

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

### **I. Scope of Application**

1. Our Terms and Conditions for the Sale of Goods (hereinafter: Terms) apply exclusively. Any conditional or different terms proposed by the buyer are objected to and will not be binding.
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.

### **II. Orders and Specifications**

1. The quantity, quality and description of and any specification for the goods shall be those set out in the sellers confirmation in writing or in his quotation. If the quotation contains a commitment-period, out of time-orders of the buyer shall not become binding for us.
2. Additional paperwork accompanying the quotation (like plans, pictures, size- and weight-figures) are roughly only and can not be seen as precise unless they are not expressively confirmed as binding in writing by us. All estimations, drawings or other paperwork are subject of our copyrights and of our right of ownership, they must not be disclosed to third parties.
3. Any modifications, alterations or amendments must be in writing.

### **III. Price Terms of Payment**

1. All prices given by us are on a ex works basis (EXW ICC Incoterms 2020 ) 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. The buyer must not set off with any counterclaims he may be entitled to, unless those claims have been legally confirmed.
5. 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.

6. 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.

#### **IV. Delivery**

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 months 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.

#### **V. Risk and Examination**

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. Collected goods must be, notwithstanding of the buyers rights as set forth in par. VII., accepted, even if they are defective.

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

## **VI. 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 10%.

## **VII. Warranties and Liability**

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

1. 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.

2. 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:

- a. 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),
- b. hidden defects need to be notified without delay after their discovery.

3. 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 installation due to instructions of the buyer, then the buyer is liable for the costs of such delivery.

4. If the repair of the goods fails repeatedly, 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.

5. We cannot be held liable for compensation of damages due to defects, as far as

- a. we did not expressly warrant for a certain specification of the goods or if there is no material breach of contract of ours,
- b. the damage have not arised through a gross negligent or intentional breach of the contract on the part of ours or
- c. in case of a damage of life or personal health have not arised through a negligent breach of the contract on the part of ours.

In cases of lit. a and in cases of lit. b – under the condition that the damage has been caused by an employed person in the performance of our obligation and for whom we are vicariously liable – our liability is limited on the amount of the foreseeable damage. A damage claim based on the law of product liability remains untouched in any case.

## **VIII. Indemnity**

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.

#### **IX. Limitation of liability for other damage claims**

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 in par. VII. subpar. 5 apply accordingly.

#### **X. Abolition or adjustment of performance obligations**

Notwithstanding the limitations of our liability according to par. IV. subpar. 4., VII. subpar. 5., VIII. subpar. 1, second sentence and IX., 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 par. 275 subpar. 2 German Civil Code due to factual impossibility or in cases of the frustration of contract within the meaning par.313 German Civil Code (especially in ongoing cases of par. IV. subpar. 3.).

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

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.