

ALMA MATER STUDIORUM – UNIVERSITÀ DI BOLOGNA

Alibaba.com

Analisi del regolamento contrattuale

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Fonti giuridiche + utilizzo del software Claudette

ARTICOLO 1341 DEL CODICE CIVILE

DSA – Digital Service Act

CODICE DEL CONSUMO

DMA – Digital Market Act

GDPR

REGOLAMENTO UE 1150/2019

DIGITAL COPYRIGHT (Direttiva UE 790/2019)



Alibaba.com

Cos'è Alibaba.com?

Alibaba è un sito di e-commerce di origine cinese di tipo B2B. Ma ha anche numerosi "affiliates" non meglio specificati come:

- AliExpress - e-commerce B2C
- Alipay - app di pagamento simile a PayPal
- Taobao - marketplace online simile a e-bay
- China Yahoo! - motore di ricerca

Fornisce un **servizio della società dell'informazione**

Fa parte delle **piattaforme di grandi dimensioni** (designati dalla Commissione europea ex **art. 33 DSA**)

Rientrerebbe nei criteri per essere considerata **gatekeeper?** (**art. 3 DMA**)

Co., Ltd. 2021-08-10

New Embroidered Mini

: for iPhone X

US \$ 1400.00

Delivery by 12/08

Shipped

ng for picking up t... >

ication

Creazione dell'account (sito web)

⚠ in contrasto con l'Articolo 7 GDPR comma 2

Il riferimento normativo di Alibaba è (citiamo da Privacy Policy)

The data processing is based on the following legal bases:

Art. 6 (1) (b) GDPR – establishment, performance, or termination of the contract with you

Art. 6 (1) (f) GDPR – our legitimate interest in improving our services based on the information obtained

Art. 6 (1) (a) GDPR – your consent



* Country/Region:

* Please select trade role: Buyer Seller Both

* Verify email address:

* Login Password:

* Confirm Password:

* Company Name:

* Full name:

* Tel: - -

* Verify:

I agree to (a) **Free Membership Agreement**, (b) **Terms of Use**, and (c) **Privacy Policy**. I agree to receive more information from Alibaba.com about its products and services.

Agree and Register

Eliminazione dell'account (via App)

⚠ POSSIBILE DARK PATTERN
(cfr. Considerano 67 DSA). Tra
l'altro si legge "we
delete/anonymize your personal
data saved in alibaba.com"

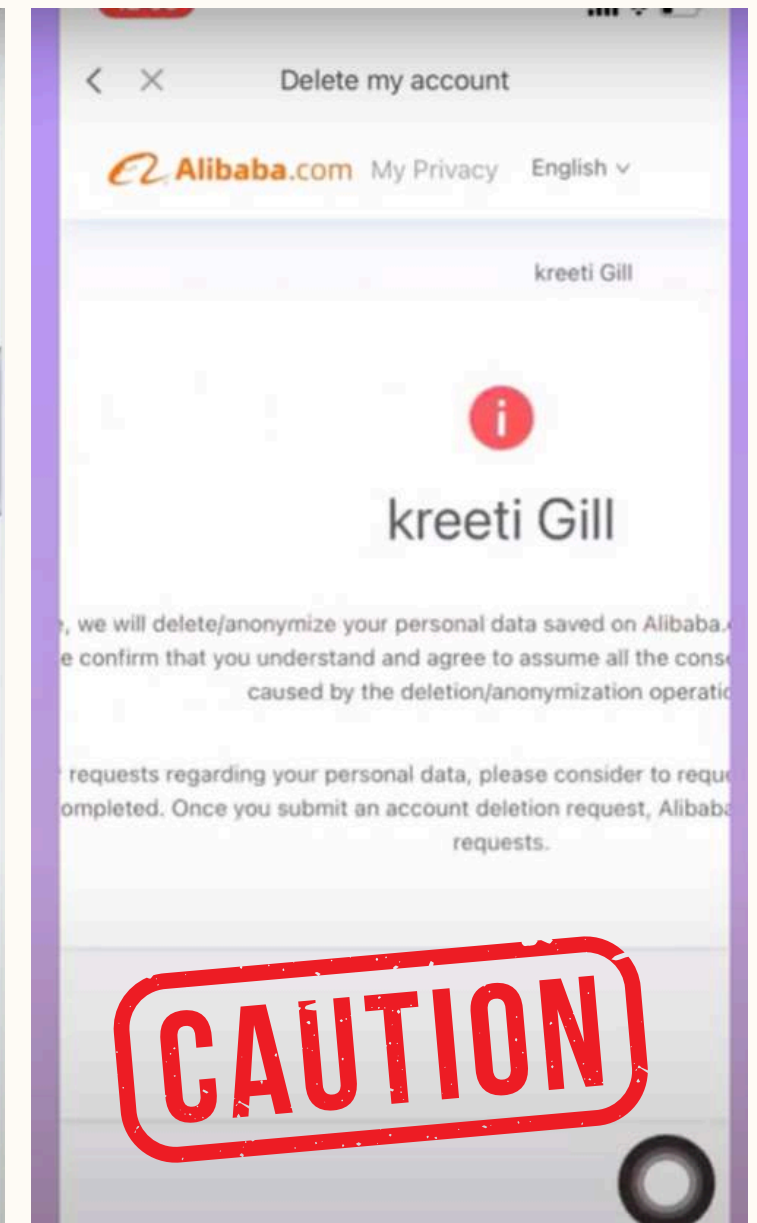
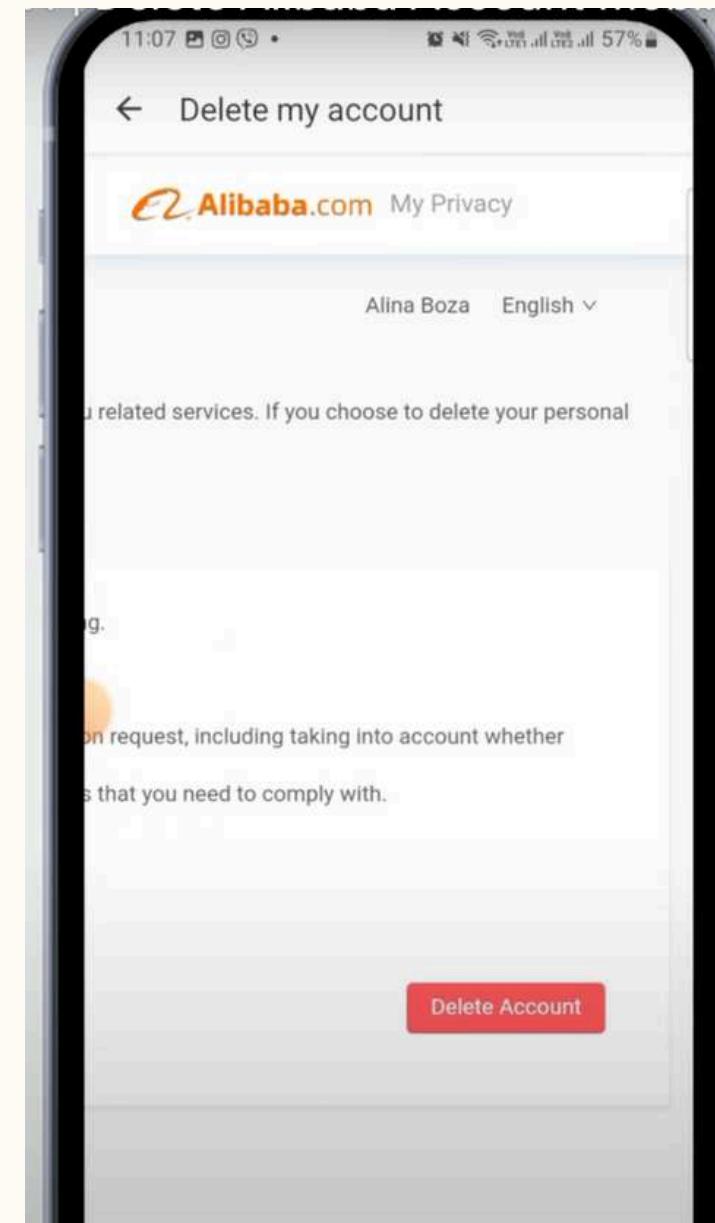
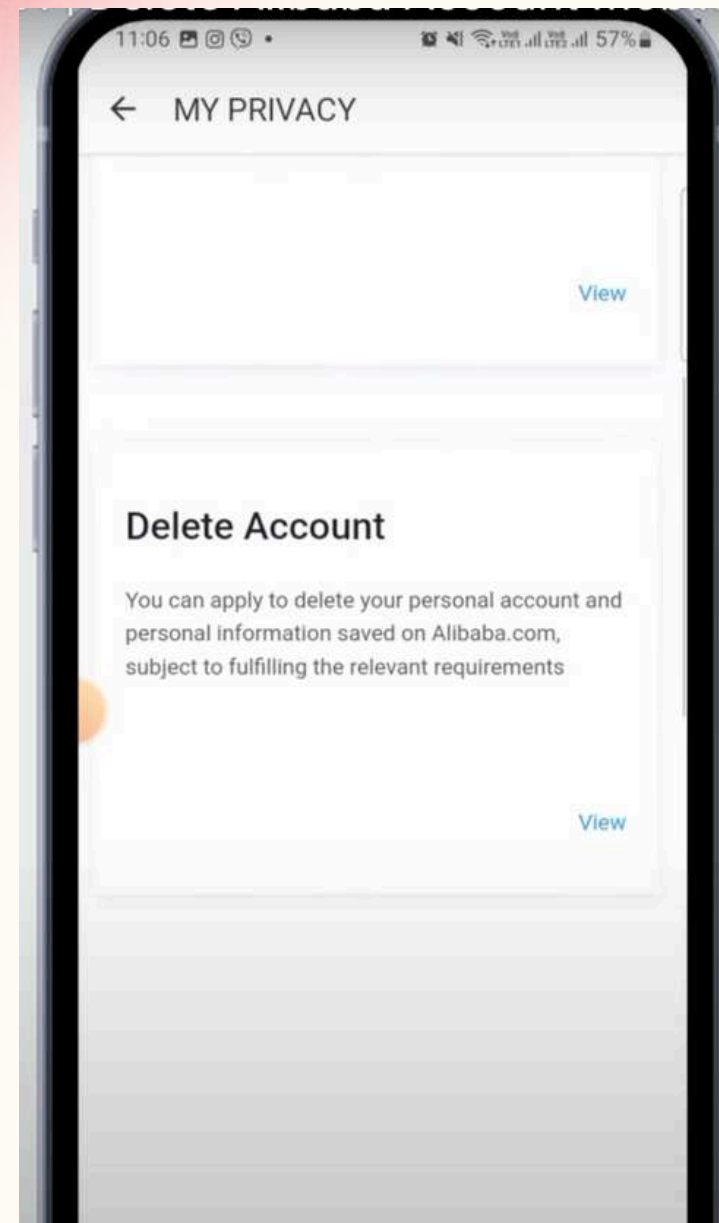
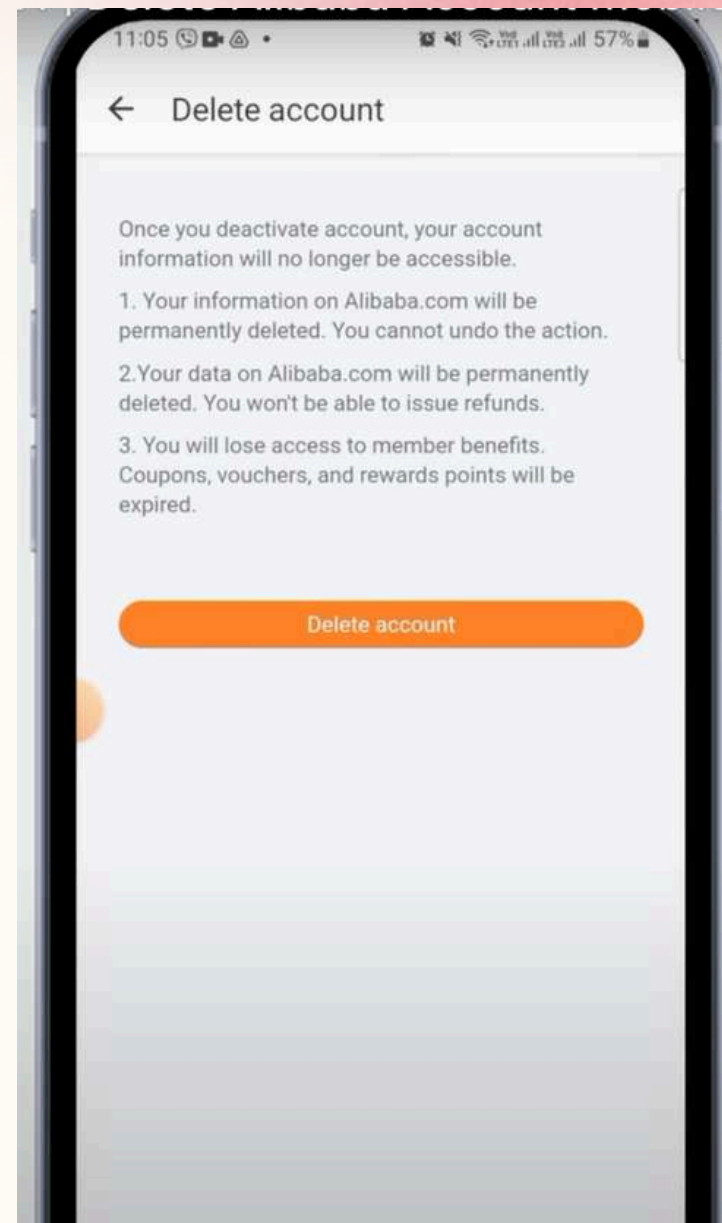
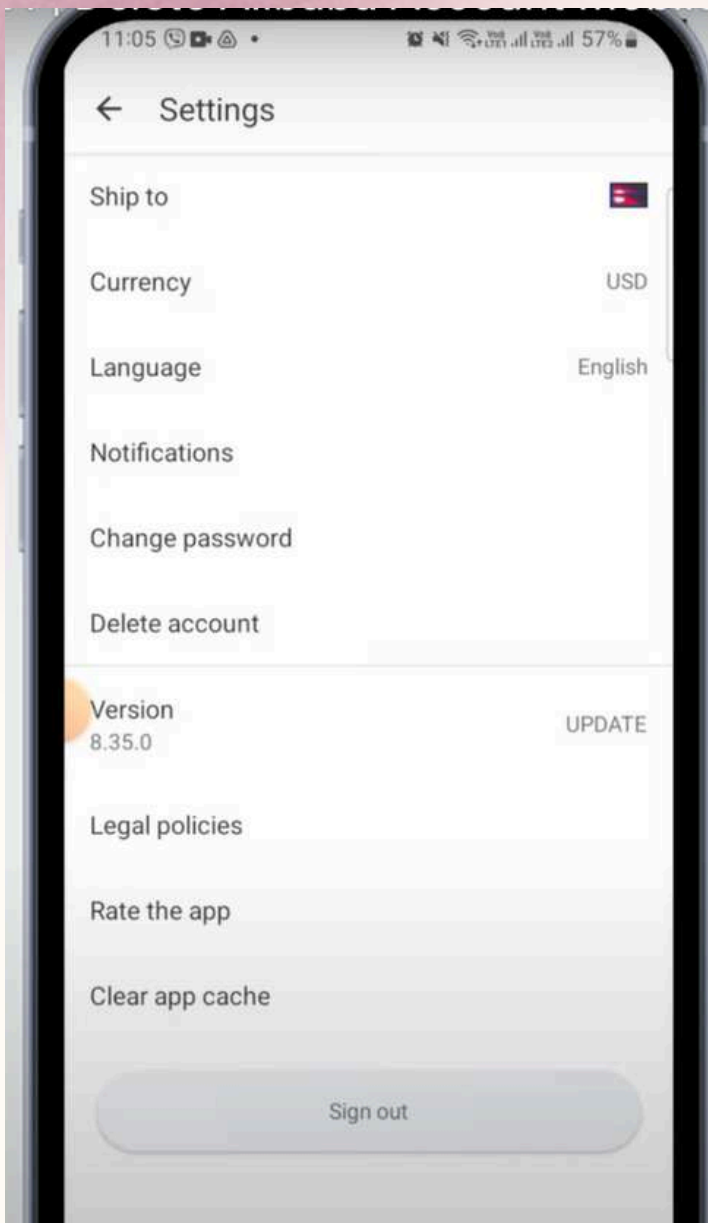
1

2

3

4

5



Struttura del contratto

Non è esplicitato in maniera chiara il prezzo del servizio, in contrasto con l'articolo 49 del cod. cons. comma 1 lett. e e l'articolo 1341 del c.c. comma 1 sulla tutela del contraente debole.

Oggetto del contratto

Sezione 7.1 dei terms of use

*“Through the Sites, Alibaba.com provides **electronic web-based platforms for exchanging information between buyers and sellers of products and services.** Alibaba.com additionally provides **electronic web-based transaction platforms for Members to place, accept, conclude, manage and fulfill orders for the provision of products and services online within the Sites subject to the terms of the Transaction Services Agreement** . However, for any Services, Alibaba.com does not represent either the seller or the buyer in specific transactions. Alibaba.com does not control and is not liable or responsible for the quality, safety, lawfulness or availability of the products or services offered for sale on the Sites, the ability of the sellers to complete a sale or the ability of buyers to complete a purchase”*

Struttura del contratto

Il consenso avviene per **fatto concludente** e il servizio **NON è gratuito**

Si potrebbe ipotizzare una mancanza di accordo tra le parti? (ex. **art. 1325 c.c.**)

Accordo delle parti

Citiamo dai Transaction Services Agreement

For users who access **or use the Alibaba.com Sites**,

- Terms of Use;
- Free Membership Agreement
- Product Listing Policy;
- Alibaba.com Privacy Policy.
- Intellectual Property Right (IPR) Protection Policy.

Le CGC con Alibaba.com valgono per tutti gli affiliati di Alibaba Group:

These Terms of Use describe the terms and conditions applicable to your access and use of the websites, mobile sites, mobile applications and other portals owned, operated, branded or made available by Alibaba.com (defined below).

Struttura del contratto

1.4

If Alibaba.com has posted or provided a translation of the English language version of the Terms, **you agree that the translation is provided for convenience only and that the English language version will govern your access to and use of the Services or the Sites.**

Lingua

Le condizioni generali di contratto sono fornite solo in lingua inglese e cinese.

Alcuni collegamenti ipertestuali sono forniti solo in cinese.

In violazione di diverse fonti:

1. **Art. 1341 c.c.** - norme non conoscibili con l'ordinaria diligenza.
2. **Art. 14 par. 6 DSA** - il contratto deve essere fornito in tutte le lingue dell'UE.
3. **Regolamento UE 1150/2019 art. 3** - il linguaggio deve essere semplice e comprensibile.

Privacy Policy

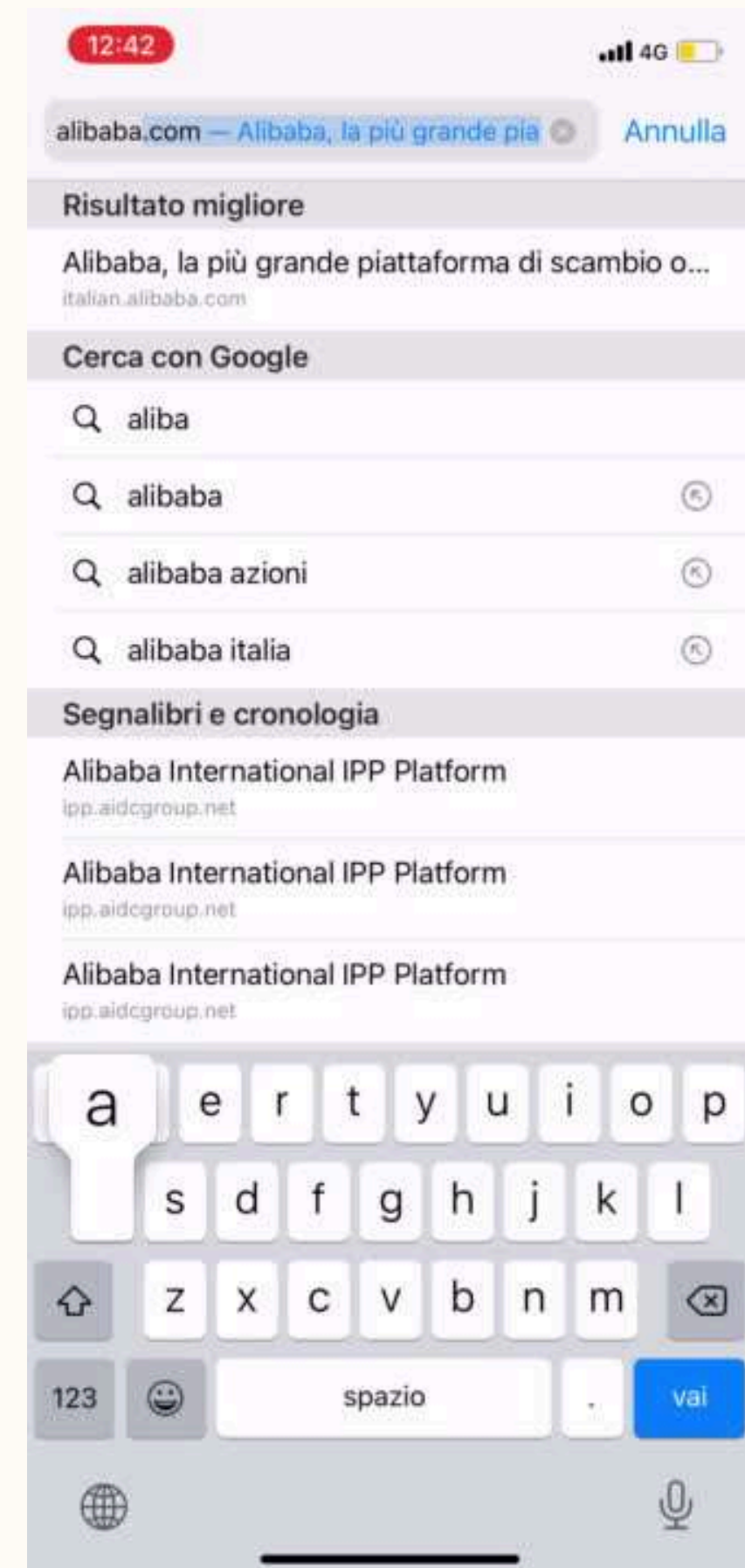
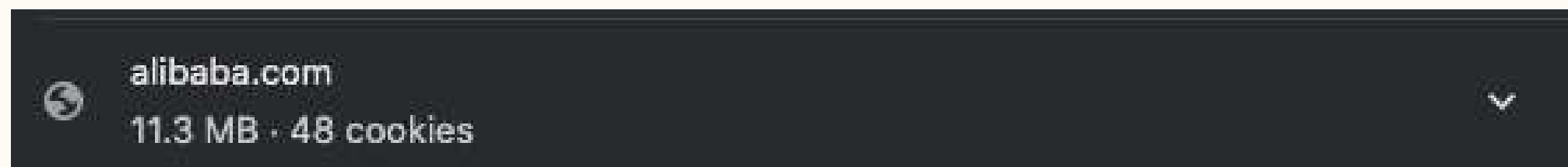
 **operazione di opt out**

Recommendations and personalization. We use your personal information to recommend features, products, and services that might be of interest to you, identify your preferences, and **personalize** your experience with the Platform. If you are a Buyer, we will share details of the last viewed products on the Platform to enable Sellers, their respective affiliates and/or their third-party services provider to contact you with details of products and/or services that might interest you. You can **opt not to share** this information with Sellers via the Buyer Privacy Settings.

Marketing and advertising. We use your personal information to send and serve you tailored marketing and advertising that we believe will be of interest to you based on the ways in which you use the Platform, your browsing records, and order history. Cookies or other similar technologies may be used to **provide you with advertising** based upon your browsing activities and interests. Please see section 5. **“COOKIES”** below for more information about how we use cookies.

Privacy Policy

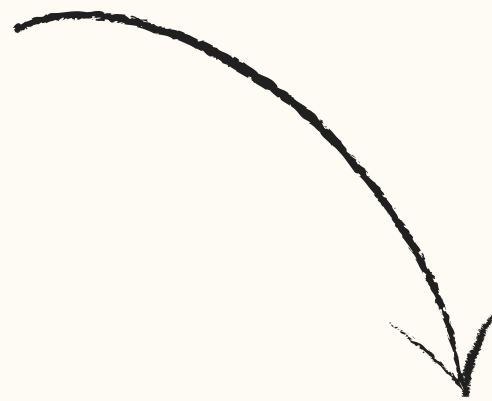
Viene data come base giuridica l'articolo 6 del GDPR ma non viene chiesta l'accettazione dei cookies all'accesso del sito. Che vengono poi riscontrati nella cache.



Parte 1 – Application and Acceptance of the Terms

1.1

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.



Claudette found 1 potentially unfair clause
Unfairness categories: **Contract by Using**

⚠ Si configura un contract by using, contrario all'art. 51 del cod.cons. comma 2 e 6.

Parte 1 – Application and Acceptance of the Terms

1.3

Alibaba.com may amend any Terms at any time by posting the relevant amended and restated Terms on the Sites. Alibaba.com will inform you of any material change to the Terms by posting the relevant changes 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.**

Claudette found 2 potentially unfair clause
Unfairness categories: **Unilateral Change, Contract by Using**



- Non predispongono preavviso di 15 giorni, come vorrebbe **Regolamento UE 1150/2019 art. 3**
- Questa clausola risulterebbe nulla per l'**art. 36 cod.cons. comma 2 lett. c**
- In caso di rapporti B2C, questa clausola è vessatoria per l'**art. 33 cod.cons. comma 2 lett. m**

Parte 1 – Application and Acceptance of the Terms

1.5

You may be required to enter into separate agreement(s), whether online or offline, with Alibaba.com or our affiliate for any Service (or features within the Services) (each an “Additional Agreement”). **If there is any conflict or inconsistency between the Terms and an Additional Agreement, the Additional Agreement shall take precedence over the Terms only in relation to that Service (or feature within the Service) concerned.**



⚠ **Deresponsabilizzazione:** perché dovrebbero esserci conflitti tra i Terms e gli Additional Agreement?

Parte 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.**



Claudette found 1 potentially unfair clause
Unfairness categories: **Unilateral Termination, Unilateral Change**



- Unilateral Termination secondo **art. 33 comma 2 lett. h + art. 1341 cod. civ. comma 2**
- Unilateral Change ai sensi dell'**art. 3 par .2 Regolamento 1150/2019 UE**
- Si potrebbe configurare un abuso di posizione dominante, facendo riferimento all'**artt. 101-102 TFUE**

Parte 2 – Provision of Services

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.**



Claudette found 1 potentially unfair clause
Unfairness categories: **Unilateral Termination**



- Unilateral Termination secondo **art. 33 comma 2 lett. h + art. 1341 cod. civ. comma 2**
- Unilateral Change ai sensi dell'art. 3 par .2 Regolamento 1150/2019 UE e art. 33 cod. cons. comma 2 lettera h
- ATTENZIONE: il verbo cambia, il linguaggio diventa più ambiguo (utilizzo di *may*)

Parte 2 – Provision of Services

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.**

2.5

Some Services (or part thereof) may be provided by Alibaba.com's **affiliates** on behalf of Alibaba.com.

Claudette found NO potentially unfair clause

TUTTAVIA



- Unilateral Termination secondo **art. 33 comma 2 lett. h + art. 1341 cod. civ. comma 2**
- Unilateral Change ai sensi dell'**art. 3 par .2 Regolamento 1150/2019 UE**
- Linguaggio ambiguo (utilizzo del periodo ipotetico *may*)

Parte 2 – Provision of Services

2.6

Promotion Services provided by Alibaba.com pursuant to the terms hereunder shall include: 1) Top Ranking and Sponsored Listing; 2) services that benefit, promote, support, whether directly or indirectly, the business of User, the User's brand, product, store, logo, trademark, service mark, User Content (as defined in clause 3.7 of the Terms) and/or derivative work using the User Content on software, applications, tools, browser extensions and/or platforms operated and/or controlled by Alibaba.com ("Alibaba Channels") and/or on software, applications, channels, platforms, websites and/or any other forms of media that are operated and/or controlled by third parties ("Third Party Channels"); and 3) any such other services as may be announced by Alibaba.com from time to time. **Alibaba.com shall be entitled to, at its sole discretion, determine whether the Promotion Services or any part thereof will be available to you.**

Claudette found NO potentially unfair clause

TUTTAVIA

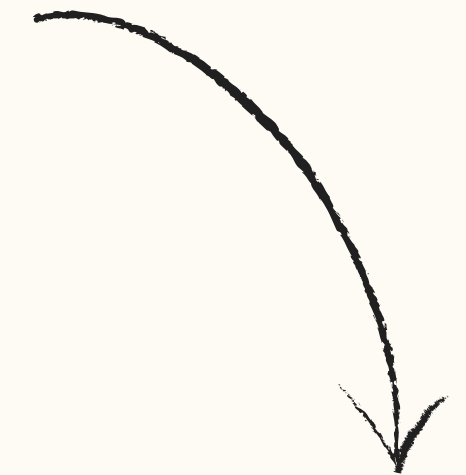


- Unilateral Termination secondo **art. 33 comma 2 lett. h + art. 1341 cod. civ. comma 2**
- Non indicano criteri di **ranking e rating** (sarebbero tenuti ex. **art. 5 Regolamento 1150/2019 UE**)
- Linguaggio ambiguo (utilizzo del periodo ipotetico *shall be*)

Parte 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 sub-licensable (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. You confirm and warrant to Alibaba.com that you have all the rights, power and authority necessary to grant the above license and the User Content and use of such User Content (including derivative works) by Alibaba.com and/or its affiliates under such license is free from any infringement or violation of any Third Party Rights (as defined in clause 5.4 of the Terms). To the maximum extent permitted by law, **you waive your right to enforce your Intellectual Property Rights in the User Content against Alibaba.com and/or its affiliates, assignees or sub-licensees in connection with use of such User Content in connection with the Services.** Information that is protected under data protection laws will only be used and kept in compliance with those laws.



Claudette found NO potentially unfair clause

TUTTAVIA

⚠ **violazione** del Digital copyright sull'equo compenso

Parte 4 – Members Account

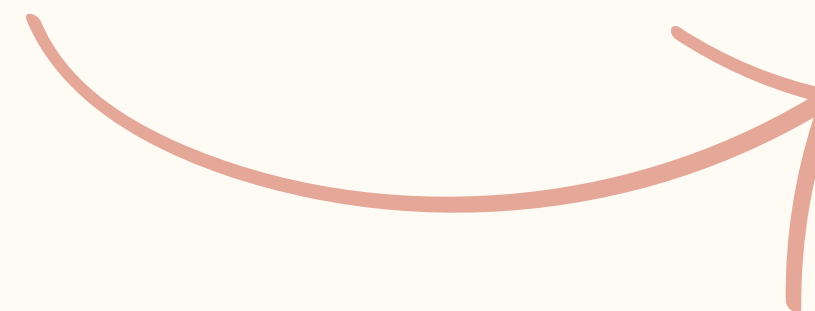
4.1

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.**

Claudette found 1 potentially unfair clause
Unfairness categories: **Unilateral Termination**

**⚠ Cod. Cons. art. 33
comma 2 lettera h e
Digital Market Act**

Terminazione unilaterale
del servizio, inoltre
impedire l’accesso è una
barriera all’ingresso



Parte 5 – MEMBER'S RESPONSABILITIES

5.1

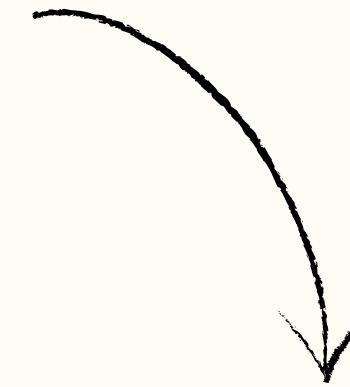
Each Member represents, warrants and agrees that

(a) you have **full power** and authority to **accept** the Terms, to grant the license and authorization and to perform the obligations hereunder;

(b) your access and use the Sites and Services will be for business purposes only;

(c) for Members who are business entities, the address you provide when registering is the principal place of business of your business entity.

For purposes of this provision, a branch or liaison office will not be considered a separate entity and your principal place of business will be deemed to be that of your head office



Claudette found NO potentially unfair clause

TUTTAVIA

⚠ Problema linguistico
art. 34 comma 2, codice del consumo
regolamento UE 1150/2019

⚠ Problema di sottoscrizione
art.7, comma 1 e 2, GDPR

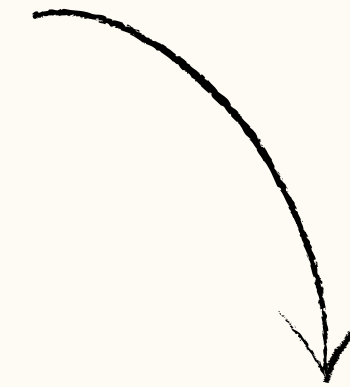
Parte 5 – MEMBER'S RESPONSABILITIES

5.2

Member will be required to **provide information or material** about your entity, business or products/services as **part of the registration process** on the Sites for your access to and use of any Service or the member account.

Each Member represents, warrants and agrees that

- (a) such information and material whether submitted during the registration process or thereafter **throughout the continuation of the use of the Sites or Service** is true, accurate, current and complete, and
- (b) you will maintain and promptly amend all information and material to keep it true, accurate, current and complete.



Claudette found NO potentially unfair clause

TUTTAVIA

⚠ Problema: Cosa rientra in queste "informazioni o materiale"? Non è chiaro. Si dichiarano sia dati di registrazione sia dati di utilizzo. Si sta dichiarando di fornire i dati ottenuti tramite profilazione?

Parte 5 – MEMBER'S RESPONSABILITIES

5.9

Member agrees to provide all necessary information, materials and approval, and render all reasonable assistance and cooperation necessary for Alibaba.com's provision of the Services, evaluating whether Member has breached the Terms and/or handling any complaint against the Member.

If Member's failure to do so results in delay in, or suspension or termination of, the provision of any Service, Alibaba.com shall not be obliged to extend the relevant service period nor be liable for any loss or damages arising out of or in connection with such delay, suspension or termination.

**Claudette found 1 potentially unfair clause:
Limitation of Liability**

⚠ **art.1341, comma 2, cc**

⚠ **art.33, comma 1, lettera b, cod.cons.**

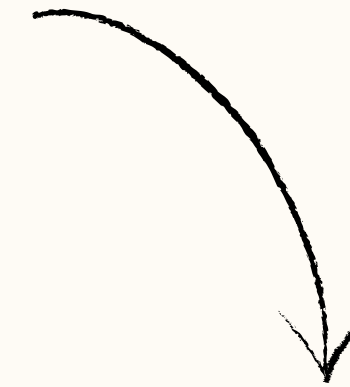
Si configura una limitazione della responsabilità da parte della piattaforma e un abuso di potere dominante:

- gli utenti sono gli unici responsabili per garantire che i Termini di Utilizzo/Servizio siano conformi a tutte le leggi, norme e regolamenti
- la piattaforma non è responsabile per eventuali azioni, errori, omissioni, dichiarazioni, garanzie, violazioni o negligenza da parte di terzi

Parte 5 – MEMBER'S RESPONSABILITIES

5.10

Member acknowledges and agrees that Alibaba.com reserves the right to, but shall **not be required to actively monitor** or exercise any **editorial control** whatsoever over the content of any message or material or information (including User Content) created, obtained or accessible through the Services or Sites. Alibaba.com **does not endorse, verify or otherwise certify the contents of any comments or other material or information** (including User Content) created, submitted, posted, displayed or otherwise made by any Member. Each Member is solely responsible for the contents of their communications and may be held legally liable or accountable for the content of their comments or other material or information



Claudette found NO potentially unfair clause

Clausola non vessatoria ma **manca di trasparenza**.

Secondo gli artt. 14-16 del DSA la piattaforma deve predisporre un sistema di notice and take down per verificare i contenuti

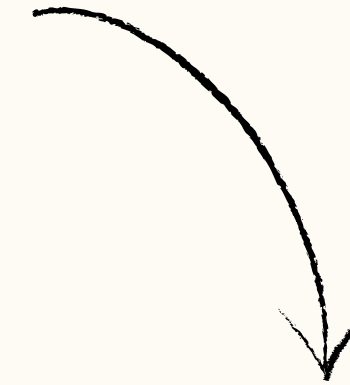
Parte 5 – MEMBER'S RESPONSABILITIES

5.11

Member acknowledges and agrees that the Sites and Services may only be used by businesses and their representatives for business use and not for individual consumers or for personal use.

5.12

Member acknowledges and agrees that each Member is **solely responsible** for **observing applicable laws** and regulations in its respective jurisdictions to ensure that all access and use of the Site and Services are in compliance with the same.



Claudette found NO potentially unfair clause

Poca **chiarezza** contrattuale: i Terms che si stanno sottoscrivendo sono relativi ad Alibaba.com o ad Alibaba.com e "affiliates"?

In più, la piattaforma cerca di **deresponsabilizzarsi** rispetto al **codice del consumo**, cercando di porsi come intermediario unicamente B2B

⚠ artt. 14-16 DSA

Parte 5 – MEMBER'S RESPONSABILITIES

Parte finale

If, at any time, you fail to meet any of the above requirements, you should stop using the Services immediately. If Alibaba.com **reasonably believes** that any of your conduct violates or threatens to violate any applicable laws and regulations, Alibaba.com may, **at its sole discretion**, at any time take action as it may deem appropriate in light of the circumstances, **including, but not limited to, terminating the provision of Services to you, closing relevant purchase orders, and terminating your accounts**, while **reserving all rights** it may have regarding any non-compliant actions or conduct of its members.

**Claudette found 1 potentially unfair clause:
Unilateral Termination, Content Removal**

**⚠ in violazione del DMA: abuso di
posizione dominante**

Parte 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.



Claudette found 1 potentially unfair clause:
content removal

 **DSA ART 14**

Parte 6: BREACHES BY MEMBERS

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**.



**Claudette found 1 potentially unfair clause:
content removal + unilateral termination**

⚠ DSA ART 14

Parte 6: BREACHES BY MEMBERS

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.



**Claudette found 1 potentially unfair clause:
unilateral termination**

La piattaforma è contraddittoria in quanto dice di prendere decisioni secondo "reasonable discretion" ma poi non si riserva il diritto di investigare eventuali violazioni

⚠️ REGOLAMENTO UE 1150/2019 ART. 4 - Limitazione, sospensione e cessazione

⚠️ DSA ART. 14-15

Parte 7 – TRANSACTIONS BETWEEN BUYERS AND SELLERS

7.2

Users are hereby made aware that there may be risks of dealing with people acting under false pretenses. **Alibaba.com uses several techniques to verify the accuracy of certain information our paying Users provide us when they register for a paying membership service on the Sites. However, because user verification on the Internet is difficult, Alibaba.com cannot and does not confirm each User's purported identity** (including, without limitation, paying Members). We encourage you to use various means, as well as common sense, to evaluate with whom you are dealing.




Claudette found NO potentially unfair clause

⚠ DSA ART 30 Know your customer rule – dovere di identificazione professionali (art. 30 DSA) + dovere di identificazione degli user consumatori (Garante Privacy su TikTok)

Parte 7 – TRANSACTIONS BETWEEN BUYERS AND SELLERS

7.3

Buyers and sellers accessing or using the Sites or Services shall assume the risks of conducting any purchase and sale transactions in connection with or through the Sites or Services. Buyer and sellers accessing or using the Site or Services shall also fully assume all risks of liability or harm of any kind arising out of or in connection with any subsequent activity relating to the products or services that are the subject of the transactions on the Sites. Examples of such risks shall include, but are not limited to, mis-representation of products and services, fraudulent schemes, unsatisfactory product quality, failure to meet specifications, defective or dangerous products, unlawful products, delay or default in delivery or payment, cost mis-calculations, breach of warranty, breach of contract, transportation accidents, the risk that the manufacture, importation, export, distribution, offer, display, purchase, sale and/or use of products or services offered or displayed on the Sites may violate or may be asserted to violate Third Party Rights, and the risk that Users may incur costs of defense or other costs in connection with third parties' assertion of Third Party Rights, or in connection with any claims by any party that they are entitled to defense or indemnification in relation to the assertion of rights, demands or claims by claimants of Third Party Rights. Examples of such risks also include the risk of claims from consumers, other purchasers, end-users of products or other third parties that they have suffered injuries or harm from their use of the products obtained through the Sites or Services. All of the foregoing risks are referred to as "Transaction Risks". **Alibaba.com is not liable or responsible for any damages, claims, liabilities, costs, harm, inconveniences, business disruptions or expenditures of any kind that may arise a result of or in connection with any Transaction Risks.**



Claudette found 1 potentially unfair clause: limitation of liability

TUTTAVIA

La piattaforma si identifica come intermediaria quindi non responsabile quindi **in riferimento all'Art. 61 cod.**

cons. Claudette si sbaglia

1. Salva diversa pattuizione delle parti del contratto di vendita, il professionista è obbligato a consegnare i beni al consumatore senza ritardo ingiustificato e al più tardi entro trenta giorni dalla data di conclusione del contratto.
2. L'obbligazione di consegna è adempiuta mediante il trasferimento della disponibilità materiale o comunque del controllo dei beni al consumatore.

Parte 7 – TRANSACTIONS BETWEEN BUYERS AND SELLERS

7.5

User agrees to provide all information and materials as may be reasonably required by Alibaba.com in connection with your transactions conducted on, through or as a result of use of the Sites or Services. Alibaba.com has the right to suspend or terminate any User's account if the User fails to provide the required information and materials without liability for any losses or damages arising out of or in connection with such suspension or termination.



**Claudette found 1 potentially unfair clause:
unilateral termination + limitation of liability**

TUTTAVIA

⚠ **Contraddittoria** (rispetto alle transazioni), posso sospendere l'account se non adempie agli obblighi a cui è tenuto (diritto di interferenza su quelle transazioni, fino a potere sanzionare l'utente professionale per eventuali inadempienze, non è solo passivo intermediario)

Transaction Services Agreement

⚠️ Alibaba si riserva un potere normativo sulla contrattazione a valle (si può dire che sia solo un intermediario?)

This Transaction Services Agreement (this “Agreement”) describes the terms and conditions on which you conclude online transactions for products and services by using the websites, mobile sites, mobile applications and other online transaction portals owned, operated, branded or made available by Alibaba.com (defined below) from time to time which relate to (a) the Alibaba.com e-commerce platform including but not limited to the web and mobile-optimized versions of the websites identified by the uniform resource locator “www.alibaba.com” and the mobile applications of the Alibaba.com e-commerce platform (the “Alibaba Sites”); and (b) the AliExpress e-commerce platform including but not limited to the web and mobile-optimized versions of the websites identified by the uniform resource locators “www.aliexpress.com”, “www.aliexpress.ru” and “www.tmall.ru”, and the mobile applications of the AliExpress e-commerce platforms (collectively the “AliExpress Sites”), (with Alibaba Sites and AliExpress Sites collectively the “Sites”). This Agreement contains various limitations on Alibaba.com’s transaction services offered through the Sites as well as gives various powers and authority to Alibaba.com with respect to online transactions effected using Alibaba.com’s transaction services offered through the Sites. [...]

10. Governing Law; Jurisdiction

⚠️ ART. 21 (3) DSA

⚠️ ART. 1341 comma 2 doppia sottoscrizione per l'arbitrato di Hong Kong

clausola vessatoria di
risoluzione extragiudiziale
delle controversie

10.1 Legge Applicabile: Questa clausola stabilisce che l'accordo sarà regolato dalle leggi di Hong Kong, a meno che non sia diversamente specificato dalla legge applicabile.

10.2 Negoziazioni Amichevoli: Questa clausola stabilisce che le dispute devono essere risolte attraverso negoziati amichevoli prima di procedere con azioni legali o arbitrali.

10.3 Controversie tra Acquirente e Venditore. Nel caso in cui sorga una disputa tra acquirente e venditore e questa non venga risolta attraverso negoziati amichevoli entro il periodo di tempo prescritto, entrambi accettano di sottoporre la controversia ad Alibaba.com per la determinazione. Se una parte è insoddisfatta della determinazione di Alibaba.com, può richiedere l'arbitrato presso il HKIAC.

10.4 Controversie tra te e Alibaba.com. Se sorge una controversia tra te e Alibaba.com, e questa non viene risolta attraverso negoziati amichevoli, le parti accettano di risolverla tramite arbitrato presso l'HKIAC.

10.5 Arbitrato presso l'HKIAC. Se una controversia viene sottoposta all'arbitrato presso l'HKIAC, l'arbitrato sarà condotto secondo le regole dell'HKIAC in vigore al momento dell'istanza di arbitrato. L'arbitrato sarà condotto in lingua inglese e a Hong Kong.

10.6 Indennizzo: Questa clausola prevede che se intraprendi azioni legali contro Alibaba.com in violazione dell'accordo, devi indennizzare Alibaba.com e le sue affiliate per eventuali perdite o danni subiti da loro a causa delle tue azioni.

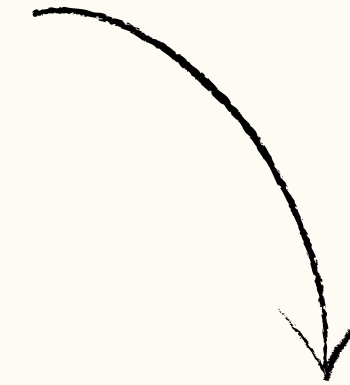
10.7 Termine di Decadenza. In ogni caso, non puoi presentare alcuna richiesta contro Alibaba.com o le sue affiliate ai sensi di questo Accordo dopo un anno dall'insorgere della questione che dà origine alla richiesta.

10.8 Provvedimenti Inibitori. Nonostante le disposizioni precedenti, ciascuna delle parti può chiedere provvedimenti inibitori o altri provvedimenti equi contro l'altra parte in qualsiasi tribunale competente prima o durante l'arbitrato.

Parte 8 – LIMITATION OF LIABILITY

8.2

TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALIBABA.COM MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE **VALIDITY, ACCURACY, CORRECTNESS, RELIABILITY, QUALITY, STABILITY, COMPLETENESS OR CURRENTNESS OF ANY INFORMATION** PROVIDED ON OR THROUGH THE SITES; ALIBABA.COM DOES **NOT REPRESENT OR WARRANT** THAT THE MANUFACTURE, IMPORTATION, EXPORT, DISTRIBUTION, OFFER, DISPLAY, PURCHASE, SALE AND/OR USE OF PRODUCTS OR SERVICES OFFERED OR DISPLAYED ON THE SITES **DOES NOT VIOLATE ANY THIRD PARTY RIGHTS**; AND ALIBABA.COM MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING ANY PRODUCT OR SERVICE OFFERED OR DISPLAYED ON THE SITES.



Claudette found NO potentially unfair clause

⚠ **Art 14 DSA**, ma valide rifacendosi al safe harbour

Parte 8 – LIMITATION OF LIABILITY

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.

**Claudette found 1 potentially unfair clause:
Limitation of Liability**

⚠ **art.1341, comma 2, cc**

⚠ **art.33, comma 1, let. b, q, cod.cons.**

⚠ **La lettera d sarebbe nulla per il GDPR**

Parte 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 shut-down 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, non-performance 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.



Claudette found 1 potentially unfair clause
Unfairness categories:
limitation of liability

⚠ in violazione dell'Art 33 cod consumo
relativamente a "system shut down for maintenance", "labour strikes", "shortage labours" e "website upgrades"

Parte 10-11 – Intellectual Property Rights and Legal notices

Non è stata riscontrata vessatorietà in nessuno dei punti riguardanti la protezione dei Diritti di Proprietà Intellettuale (DPI) e il Sistema di Notice. Abbiamo invece riscontrato attenzione e partecipazione di Alibaba nella lotta alla 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 possiede una piattaforma apposita: la Intellectual Property Protection Platform (Piattaforma per la protezione della proprietà intellettuale – IPP)**

Alibaba applica politiche sanzionatorie 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.

Parte 10-11 – Intellectual Property Rights and Legal notices

1. SEGNALAZIONE E RIMOZIONE (I titolari dei diritti hanno la possibilità di richiedere personalmente l'eliminazione delle inserzioni illecite utilizzando le specifiche procedure di segnalazione)

2. MONITORAGGIO PROATTIVO (Alibaba si impegna nell'utilizzo di tecnologie all'avanguardia con il fine di esaminare PROATTIVAMENTE eventuali inserzioni problematiche)

3. INIZIATIVE 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. COLLABORAZIONE CON LE PARTI INTERESSATE (Alibaba collabora attivamente con i titolari dei diritti, le associazioni industriali, le autorità governative, il mondo accademico e i leader del settore industriali per creare una comunità inclusiva e globale per la protezione dei DPI)

Parte 12 – General provisions


12.7

THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA ("PRC") IF YOU CONTRACT WITH HANGZHOU ALIBABA ADVERTISING CO., LTD ACCORDING TO PARAGRAPH 2.1, AND THE PARTIES TO THIS AGREEMENT HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE YUHANG BASIC PEOPLE'S COURT OF HANGZHOU, PRC. 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.**

CLAUDETTE FOUND **NO** POTENTIALLY UNFAIR CLAUSE

TUTTAVIA

⚠ art.1341 cc comma 2
necessaria doppia firma



VOTI

- **Trasparenza** (Punteggio > 0): Si riscontra un problema linguistico che rende poco chiaro l'oggetto del contratto, in particolare nella sezione 7.1 dei termini. Alcune clausole risultano ambigue e manca una chiara descrizione dei servizi e dei collaboratori, sebbene alcuni vengano menzionati. Il contratto appare deresponsabilizzante e il fatto che ci sia un solo contratto per acquirenti e venditori crea confusione. Inoltre, l'accettazione del contratto è implicita nell'uso della piattaforma, portando all'accettazione automatica di più contratti.
- **Libertà di manifestazione del pensiero** (Punteggio > 5): Alibaba si deresponsabilizza nei confronti di contenuti discriminatori a meno che non vadano contro i suoi interessi. Pertanto, non sembra esercitare un controllo adeguato su ciò che viene pubblicato sulla piattaforma. L'impressione è che la libertà di pensiero sia solo superficiale, in quanto qualsiasi critica diretta ad Alibaba può portare alla sospensione dell'account.

VOTI

- **Fairness** (Punteggio > 0): Le condizioni contrattuali sono poco chiare, inclusa l'identificazione delle parti coinvolte nel contratto (Alibaba e chi altro?). Alcune clausole mancano di precisione e non esplicitano adeguatamente i servizi e i collaboratori coinvolti. Il contratto appare deresponsabilizzante e il fatto che ci sia un solo contratto per acquirenti e venditori introduce confusione. Inoltre, l'accettazione del contratto è implicita nell'utilizzo della piattaforma.
- **Privacy** (Punteggio > 2): La profilazione dei dati personali è dichiarata, ma non viene garantito il rispetto del GDPR nell'accettazione dei cookie. I dati personali possono essere condivisi con terze parti non chiaramente identificate.
- **Claudette** (Punteggio > 5): Claudette non è riuscita a identificare tutte le clausole vessatorie né a contestualizzare adeguatamente le condizioni contrattuali. Per esempio, nelle sezioni 1 e 2, una maggiore consapevolezza delle dimensioni di Alibaba come piattaforma avrebbe potuto influenzare il suo giudizio in modo diverso.

Grazie per l'attenzione

Camilla Bartolucci, Eleonora Boin, Luca Francalancia,
Marta Massera, Niccolò Palino