

ANALISI TERMINI DI UTILIZZO DI ALIBABA.COM E ALIEXPRESS

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Alibaba Group

è una multinazionale cinese privata composta da una serie di società attive nel commercio elettronico

I 2 maggiori mercati sono:

- **Alibaba.com** - b2b
- **AliExpress** - b2c

**FONTI PER
INDIVIDUARE
LE CLAUSOLE
VESSATORIE:**

ART. 1341 CODICE
CIVILE

ART. 33 CODICE DEL
CONSUMO (LISTA
GRIGIA)

ART. 36 CODICE DEL
CONSUMO (LISTA
NERA)

REGOLAMENTO
ROMA I 593/2008

REGOLAMENTO UE
1215/2012
REGOLAMENTO UE
1150/2019

UTILIZZO DEL
SOFTWARE
CLAUDETTE

1. APPLICATION AND ACCEPTANCE OF THE TERMS

□ 1.1) Your access to and use of the Sites and Alibaba.com's services, software and products through the Sites, which shall include the platforms described in clause 7.1 of the Terms (such services, software and products collectively referred to as the "Services" hereinafter) is subject to the terms and conditions contained in this document as well as the Privacy Policy (defined in clause 3.3 below), the Product Listing Policy and any other rules and policies of the Sites that Alibaba.com may publish from time to time. This document and such other rules and policies of the Sites are collectively referred to below as the "Terms". By accessing and use of the Sites and Services, you agree to accept and be bound by the Terms. Please do not access or use the Services or the Sites if you do not accept all of the Terms.

▪ **CONTRACT BY USING □ ART. 33 CODICE DEL CONSUMO L); ART. 36 CODICE DEL CONSUMO C);**

▪ **ART. 1341 COMMA 1 CODICE CIVILE**

□ 1.3) Alibaba.com may amend any Terms at any time by posting the relevant amended and restated Terms on the Sites. By continuing to access or use the Services or the Sites, you agree that the amended and restated Terms will apply to you.

▪ **CAMBIAMENTO UNILATERALE E CONTRACT BY USING □ ART. 33 CODICE DEL CONSUMO L) M); ART. 36 CODICE DEL CONSUMO C);**

▪ **ART. 3 REGOLAMENTO UE 1150/2019 (la clausola si applica senza avvisare preventivamente il consumatore su supporto durevole)**

2. PROVISION OF SERVICES

□ 2.2) You must register as a member on the Sites in order to access and use some Services. Further, Alibaba.com reserves the right, without prior notice, to restrict access to or use of certain Services (or any features within the Services) to paying Users, or subject to other conditions that Alibaba.com may impose in our discretion.

▪ RISOLUZIONE UNILATERALE → ART. 33 CODICE DEL CONSUMO L) M); LIMITAZIONE DI RESPONSABILITÀ; ART.3 REGOLAMENTO UE 1150/2019

□ 2.3) Services (or any features within the Services) may vary for different regions and countries. No warranty or representation is given that a particular Service or feature or function thereof or the same type and extent of the Service or features and functions thereof will be available for Users. Alibaba.com may in our sole discretion limit, deny or create different levels of access to and use of any Services (or any features within the Services) with respect to different Users

▪ RISOLUZIONE UNILATERALE → ART. 33 CODICE DEL CONSUMO M)

□ 2.4) Alibaba.com may launch, change, upgrade, impose conditions to, suspend, or stop any Services (or any features within the Services) without prior notice except that in case of a fee-based Service, such changes will not substantially adversely affect the ability of such paying Users to enjoy that Service, except in respect of any AliExpress Relevant Jurisdiction Users. In respect of any AliExpress Relevant Jurisdiction Users, AliExpress Russia Holding Private Limited may launch, change, upgrade, impose conditions to, suspend, or stop any Services (or any features within the Services) without prior notice except that in case of a fee-based Service, such changes will not substantially adversely affect the ability of such paying Users to enjoy that Service

▪ RISOLUZIONE UNILATERALE → ART. 33 CODICE DEL CONSUMO G) M)

3. USERS GENERALLY

□ 3.7) By posting or displaying any logos, trademarks, service marks, brands, description/information in the product listings, and any other information, content or material on the Sites (any of such information, content or material, collectively referred to as “User Content”) or providing any User Content to Alibaba.com and/or its affiliates and their respective representative(s), and to the extent permitted under applicable laws, you grant an irrevocable, perpetual, worldwide, royalty-free, and sublicensable (through multiple tiers) license to Alibaba.com and/or its affiliates and their respective representative(s) to display, transmit, distribute, reproduce, publish, duplicate, adapt, modify, edit, translate, create derivative works using the User Content, remove any part of it (including, without limitation, the watermark or mark the User Content bears), and otherwise use any or all of the User Content in any form, media, or technology now known or not currently known in any manner, on the Sites, Alibaba Channels and/or Third Party Channels and for any purpose which may be beneficial, whether directly or indirectly, to Alibaba.com, the operation of the Sites, the provision of any Services and Promotion Services and/or the business of the User. ...[]

- **ART 33 CODICE DEL CONSUMO D) R); ART. 1341 CODICE CIVILE COMMA 2.**
- **se si tratta di dati personali si applica il GDPR che impone la revocabilità dei dati**
- **DIRETTIVA 790/2019, che prevede un equo compenso per i contenuti**

4. MEMBER ACCOUNTS

- 4.1) User must be registered on the Sites to access or use some Services (a registered User is also referred to as a “Member” below). Except with Alibaba.com’s approval, one User may only register one member account on the Sites. Alibaba.com may cancel or terminate a User’s member account if Alibaba.com has reasons to suspect that the User has concurrently registered or is in control of two or more member accounts. Further, Alibaba.com may reject User’s application for registration for any reason.

RISOLUZIONE UNILATERALE → (CODICE CIVILE ART 1341 COMMA 2); ART 33 CODICE DEL CONSUMO G)

- 4.5) Member acknowledges that sharing of your account with other persons, or allowing multiple users outside of your business entity to use your account (collectively, "multiple use"), may cause irreparable harm to Alibaba.com or other Users of the Sites. Member shall indemnify Alibaba.com, our affiliates, directors, employees, agents and representatives against any loss or damages (including but not limited to loss of profits) suffered as a result of the multiple use of your account. Member also agrees that in case of the multiple use of your account or Member’s failure to maintain the security of your account, Alibaba.com shall not be liable for any loss or damages arising from such a breach and shall have the right to suspend or terminate Member’s account without liability to the Member.

RISOLUZIONE UNILATERALE E LIMITAZIONE DELLA RESPONSABILITA’ → ART 33 CODICE DEL CONSUMO G), Q)

6. BREACHES BY MEMBERS

❑ 6.1) Alibaba.com reserves the right in our sole discretion to remove, modify or reject any User Content (in whole or in part) that you submit to, post or display on the Sites which we reasonably believe (i) violates any applicable laws and regulations, (ii) violates the Terms hereunder, (iii) could subject Alibaba.com or our affiliates to liability, (iv) infringes any Third Party Rights, (v) could harm the interests of our Members, third party or Alibaba.com or our affiliates, or (vi) is otherwise found inappropriate in Alibaba.com's sole discretion.

▪ RIMOZIONE CONTENUTI → ART. 33 CODICE DEL CONSUMO H), M)

❑ 6.2) If any Member breaches any Terms, or if Alibaba.com has reasonable grounds to believe that a Member is in breach of any Terms, Alibaba.com shall have the right to take such disciplinary actions as it deems appropriate, including without limitation: (i) suspending or terminating the Member's account and any and all accounts determined to be related to such account by Alibaba.com in its sole discretion **without liability for any losses or damages** arising out of or in connection with such suspension or termination; (ii) restricting, downgrading, suspending or terminating the subscription of, access to, or current or future use of any Service; (iii) removing any product listings or other User Content that the Member has submitted, posted or displayed, or imposing restrictions on the number of product listings or User Content that the Member may post or display; (iv) imposing other restrictions on the Member's use of any features or functions of any Service as Alibaba.com may consider appropriate in its sole discretion; and (v) any other corrective actions, discipline or penalties as Alibaba.com may deem necessary or appropriate **in its sole discretion.**

▪ RIMOZIONE CONTENUTI, RISOLUZIONE UNILATERAL → ART. 33 CODICE DEL CONSUMO F) G) H) M);

▪ LIMITAZIONE DI RESPONSABILITA' → ART. 1341 CODICE CIVILE

❑ 6.4) Alibaba.com reserves the right to cooperate fully with governmental or regulatory authorities, law enforcement bodies, private investigators and/or injured third parties in the investigation of any suspected criminal or civil wrongdoing. Further, to the extent permitted by applicable laws and policies, Alibaba.com may disclose the Member's identity, contact information and/or information regarding the Member's account(s), transactions or activities carried out on or via the Site, if requested by a government, regulatory or law enforcement body or an injured third party, or as a result of a subpoena or other legal action. Alibaba.com shall not be liable for damages or results arising from such disclosure, and Member agrees not to bring any action or claim against Alibaba.com for such disclosure.

- **LIMITAZIONE DI RESPONSABILITA' → (ART 1341 CODICE CIVILE); ART 33 CODICE DEL CONSUMO B);**
- **ART. 1341 CODICE CIVILE**
- **GDPR: questa clausola viola il diritto di difesa**

❑ 6.5) Alibaba.com may, at any time and in our reasonable discretion, impose limitations on, suspend or terminate the Member's use of any Service or the Sites without being liable to the Member if Alibaba.com has received notice that the Member is in breach of any agreement or undertaking with any affiliate of Alibaba.com including without limitation Taobao, Alipay, China Yahoo! and such breach involves or is reasonably suspected to involve dishonest or fraudulent activities. Alibaba.com reserves the right to, but shall not be required to investigate such breach or request confirmation from the Member.

- **ART. 1460 CODICE CIVILE (criterio della buona fede)**

❑ 6.7) Each Member further agrees that Alibaba.com is not responsible, and shall have no liability to you or anyone else for any User Content or other material transmitted through the Sites or Services, including fraudulent, untrue, misleading, inaccurate, defamatory, offensive or illicit material and that the risk of damage from such User Content or other material rests entirely with the Member. Alibaba.com reserves the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by the Member, in which event the Member shall cooperate with Alibaba.com in asserting any available defenses.

- **E' VALIDA SECONDO IL SAFE HARBOR, MA PRETENDE DI MONOPOLIZZARE LA SCELTA DELL'AVVOCATO DA PARTE DELLO USER VIOLANDO IL DIRITTO DI DIFESA**

8. LIMITATION OF LIABILITY

❑ 8.4) The Sites may make available to User services or products provided by independent third parties. No warranty or representation is made with regard to such services or products. In no event shall Alibaba.com or our affiliates be held liable for any such services or products.

- **LIMITAZIONE DI RESPONSABILITÀ → ART. 1341 c.2 CODICE CIVILE; ART. 33 CODICE DEL CONSUMO B) Q);**
- **ART. 1229 CODICE CIVILE**

❑ 8.7) Alibaba.com shall not be liable for any special , direct , indirect , punitive , incidental or consequential damages or any damages whatsoever (including but not limited to damages for loss of profits or savings , business interruption , loss of information) , whether in contract , negligence , tort , equity or otherwise or any other damages resulting from any of the following : a) the use or the inability to use the Sites or Services ; b) any defect in goods , samples , data , information or services purchased or obtained from a User or any other third party through the Sites or Services ; c) violation of Third Party Rights or claims or demands that User 's manufacture , importation , exportation , distribution , offer , display , purchase , sale and/or use of products or services offered or displayed on the Sites or through the Services may violate or may be asserted to violate Third Party Rights ; or claims by any party that they are entitled to defense or indemnification in relation to assertions of rights , demands or claims by Third Party Rights claimants ; d) unauthorized access by third parties to data or private information of any User ; e) statements or conduct of any User of the Sites or Services ; or ; f) any matters relating to the Sites or Services , however arising , including negligence

- LIMITAZIONE DI RESPONSABILITÀ → ART.33 CODICE DEL CONSUMO B) Q)
- è valida secondo il Safe Harbor
- GDPR in contrasto con la lettera d) della clausola

9. FORCE MAJEURE

□ 9.1) Alibaba.com shall not be liable for or required to pay compensation of any nature whatsoever for any loss arising from the unavailability, inconvenience or failures of the services or systems due to the following reasons: (i) system shutdown for maintenance; (ii) inability to transmit data due to failures in communications terminals or telecommunications equipment; (iii) systems failure and inability to perform its functions) due to force majeure events including but not limited to typhoons, earthquakes, tsunamis, floods, power failure, fires, storms, war, political unrest, labour strikes, shortage of labor or materials, riots, insurrections, civil disturbances, terrorist attack, explosions, acts of God, governmental actions, orders of domestic or foreign courts or tribunals, nonperformance of third parties; or (iv) suspension or delay of services or systems failure due to reasons beyond the reasonable control of Alibaba.com such as hacker or cyber attacks, technical adjustments or failure of the telecommunications department, website upgrades, third party problems or any suspension or disruption of transportation or business operation (including but not limited to delays or disruption of the resumption of work or operation ordered by any government agency) in the event of a national or regional spread of epidemic or pandemic.

▪ **GDPR: TENDENZIALMENTE NON VESSATORIA, MA PUO' SORGERE UN PROBLEMA SE LA PIATTAFORMA PRETENDE DI DEFINIRE QUALI SONO LE CAUSE DI FORZA MAGGIORE**

10 E 11

DIRITTI DI
PROPRIETA'
INTELLETTUALE
E SISTEMA DI
NOTICE

Non è stata riscontrata vessatorietà in nessuno dei punti riguardanti la protezione dei Diritti di Proprietà Intellettuale (DPI) e il Sistema di Notice.

Abbiamo, al contrario riscontrato una particolare attenzione e partecipazione di Alibaba nella lotta contro la contraffazione.

- 2002. Alibaba introduce un sistema di protezione dei diritti di proprietà intellettuale per richiedere la rimozione dei prodotti illeciti da parte dei titolari dei diritti.
- 2016. Alibaba una piattaforma apposita: la **Intellectual Property Protection Platform** (Piattaforma per la protezione della proprietà intellettuale - IPP).

I 4 PILASTRI DELLA PROTEZIONE DEI DPI DEL GRUPPO ALIBABA

1. SEGNALAZIONE E RIMOZIONE
2. MONITORAGGIO PROATTIVO
3. INIZIATIVE OFFLINE
4. COLLABORAZIONE CON LE PARTI INTERESSATE

Alibaba applica politiche sanzionatorie rigorose e coerenti nelle piattaforme di suo controllo per i commercianti che attuano un illecito in tale campo. Le sue politiche prevedono sanzioni crescenti, le quali possono arrivare fino alla **chiusura definitiva** dell'account per i commercianti che commettono un illecito.

1. PROCEDURA DI SEGNALAZIONE E PROTEZIONE

I titolari dei diritti hanno la possibilità di richiedere **personalmente** l'eliminazione delle inserzioni illecite utilizzando le specifiche procedure di segnalazione.

La procedura si avvia **tramite IPP**, previa iscrizione ad essa e fornitura di documenti comprovanti l'identità del singolo o dell'entità aziendale / comprovanti il DPI in questione / comprovanti l'autorizzazione ad operare se la richiesta viene effettuata da un terzo rappresentante.

Alibaba verifica la violazione e nel caso rimuove il prodotto illecito.

I commercianti oggetto di una richiesta di rimozione riceveranno un avviso di notifica e avranno la possibilità di presentare una contro-notifica entro un periodo di tempo specificato.

è possibile iscriversi al "Good Faith Program" → Programma che permette di rimuovere in maniera più tempestiva le inserzioni segnalate.

Per poter essere ammessi a tale programma è necessario avere determinati requisiti, quali:

- Avere inviato un numero minimo di 100 richieste di rimozione nei tre mesi precedenti
- Avere un tasso di rimozioni andate a buon fine pari almeno al 90% e un tasso di contro-notifiche andate a buon fine non superiore al 5%
- Non avere alcun precedente di fornitura intenzionale di false informazioni

2. MONITORAGGIO PROATTIVO

3. LOTTA OFFLINE ALLA CONTRAFFAZIONE

2. Oltre a rispondere alle richieste di rimozione dei titolari dei diritti, Alibaba si impegna nell'utilizzo di tecnologie all'avanguardia con il fine di esaminare **PROATTIVAMENTE** eventuali inserzioni problematiche. Questo monitoraggio consiste nella rimozione dei prodotti illeciti senza previa richiesta del titolare del diritto.

Alibaba utilizza tecnologie avanzate che si affidano ad algoritmi per individuare rischi e salvaguardare il buon funzionamento delle piattaforme.

3. Considerato che le vendite online di prodotti contraffatti sono un riflesso delle attività di contraffazione offline, Alibaba integra il controllo delle sue piattaforme online con l'esecuzione di indagini offline, supportando le forze dell'ordine nell'identificazione delle strutture di produzione e di distribuzione di merci illecite.

4. MAGGIORE COINVOLGIMENTO DELLE PARTI

Alibaba collabora attivamente con i titolari dei diritti, le associazioni industriali, le autorità governative, il mondo accademico e i leader del settore industriale per creare una comunità inclusiva e globale per la protezione dei DPI.

Il risultato di questa collaborazione è la creazione e il sostegno da parte di Alibaba a numerose iniziative all'avanguardia e programmi di buone pratiche.

12. GENERAL PROVISIONS

□ 12.7) IF YOUR CONTRACT IS WITH ALIBABA.COM HONG KONG LIMITED OR ALIBABA.COM SINGAPORE E-COMMERCE PRIVATE LIMITED , THEN THIS AGREEMENT SHALL BE GOVERNED BY LAWS OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (`` HONG KONG ") WITHOUT REGARD TO ITS CONFLICT OF LAW PROVISIONS ; AND THE PARTIES TO THIS AGREEMENT HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE HONG KONG COURTS , EXCEPT AS OTHERWISE STIPULATED UNDER APPLICABLE LAW.

▪ ART. 1341 c.2 CODICE CIVILE

□ 12.7)IF YOUR CONTRACT IS WITH ALIEXPRESS RUSSIA HOLDING PTE LTD. , THIS AGREEMENT SHALL BE GOVERNED BY LAWS OF THE RUSSIAN FEDERATION (`` RUSSIA ") WITHOUT REGARD TO ITS CONFLICT OF LAW PROVISIONS ; AND THE PARTIES TO THIS AGREEMENT HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF RUSSIA , EXCEPT AS OTHERWISE STIPULATED UNDER APPLICABLE LAW

▪ CHOICE OF LAW→ART.33 CODICE DEL CONSUMO U);

▪ ART. 18 REGOLAMENTO UE 1215/2012

A seconda della situazione del consumatore e del tipo di ordine effettuato, è possibile scegliere uno dei seguenti tipi di controversia:

ONLINE DISPUTE RESOLUTION

- ❖ controversia sull'ordine di garanzia commerciale;
- ❖ controversia sull'ordine all'ingrosso;
- ❖ controversia commerciale offline.

Processo di contestazione	Tempo
Processo di negoziazione	Da 3 a 30 giorni
Il venditore risponde alla tua proposta durante la negoziazione	5 giorni
Richiesta di intervento di Alibaba se il venditore si rifiuta	Dal 4° giorno di negoziazione
Tempo di intervento di Alibaba	3 giorni
Durata massima delle mediazioni delle controversie di Alibaba	90 giorni
Il tuo tempo a disposizione per inoltrare la controversia al centro arbitrale di HK	20 giorni dalla risoluzione di Alibaba

CONSIGLI PER GLI UTILIZZATORI DELLE PIATTAFORME

- ❑ Leggere con attenzione i termini di utilizzo delle piattaforme e non accettare senza prima aver preso coscienza dei contenuti.
- ❑ Non sottovalutare l'atto di cessione dei propri dati personali e dei propri contenuti alla piattaforma.
- ❑ Durante le controversie è consigliato inoltrare al team di mediazione di Alibaba più prove possibili, in particolare l'ordine di vendita e la fattura.
- ❑ Iscrivere preventivamente alla piattaforma IPP fornendo tutta la documentazione necessaria.