

## Sales and Delivery Terms and Conditions

As of: May 2011

### 1. Scope:

- 1.1 These conditions apply to all offers, orders, purchase- and other contracts and their fulfilment in so far as APL Apparatebau GmbH has offered, delivered or sold the produced goods or components therein, which will subsequently be referred to as the Goods.
- 1.2 APL Apparatebau GmbH will subsequently be referred to as the Seller, regardless of whether it is meant as a provider, vendor or supplier, and the contractual partner as the Purchaser, on the understanding that the final contract does not necessarily constitute a sales contract.
- 1.3 All transactions concluded on the basis of these terms will only be subject to Austrian law with the exceptions provided therein.
- 1.4 Any conditions imposed by the Purchaser will not be applicable to the Seller, unless a separate written agreement has been signed by the Seller.

### 2. Offers:

- 2.1 All offers provided by the Seller, in whatever form, are subject to change.
- 2.2 Verbal commitments are non-binding to the Seller, providing there is no written confirmation.
- 2.3 Any illustrations, catalogues, drawings, etc. with specified dimensions, weight, capacity, performance and results of the Goods offered by the Seller are only indicative and are non-binding. Details, including criteria for calculations, do not need to be provided.

### 3. Conclusion of the contract:

- 3.1 The contract will be deemed completed after it has been signed by the Seller and after the Purchaser has raised no written objections within three days of the date of signature by the Seller. The date of signature by the Seller will be taken as the date of sending the signed document.
- 3.2 After that date, any changes or additions will only be deemed valid with written confirmation by the Seller and after the Purchaser has raised no written objections within three days of that confirmation.
- 3.3 Reasonable variations upon delivery do not provide grounds for the Purchaser to withdraw from the contract, make claims under the guarantee, claim compensation or exercise any other rights.

### 4. Prices and costs:

The prices offered by the Seller are based on relevant wages, social security, taxes, transportation insurance costs, commodity prices, materials, auxiliary materials and spare parts prices, exchange rates of foreign currencies and other costs applicable at the time of the offer. Increases in one or more of these factors will entitle the Seller to increase the offer or agreed price accordingly. As long as no alternative arrangements have been made, the prices quoted are for ex-works delivery.

### 5. Delivery times:

- 5.1 The delivery time will begin on the latest of the following dates:
  - a) the completion date of the contract;
  - b) the date on which the documents, data and licenses required to fulfil its contractual obligations are received by the Seller;
  - c) the date on which formalities and obligations required to fulfil the contract are completed;
  - d) the date on which the Seller receives the contractually agreed payment;
  - e) the date of release from production.
- 5.2 If the contract following an offer is changed or the fulfilment otherwise constrained by the Purchaser, the delivery time will be extended by the period resulting from the additional work or suspension thereof.
- 5.3 Changes to be made after release from production require a written order. The Seller has the right to require separate settlement of any additional expenses.
- 5.4 Concerning delivery time, the Goods will be considered delivered when they are made available at the factory or warehouse of the Seller or at another point of delivery.
- 5.5 A delay in delivery - for whatever reason - does not constitute grounds for the Purchaser to claim for damages, to withdraw from the contract, to fail to fulfil its contractual obligations or to make substitutions.

### 6. Transfer of risk for deliveries

- 6.1 Once the Seller has made the Goods available, all risk is thereby transferred to the Purchaser.
- 6.2 As long as no detailed instructions have been provided by the Purchaser, the Seller can select the method of transport according to common practise and due diligence, without liability and without responsibility for the packaging.
- 6.3 All risks during transport of the Goods shall, in all cases, even when free-delivery has been agreed, fall on the Purchaser - even if bills of lading, delivery notes etc. include a clause making any damage during transport the responsibility of the sender.

### 7. Payment and retention of title:

- 7.1 The agreed payments are to be paid expense- and compensation-free to the place of business of the Seller or a bank account designated by the Seller.
- 7.2 If the Purchaser falls into arrears with its payments, it shall be deemed to be in default and the Seller shall be entitled without any further notice or communication to claim interest at the rate of 1.5% per month.
- 7.3 In the event that non-payment of a partial payment or bill of exchange agreement occurs, only the date of payment or exchange will be affected. This furthermore applies if the Purchaser's assets are subject to insolvency proceedings, if or a request to that effect was dismissed for lack of coverage of the costs.
- 7.4 In the event of the payment date being affected, the entire outstanding balance of the purchase price including all collateral claims will become immediately due for payment, without prejudice to any other rights of the Seller.
- 7.5 All Goods sold will remain the property of the Seller until complete payment of all claims arising from the contract with the Purchaser have been made.
- 7.6 As long as the Seller remains the owner of the purchased Goods, the buyer may not use them to gain credit or otherwise dispose of them.  
In case of violation, all claims of the Purchaser to a third party arising from such a violation are at that moment ceded to the Seller.  
In such a case, the Seller is also entitled to cancel the contract with immediate effect. The liability for any risk, even for the accidental destruction of the Goods, during continued retention of title, will fall on the Purchaser.
- 7.7 Installation or connection to an immovable object does not obviate the retention of title. In the case of a delay of at least one partial payment by a period of 3 weeks, the seller is entitled to remove the delivered Goods and repatriate them at the Purchaser's expense.

## 8. Statutory provisions:

- 8.1 The Goods will meet the Austrian regulations, or other regulations stipulated in the contract, of service, transportation and safety on the day the contract is concluded.
- 8.2 When other statutory provisions come into force between the conclusion of the contract and delivery, the Goods will be, as far as possible, adapted to comply with the new regulations. The Purchaser will bear any costs that arise from this.

## 9. Warranty / guarantee:

- 9.1 The Seller guarantees the delivered Goods for a period of one year from the date of delivery, provided that the Purchaser informs the Seller in writing by registered post of the defect immediately after its discovery, and that this defect was exclusively or predominantly caused by construction error, poor processing or use of unsuitable materials for which the Seller was responsible.
- 9.2 In this case, the Seller will rectify the defect on the premises of the Seller.
- 9.3 General: The Seller will bear any removal and replacement costs up to a maximum of 10% of net sales price of the upgraded Goods but not exceeding an amount of €100,000.00.
- 9.4 The guarantee will expire prematurely if the Purchaser or third party carries out any improper assembly, alterations or repairs.
- 9.5 The Seller is not responsible for corrosion damage of any kind, in so far as it is not due to faulty materials or improper workmanship. The selection of material is in any event down to the Purchaser. Any material recommendations by the Seller are not binding and do not impose liability.
- 9.6 Any warranty or liability for wear parts (eg. seals, screws etc.) is expressly excluded.
- 9.7 The Seller is not liable for damage to paint and chrome surfaces, as long as this damage was not caused by design flaws or poor quality of other parts that were the responsibility of the Seller.
- 9.8 The Seller is not liable for defects and malfunctions caused in whole or in part by improper or negligent acts of the Purchaser, its staff or third parties, or caused by alterations or repairs made by the Purchaser, its staff or third parties when operating or arranging the Goods.
- 9.9 Any liability is also excluded if the Purchaser uses the delivered Goods for anything other than normal operating purposes, operates it improperly or if the Purchaser, its staff or third parties have not strictly adhered to the operating and service instructions provided by the Seller.
- 9.10 When fulfilling warranty claims, the Seller has the right to replace defective parts or to repair the parts to meet the agreed performance. The decision is that of the Seller.
- 9.11 Replaced defective parts become the property of the Seller. Without the express written consent of the Seller, the Purchaser is not entitled to forward the Goods or components thereof which are owned by the Seller.
- 9.12 For Goods or components not manufactured by the Seller, no further guarantee is provided beyond that of their suppliers.
- 9.13 If the Seller is - for whatever reason - not able to replace parts of the Goods to meet the guarantee, then, when the delay is temporary, the obligations of the guarantee will be set aside until such time as the obstacles have ceased to exist. It must be added that if the obstacle is permanent, the Seller will refund the Purchaser the cost price of these or similar parts in cash.

## 10. Liability and risk

- 10.1 The liability of the Seller is limited to warranty obligations as listed in Point 9.
- 10.2 Any liability of the seller for damages arising from or based on negligent conduct is excluded.
- 10.3 Regardless of fault, liability for indirect damages of any kind is excluded. This includes in particular those losses from interrupted business, loss of production, pure economic losses, damages resulting from delay or disruption, consequential or any other damages of any kind whatsoever, and apply regardless of the reasons for which they have arisen. Liability of the Seller for property damage under the Product Liability Act is also specifically excluded.

## 11. Drawings

- 11.1 All drawings, catalogues and other information made available by the Seller shall remain its property and must be immediately returned upon request.
- 11.2 The Purchaser will ensure that these drawings, illustrations, catalogues and other information are not copied or permanently reproduced in any form or permanently secured and/or provided to third parties or made available for inspection. If the Purchaser provides drawings, models, materials, etc. to third parties or makes them aware of them, the Purchaser will be liable for all possible resulting legal infringements and in particular breaches of patent or license rights. Any use by third parties must keep the Seller fully undamaged and indemnified.
- 11.3 Should any third party raise objections relating to alleged infringements, the Seller is entitled to immediately terminate their services. The Purchaser must then compensate the Seller for all damages incurred. The Purchaser has no entitlement or claim whatsoever against the Seller if it terminates the services.

## 12. Cancellation

- 12.1 If the Purchaser does not fulfil the contractual obligations properly or on time, it shall be deemed to be in default and the Seller has the right to cancel the contract without further warning.
- 12.2 In such a case, the Purchaser will be obliged to compensate the Seller for all losses.
- 12.3 The Seller is entitled, without prejudice to any other claims, to claim an amount equal to 20% of the agreed purchase price as compensation for its loss of earnings.
- 12.4 The above points do not affect the entitlement of the Seller to suspend fulfilment of the contract and demand full payment of all monies contractually owed by the Purchaser.

## 13. General

- 13.1 Should partial deliveries and/or payments be agreed, then unless stipulated otherwise in an agreement, each part shall be regarded as an independent contract, particularly in relation to provisions for payments and guarantees.

## 14. Place of Fulfilment, Jurisdiction

- 14.1. The place of fulfilment for both parties shall be the business address of the Seller. Any dispute arising from the contractual relationship agreed to in the contract shall fall under the sole jurisdiction of the appropriate court of law in Innsbruck.