort, and/or other tort. The waiver, agreement and release in the foregoing sentence is binding upon Buyer’s successors in title and assigns.
10. Risk of AlphaGary’s Nonperformance. The following shall be hereinafter known as the “Nonliability Events”: action by governmental authority, public enemy, insurrection, rebellion, or riot; fire; explosion; flood; severe weather conditions; accidents; labor trouble or strikes; shortage of inventory, raw material, power or fuel; difficulties with equipment or transportation; or acts of God or any other cause or events beyond AlphaGary’s control. In the event of delays in delivery or nondelivery of the goods which, directly or indirectly, were caused by a Nonliability Event or to which a Nonliability Event contributed, AlphaGary shall not be liable for damages, whether direct, incidental, or consequential, and (a) the time for performance shall, at AlphaGary’s option, be extended in whole or in part until the termination of the Nonliability Event and for an additional period thereafter reasonably necessary to cure the effects thereof, or (b) at AlphaGary’s option, a part or all of the Goods affected may be eliminated from the contract of sale, without any liability to AlphaGary; and the contract price shall be appropriately reduced.
11. Taxes and Other Additional Charges. In addition to the price for the Goods, Buyer will pay AlphaGary the amount of any excise, sales, use, or similar tax relating to the Goods or their sale, and any freight (unless there is an express freight allowance) stop-over charge, lot loading charge, demurrage charge or the like relating to the transportation or storage of the Goods, which AlphaGary is legally obligated to pay, within ten days after the date of an invoice for the charge.
12. Assignment. The contract for sale of the Goods is not assignable in whole or in part by Buyer without the written approval of AlphaGary, and any attempted assignment shall be void.
13. No Sales “on Approval” or “Sale Return”. No sale is made on approval or under a sale or return. AlphaGary may, however, at its option, allow a return. Any such return shall be at Buyer’s sole risk and expense; return shall be effected only upon actual delivery to AlphaGary or as otherwise instructed by it in writing. No credit, whether by refund of monies paid or by allowance against monies due, shall be given until such actual receipt by AlphaGary of return products in the same condition as they were when delivered to the carrier by AlphaGary for original shipment to Buyer.
14. Governing Law. The contract for sale for the Goods shall be governed by the laws of the Commonwealth of Massachusetts.
15. AlphaGary’s Non-Exclusive Remedies. Upon any breach by Buyer of any promise, term, and/or condition contained herein, including, but not limited to, the nonpayment by Buyer of any amount due hereunder, or if AlphaGary deems itself insecure, AlphaGary may, at its option, and without prejudice to or limitation of any other legal remedy hereunder, by law, or otherwise, resort to one or more of the following remedies: (a) suspend further deliveries, even though partial payment for undelivered Goods has been received; (b) demand adequate assurance of due performance, including but not limited to, the delivery to AlphaGary of a third-party bond satisfactory to AlphaGary; (c) identify to the contract finished or unfinished Goods at Buyer’s sole risk, Buyer hereby waiving the provisions of Mass. G.L.c. 106 Section 2-613 or any similar applicable provisions of law; (d) declare the unpaid balance of the contract immediately due and payable; (e) collect from Buyer all costs of collection, including but not limited to, reasonable attorney’s fees incurred in enforcing any right or remedy hereunder or in law, pertaining in whole or in part to the goods; and (f) reposes and/or reclaim the Goods or any part thereof. Buyer hereby agrees, upon demand, to assemble the Goods or any part thereof to AlphaGary, at Buyer’s expense, all in accordance with AlphaGary’s instructions. Buyer hereby grants AlphaGary a security interest in the Goods and any and all proceeds thereof and accessions thereto to secure all of Buyer’s obligations hereunder under this or any other agreement. Buyer hereby irrevocably appoints AlphaGary as the Buyer’s lawful attorney-in-fact to execute and file all documents necessary to desirable to effectuate the purposes of this paragraph, including but not limited to, appropriate financing statement. A photo static copy of this document may be filed as a financing statement.
16. Integration Clause. This document constitutes the entire agreement of the parties as to the subject matter hereof.
17. Statement of Responsibilities. Each customer or user of AlphaGary materials is solely responsible for determining the suitability of the material(s) selected for the intended application. Each customer or user must conduct its own studies and gain all necessary approvals and certifications as required for the intended finished product.