

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

II. Scope of Contract

1. The quantity, quality and description of and any specification for the goods shall be those set out in the seller's 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, details of size and weight) are only approximate and cannot be seen as precise unless they are expressly confirmed as binding in writing by us. All estimations, drawings or other paperwork are subject to our copyrights and to our right of ownership. They are not allowed to be disclosed to third parties.
3. Any modifications, alterations or amendments must be made in writing.

III. Prices and Terms of Payment

1. All prices given by us are on an 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 at his cost covering theft, damages, transportation risks, fire, 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 by 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 prove an additional damage in interest, or the buyer proves a lower damage in interest. Our right to claim for interest in the amount set out by law remains in any case.
3. The minimum order must amount to at least € 150,- plus value added tax. For orders with a lower value we charge an additional amount 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 takes 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 cheques or bills of exchange in individual cases, the acceptance shall not be considered as fulfilment of the payment obligation. We do not warrant 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 Time

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

3. The fixed time of delivery extends reasonably in cases of force majeure such as strikes, lockouts, 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 severely affected our production performance or transportation. The extension of the fixed time of delivery also applies in cases where our suppliers are subject to foresaid causes. We shall not be responsible for such causes, even 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 transport is postponed due to reasons within the responsibility of the buyer, especially in cases where the buyer asks us to deliver the goods later than on the last day of the fixed time of delivery, we are entitled to claim for compensation for the storage costs of the goods. If the goods are stored in our premises, the buyer is liable for a compensation at an amount of 0.5% of the value of the goods during each month of the postponement. However, we are also entitled to dispose of the goods otherwise, if a notification of the buyer with a reasonable time limit for him to take over the delivery is unsuccessful. In this case, we can deliver the different kind of ordered goods within a reasonable new fixed time of delivery.

V. Transfer of Risk and Acceptance

1. Risk of damage to or loss of the goods shall pass to the buyer, when we have tendered delivery of the goods, even if only parts of the ordered goods have been 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. Notwithstanding the buyer's rights as set forth in par. VII., collected goods must be accepted even if they are defective.

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

VI. Retention of Title

1. Notwithstanding delivery and the passing of risk of the goods, or any other provision of these Terms, title to the goods shall not pass to the buyer until we have received, in cash or clear funds, full payment 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 to those cases in which some or all our invoices have been taken in an open account and the balance has been struck and accepted. If the buyer fails to comply with the provisions of these Terms, especially if he fails to make any payment by 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 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 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 money or properties of the buyer and third parties, no matter if the goods have been reshaped before the resale 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 shall not undertake to collect any claims on our own unless the buyer fails to make payments in his ordinary course of business. We are entitled to demand complete information on the proceeds and the buyer's debtors as well as any 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 combination with other goods that we have no property of, the proceeds are transferred to us pro rata at 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 title to, we become co-owner of the new goods pro rata at the value of the goods we have a title to. The same shall apply if our goods are completely reshaped and combined with other goods. The provisions for the goods we have a title to shall apply accordingly to the new goods.

4. We undertake to release the exceeding part of the collateral if the value of the collateral held in favor of ours exceeds the value of the claims being secured at an amount of more than 10%.

VII. Liability for Material Defects

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, unsuitable operating materials, substitute materials, defective

construction work, unsuitable building ground as long as we are not responsible for such causes. If the buyer raises unsubstantial claims from workmanship warranties, especially if defects without our responsibility 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 he fails to do so, he shall forfeit 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 operation 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 of our choice, in case of a sales contract of 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 this involves an unreasonable cost effect. In case of a repair of the goods, we undertake to bear all costs with respect to such repair, especially costs for transportation, travel expenses, wages and material. If upon instructions of the buyer the goods are transferred to other premises after the installation, then the buyer shall be liable for the costs of such delivery.

4. If the repair of the goods fails repeatedly, or if we do not agree or are unable to repair the goods or replace them 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 service contract, the buyer may, if his safety at work is endangered or if he is threatened by an unreasonable damage, repair the goods on his own or have them repaired by a third party and hold us liable for said reasonable costs. The buyer's 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 have not expressly warranted for a certain specification of the goods or if there is no material breach of contract by us,
- b. the damage has not arisen from a grossly negligent or intentional breach of the contract on the part of ours or
- c. in case a damage of life or personal health has not arisen from a negligent breach of the contract on our part.

In cases of lit. a. and 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 to the amount of the foreseeable damage. A damage claim based on the product liability law remains untouched in any case.

VIII. Liability for Defects in Title

1. We shall be under no liability, if the goods or their use or resale infringe the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, if the goods are based on a drawing or design 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, trademark or other industrial or intellectual property rights by the goods. Additional condition of this indemnification shall be that

- a. the buyer transfers the rights to control any proceedings or negotiations to us as far as permitted by law and assists us in any reasonable way for the purpose of any such proceedings or negotiations by furnishing us with all necessary information and material (we shall 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 combination 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 that might infringe the patent, copyright, design, trademarks or other industrial or intellectual property rights avoid the infringement through the initially delivered goods.

IX. Limitation of Liability for Other Breaches of Duty

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. Omission 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 of 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.