

## **General terms and conditions of AP&S International GmbH, Donaueschingen**

### **§1 Scope of Application**

(1) Our Terms and Conditions for the Sale of Goods (hereinafter: Terms) apply solely to entrepreneurs, legal entity under public law or public special assets. Any conditional or different terms proposed by the buyer are objected to and will not be binding until any further unti

(2) The provisions of these Terms are standard contract conditions for any contract with the buyer who is a merchant in the course of an ongoing business relationship, even if they are not expressly named in a following transaction.

(3) Individual agreements made with the customer in the particular case (including side agreements, supplements and changes shall take priority over these conditions. A written contract or a written confirmation is decisive for the content of such agreements.

### **§2 Conclusion of contract**

(1) Conclusion of contract shall be determined by §§145ff. BGB

### **§3 Provided Documents**

(1) All documents, managed and kept in electronic form, we shall retain the right of property and copyright. All documents must not be passed to third parties. Any claims for damage remain unaffected.

### **§4 Scope of contract**

(1) The scope of delivery shall be governed by the acknowledgement of the order by AP&S International GmbH. If the deadline is exceeded we are not longer bound by the offer.

(2) The documents that belong to the offer , such as figures, drawings, indications of weight and dimensions shall only be approximates. The Contractor reserves the unrestricted right to ownership and copyright exploitation rights in cost estimates, drawings and any other documents. The Supplier undertakes to only make information and documents designated by the Buyer as confidential accessible to third parties with the Buyer's consent.

### **§5 Prices and Payment**

(1) All prices given by us are on a ex works basis (Hauptwerk ICC Incoterms 2020 exclusive VAT and or taxes) including shipping charges, excluding packaging. The price is exclusive of any applicable value added tax, which the buyer shall be additionally liable to pay to us. On buyers written demand, we may purchase an insurance on behalf of the buyer on his costs covering theft, damages, transportation risks, fire and water and additional insurable risks.

(2) If not otherwise agreed in writing, payments must be effected by interbank payment transaction within 30 days of the date of our invoice without any cash discount. If the buyer fails to make any

payment on the due date, we are entitled to charge interest on the amount unpaid at a rate which is customary in banking if we do not proof an additional damage in interest, or the buyer proofs a lower damage in interest. Our right to claim for interest in the amount set out by the law remains in any case.

(3) The minimum order must reach the sum of € 150,- plus value added tax. For orders with a lower value we charge an additional sum of € 50,- for minor orders.

(4) Our prices are calculated on the basis of the current cost-situation at the date of contract. We reserve the right to increase the price of the goods, if the delivery would take place later than 4 months after the date of contract and in case of an increase of payroll- or material-costs within this period.

(5) If we accept in single cases cheques or bills of exchange, the acceptance will not be considered as fulfilment of the payment obligation. We do not warrant for presentation in time. Date of payment will be the day of the payment of the bill. Any discount expenses are at the expense of the buyer.

## **§6 Right of Retention**

(1) The contractual partner is only authorized to exercise a right of retention, if the counterclaim is based on the same contractual relation.

## **§7 Delivery period**

(1) The fixed time for delivery starts with the receipt of our confirmation of the order with the buyer, but, not earlier than on that day, we received all supporting documentation the buyer has to furnish to us (like plans, authorizations, approvals etc.) and the receipt of a down payment which might be agreed on.

(2) The fixed time for delivery is met, when we notify the buyer within this period that the goods are ready for collection in our premises, or if agreed on some other place for delivery, by our transfer of the goods to the carrier.

(3) The fixed time for delivery would extend reasonable in cases of force majeure as strikes, lock-outs or other industrial actions or trade disputes or if the delay or failure was due to any other cause beyond our reasonable control, as far as those causes have been of major influence on our production-performances or the transportation. The extension of the fixed time for delivery would also apply in cases, where our suppliers are subject of foresaid causes. We are even then not responsible for such causes, if they occur when we are in default. We will inform the buyer immediately about the beginning and the end of said causes.

(4) If the buyer suffers a damage due to a delay of our responsibility, he is entitled to claim for a compensation. The compensation amounts for each week of the delay 0.5% (but in no case more than 2,5%) of the value for the goods which cannot be used for the contractual purposes due to our delay in delivery, as long as the buyer does not proof a higher damage or we do not proof a lower damage due to the delay. If the transport is postponed due to reasons in the responsibility of the buyer, especially in cases where the buyer asks us to deliver the goods later than the last day of the fixed time for delivery, we are entitled to claim for compensation for the storage-costs for the goods. If the goods are stored in our premises, the buyer is liable for a compensation in an amount of 0.5%

of the value of the goods for each month of the postponement. But, we are also entitled to dispose with the goods otherwise, if a notification of the buyer with a reasonable time limit for him to take over the delivery should be unsuccessful. In this case we can deliver the ordered goods within a reasonable new fixed time for delivery.

#### **§8 Passing of Risk**

(1) Risk of damage to or loss of the goods shall pass to the buyer, when we have tendered delivery of the goods, even when only parts of the ordered goods are delivered or in case of additional services of ours (like transport, installation, etc.).

(2) If the delivery is delayed due to a postponement of the buyer, the risk of damage to or loss of the goods shall pass to the buyer when we notify the buyer that the goods are available for collection; we undertake to insure the goods for such a period on demand of the buyer and on his liability for the charges.

(3) We may deliver parts of the ordered goods, unless the part-delivery is of no value for the buyer.

#### **§9 Retention of title**

(1) Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Terms, title to the goods shall not pass to the buyer until we received in cash or clear funds payment in full of the price of the goods and all other goods agreed to be sold by us to the buyer for which payment is then due. This also applies for those cases where some or all of our invoices have been taken in an open account and the balance has been struck and accepted. If the buyer is in contradiction with the provision of these Terms, especially if he fails to make any payment on the due date, we are entitled to require the retransfer of the goods to us. This request as well as any pledge of the goods by us shall only be deemed as a revocation of the contract, if we declare such revocation expressly in writing. If third parties take up steps to pledge or otherwise dispose of the goods, the buyer shall immediately notify us in writing.

(2) Until the title to the goods passes to the buyer, the buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to us for the proceeds of sale or otherwise of the goods including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the buyer and third parties, no matter if the goods has been reshaped before the resell by the buyer or not. The collection of the claims shall be up to the buyer, notwithstanding our own right to collect such claims. We undertake not to collect any claims on our own unless the buyer does not fail to make payments in its ordinary course of business. We are entitled to demand for complete information of the proceeds and its debtors as well as all additional material and paperwork. On our demand, the buyer must inform the debtors about the transfer of title to us. If the goods are resold to a third party in connection with other goods that we have no property in, the proceeds are transferred to us pro rata in the amount of our charge for the goods to the buyer.

(3) If the goods are processed or reshaped by the buyer and if processing is done with goods that we have no property in, we become co-owner of the new goods pro rata in the value of the goods we have property in. The same shall apply if our goods are completely reshaped and mixed with other goods. The provisions for the goods we have property in shall apply accordingly on the new goods.

(4) We undertake to release the exceeding part of the collateral if the value of the collateral held in favour of ours exceeds the value of the claims being secured in an amount of more than 25%.

(5) The purchaser is obligated to handle the object of purchase with care until ownership has transferred to the purchaser. The purchaser is obliged to take out adequate insurance for these goods against theft, fire, water and other damage and to furnish. If maintenance and inspection work has to be carried out, the ordering party shall proceed accordingly in good time at his own costs. As far as the third party is not in a position to refund to us the judicial or extrajudicial expenses of our prosecution or defence regarding third party actions, §771 ZPO.

#### **§10 Warranty claims, Complaint, Recourse Claims**

(1) The warranty rights of the customer require that the latter examine the goods delivered for obvious defects, without delay, §377 HGB.

(2) All claims arising from a defect shall lapse 12 months after Purchaser receives the merchandise, if the supplied merchandise. For claims of compensation caused intentionally or by gross negligence and in damage to life, body or health based on a deliberate or negligent breach of duty - also by a legal representative or a vicarious agent of the group of persons released from duty - and except for other damage that is based on a deliberate or grossly negligent breach of duty - also by a legal representative or a vicarious agent of the group statutory warranty is valid. Our consent must be obtained prior to any return of goods.

(3) In the case of justified complaints, shortages will be rectified by further delivery and other complaints will be dealt with by supplementary performance within a reasonable period of time.

(4) If and when the subsequent performance fails or is impossible or is rejected the buyer is within his rights to withdraw from the contract or ask for a commensurable reduction in price.

Subject to the conditions set out below we warrant that the goods will be free from defects in material and:

(a) We are under no liability for defects which occur after the transfer of risk according to par. V. We are under no liability for defects arising from willful damage, fair wear and tear, negligence, abnormal working conditions, failure to follow our instructions whether written or oral, misuse or alterations, repair or installation of the goods by third parties without our approval, chemical or electrochemical or electric influences, as long as we are not responsible for such causes. If the buyer should raise unsubstantial claims out of workmanship warranties, especially if defects without our responsibility should arise, we are entitled to charge all the costs in connection with our services then rendered to the buyer.

(b) If the buyer is a merchant, he shall notify us of the defect in writing according to the following provisions; if not he loses his rights out of the warranties:

(c) apparent defects need to be notified without delay after the receipt of the goods, or if installation or assembly by us or a test is agreed on, without delay after that installation, assembly or test, but in no case later than within 6 months (if used in shift operations within 3 months),

(5) If the defect is under our liability, in case of a contract for services on our choice, in case of a sales-contract on the buyer's choice, we undertake to repair the goods or to replace the goods free

of charge (hereinafter: remedy). We are entitled to refuse a remedy chosen by the buyer, if it is connected with an unreasonable cost-effect.

In case of a repair of the goods we undertake to bear all costs in regard of such repair, especially costs for transportation, travel expenses, wages and material. If the goods are transferred to other premises after the repair due to instructions of the buyer, the buyer is liable for the costs of such delivery. Said restrictions do not apply, if the legal provisions for the sale of consumer goods are pertinent.

(6) If the repair of the goods fails, or if we do not agree or be unable to a repair of the goods or a replacement of the goods free of charge, or if the remedy would extend a reasonable time period, the buyer is entitled to revoke the contract or to claim for a reduction of price. In case of a contract for services the buyer may, if his safety at work is endangered or if he is threatened by an unreasonable damage, repair the goods on its own or let them have repaired by a third party and hold us liable for said reasonable costs. Buyers obligation to take recourse to us before his own or third-party repair of the goods remains untouched.

(7) §442 Abs. 1 BGB, Claims under guarantee are excluded in respect of any faults or defects if the Purchaser knew of the defect or any other reason for complaint at the passage of risk. §442 Abs. 1 S.2 BGB, the exercise of these rights shall be precluded if the buyer did not recognize the cause of the defect due to gross negligence and the the vendor has failed to disclose the defect maliciously or the vendor has given a quality guarantee for the goods.

(8) Exclusion of liability, §444 BGB. The Purchaser`s rights can be excluded by a contract. The limitation does not apply if the seller is the lack fraudulently concealed or where the seller assumed a guarantee.

(9) A liability according to the product liability act remains untouched.

(10) We cannot be held liable for compensation of damages due to defects only apply insofar as the Purchaser has not entered into any further agreements with its client exceeding the statutory claims due to defects.

(11) No extra warranty is given for parts subject to wear and tear.

### **§11 Defect of title, in particular patents**

(1) We shall be under no liability if the goods or their use or resale infringe the patent, copyright, design, trademarks or other industrial or intellectual property rights of any other person, if the goods are based on a drawing or construction of the buyer. In all other cases, our liability is limited according to the provisions of par. VII., subpar. 5. As far as we are liable according to these provisions, we undertake to indemnify the buyer against all loss, damages, costs and expenses incurred by the buyer due to a third party claim of the infringement of the patent, copyright, design, trademarks or other industrial or intellectual property rights through the goods. Additional condition for this indemnification shall be that

(a) the buyer transfers the rights to control any proceedings or negotiations as far as permitted by law to us and assists us in any reasonable way for the purposes of any such proceedings or negotiations by furnishing us with all necessary information and material (we will be liable for the costs of the buyer for said assistance) and

(b) the claim is only based on the breach of our contractual obligations, especially the design and construction of our goods and not on a misuse of the goods which is not in our responsibility or on the use in connection with other goods.

(2) We are entitled to release ourselves from our obligations according to subpar. 1. by either:

(a) purchasing the licenses for the patent, copyright, design, trademarks or other industrial or intellectual property rights which might be infringed or

(b) delivery of varied goods or parts of the goods, which would through the substitution of those parts who might infringe the patent, copyright, design, trademarks or other industrial or intellectual property rights avoid the infringement through the initial delivered goods.

### **§12 Limitation of liability for other damage claims**

(1)As far as other damage claims are raised (impossibility of performance, breach of an obligation other than delay or impossibility, negligence in the course of contracting and tort) the provisions for the limitation of our liability as set out.

### **§13 Abolition or adjustment of performance obligations**

(1)Notwithstanding the limitations of our liability according to §§10, 11 we are entitled – as far as the preconditions are fulfilled - to claim for an adjustment of the contract or to even revoke the contract in cases of the right to withhold performance according to §275 Abs. 2 BGB due to factual impossibility or in cases of the frustration of contract within the meaning §313 BGB.

### **§14 Choice of law and place of Jurisdiction**

(1)All contractual relations between the buyer and us shall be governed by German law, whereas the United Nations Convention on Contracts for the International Sales of Goods adopted on April 11, 1980 shall not apply. Each party agrees to submit to the jurisdiction of the courts having jurisdiction (including summary bill- and cheque-enforcement procedures) for our principal place of business or the place of business of our subsidiary, which is in charge for the delivery of the goods. We also have the right to bring a claim before a court at the buyer's principal place of business.

*The current state: 01/01/2022*

### **Appendix I:**

(1)§307 Abs.1,2 Nr.1 BGB is also true vis-à-vis entrepreneur. An unreasonable disadvantage is given if the clause cannot be reconciled with essential basic principles of the statutory rule from which it deviates.

(2) We, the AP&S International GmbH, hereby undertake to register the requirement for transparency. The terms shall not relate to the definition of the main subject matter of the contract, provided that these terms are in plain intelligible language.

(3) For sales contracts and works contracts period of warranty shall be shortened accordingly.

(4) The notice of defect should be no less than one year. The period shall begin according to the legal beginning of the limitation period according to German civil law.

#### **Appendix II:**

(1) This Agreement and all legal relations subsisting between the parties are subject to the law prevailing in the Federal Republic of Germany.

(2) Place of fulfilment and exclusive jurisdiction is, as far as judicially admissible is our headquarter, AP&S International GmbH, Obere Wiesen 9, 78166 Donaueschingen. As far as nothing else results.

(3) All agreements that are concluded between us and the customer for the purposes of executing this contract are contained in writing in this contract.

(4) Claims of damage regardless of culpability cannot be attributed to warranty claims.

(5) Reimbursement of expenses. The vendor must bear all expenditure required for the purposes of supplementary performance, in particular carriage, §439 Abs. 2 BGB. According to §439 Abs. 3 BGB the vendor shall be obliged to bear all necessary costs and expenses regarding installation and removal costs. According to §445 BGB the vendor is able to take recourse to its suppliers for part of these expenses. The rights of the buyer regarding a defect are eliminated, if he knows about the defect at the time of installation or gross negligence.

(6) Limitation of liability. The exclusion of liability for damage or injury of any kind will be invalid.

(7) Default interest. As of the time of default, the customer will owe the statutory interest over the total outstanding amount. In the case of a contracts between businesses the default rate shall be 8% above the respective base rate. The current daily developments can be found at the website of the Federal Bank of Germany.

#### **Appendix III:**

(1) Data protection law. With the consent to this data privacy statement, which can be rescinded with future effect at any time, user agrees to its data being processed by the [www.ap-s.de](http://www.ap-s.de) website and to a transmission of the same to the selected by the [www.ap-s.de](http://www.ap-s.de) website user.