

Pfäffikon, 01.08.2018

## General conditions of sale, delivery and payment

### 1. General

These General Conditions of Sale, Delivery and Payment (hereinafter referred to as the "General Conditions") are binding if they are declared applicable in APAG's offer. By accepting APAG's offer, the customer accepts the following terms and conditions.

Different general terms and conditions of the customer, including those which the latter declares applicable together with the acceptance, will not be accepted by APAG. They are only valid if and to the extent that they have been expressly accepted by APAG in writing.

These General Conditions are subject to any other contractual arrangements.

All verbal and telephone agreements must be confirmed in writing in order to be binding. The requirement of written form is fulfilled even if an explanation is contained in an e-mail.

### 2. Offers

Offers by APAG are, if not stated otherwise, are binding for 3 weeks from the date of issue.

### 3. Contract conclusion

The contract shall be considered concluded if the customer accepts APAG's offer in writing and the written declaration of acceptance within the period stated in para. 2 has been received by APAG before. A declaration by the customer is only accepted if it fully complies with APAG's offer. If this is not the case or if the declaration of acceptance is received by APAG after the acceptance period (as per item 2 above), the customer's declaration will be accepted as a counter-offer. In this case, a contract is only concluded if APAG accepts the counter offer of the customer in writing. Silence of APAG on the counter offer of the customer under no circumstances applies as a declaration of acceptance.

### 4. Scope of delivery

For the extent with regard to execution of the delivery, the order confirmation is decisive. Services not included therein will be charged separately. Weights of material and packaging are not binding.

### 5. Technical documents

Technical documents (drawings, descriptions, illustrations, etc.) prepared by APAG for the purposes of the offer are only approximate. APAG expressly reserves the necessary changes. All technical documents remain the intellectual property of APAG and may not be copied, reproduced, made known to third parties in any way, nor used to make the work or any parts. They may be used for maintenance and service provided that they have been appropriately marked by APAG. Any rights to patents, utility models etc. belong exclusively to APAG, even if they are not yet registered. A replica of APAG products is only permitted with the written consent of APAG. Technical documents for offers that do not result in an order must be returned immediately.

### 6. Regulations for exports

APAG is obliged to manufacture the ordered products in such a way that they comply with the current state of technology as well as with the relevant regulations in Switzerland (laws, technical regulations and standards, standards, etc.) at the time of ordering.

To comply with regulations (laws, technical regulations and standards, standards, etc.) that are not relevant for the product in question in Switzerland, APAG is only obligated, if this has been agreed in writing and under explicit name and name of the observed provision. The clarification of non-relevant regulations in Switzerland is the sole responsibility of the customer.

The completion of customs formalities and other official permits (especially import and export licenses) is the responsibility of the customer.



#### **7. Price**

The prices of APAG, provided not stated otherwise, are "net cash" (without any discount deduction), excluding VAT (Switzerland). The price does not include all transport costs (including import and export duties and other import and export duties).

#### **8. Costs of testing, conformity assessment, registration, approval and certification procedures**

The costs of all testing, conformity assessment, registration, approval and certification procedures in Switzerland and abroad, unless the said procedures are initiated by the customer anyway, shall be borne entirely by the customer

#### **9. Delivery location**

Subject to particularly other contractual arrangements place of delivery is Pardubice (CZ).

#### **10. Delivery periods**

As soon as the contract has been concluded, the delivery period begins with all official formalities (such as import and payment authorizations), any advance payments and collateral, and all technical points have been cleared.

The delivery period is met if before the expiry of the ordered products in suitable packaging ex works Pardubice (CZ) ready for shipment.

The delivery period covers the time required by APAG to manufacture and package the ordered products in rapid labor and with the usual use of tools and equipment. In the event of strike, lockout, accidents, breakdowns, rejection of a required part, lack of material or force majeure, either in APAG's own company or at a subcontractor, the delivery period will be extended without further notice. The delivery period will also be extended if the information required by APAG to execute the order is not available on time or if the customer subsequently changes it. In cases of extension of time, APAG will not be in default of payment.

Otherwise, in the event of debtor's delay by APAG, the customer is not entitled to waive the subsequent performance, either to withdraw from the contract, or to demand compensation for the damage (Art. 107 et seq. CO). This shall also apply if APAG has caused the default of the debtor in slight negligence or if an APAG assistant caused the default of the debtor in unlawful or gross negligence.

#### **11. Transfer of risk, transport and insurance**

The risk of destruction (in particular destruction, theft, withdrawal by expropriation or seizure) or the deterioration (especially damage) of the ordered products shall pass to the customer at the time of their departure from the factory. This regulation applies both to the loss or deterioration of all products ordered and to the fact that only part of the risk is realized. Even with partial loss or partial deterioration, thus always the entire remuneration is owed.

If the shipment is delayed or rendered impossible for reasons for which APAG is not responsible, the delivery will be stored at the expense and risk of the customer.

APAG is authorized to issue the necessary forwarding and transport orders at the usual conditions named and on behalf of the customer. The same applies to any insurance required by the customer against material damage. Special requests concerning transport (carrier etc.) and insurance are taken into account, provided they are announced to APAG in good time. The costs of transport and insurance are also borne by the customer if APAG does not conclude the necessary forwarding, transport and insurance contracts except in foreign, but in their own name.

#### **12. Terms of payment**

Payments are to be made "net cash" (without any discount deduction) within 30 days from date of invoice. The offsetting against unrecognized or not legally valid counterclaims of the customer is excluded.

If the customer remains in arrears for more than four weeks with a partial payment or the delivery of agreed drawn bills of exchange or a bill of exchange, the entire balance will be due immediately. If a contractual payment date is exceeded, a default interest at the bank-specific discount rate - in the minimum, however, 5% - is owed by the customer without further reminder.

If any economic factors (foreign currency situation, transfer options, etc.) in the relations between Switzerland and the country of destination or the country of the customer change after the conclusion of the contract, APAG has the

right to suspend the production of the ordered products or to retain their dispatch or surrender, and indeed, until the entire consideration (price of the works, any transport and insurance costs, etc.) is secured by the customer. The same applies in the event that as a result of force majeure, war, civil war, unrest of any kind, etc., the fulfillment of the agreed payments is in question.

### **13. Inspection and Complaints Period**

The customer shall inspect the ordered products as soon as possible according to the normal course of business and shall immediately notify APAG of any defects. If he fails to do so, the ordered products are considered approved. The approval is in any case deemed to have taken place if the customer has not lodged a written notice of defects within the following periods: 14 days for individual objects or 2 months for complete systems and conversions, counting from the day of receipt of the ordered products or, if APAG has taken over the installation, from the end of the same.

Defects which were not identifiable by proper inspection in accordance with the preceding paragraph shall be reported to APAG in writing immediately after their discovery, otherwise the ordered products shall also be considered as approved with regard to these defects.

For defects that have been notified in good time in accordance with this clause, the following provisions apply (clauses 14.1 to 14.4).

### **14. Warranty**

#### *14.1. The contractual condition*

APAG is obliged to manufacture the ordered products in such a way that they are suitable for the agreed use. If the ordered and delivered products cannot be used because they do not comply with foreign (i.e. non-Swiss) regulations (laws, technical regulations and standards, standards etc.), this shall only be deemed a defect if APAG complies with sec. 6 is obliged to comply with the rules in question.

If the parties have not made a contractual provision for future use, but APAG has manufactured the ordered products exactly as requested by the customer, the ordered products shall be deemed free of defects even if they are not suitable for the unilaterally intended use by the customer.

Furthermore, the ordered products have to have all assured properties. A property is only guaranteed if it has been expressly designated as such in the contract or in the offer.

#### *14.2. The right to repair as an exclusive warranty claim*

APAG is obliged to repair or replace all defective products as soon as possible at its own discretion, upon written request from the customer. Replaced parts become the property of APAG. APAG bears the costs of rectification incurred in its factory. If repair is not possible at the APAG plant, the associated costs - insofar as they exceed the usual transport, personnel, travel and subsistence costs as well as costs for the installation and removal of the defective parts - are borne by the customer.

Further warranty claims of the customer - namely the right to compensation, reduction of price or withdrawal from the contract - are expressly excluded. This exclusion of liability also extends to all claims that compete with the warranty rights, whether those under contract (Article 97 et seq. OR), tort (Article 41 et seq. OR), contestation of the contract due to error (Art. 23 et seq. OR) etc.

#### *14.3. Statute of Limitation*

The warranty claim of the customer according to para 14.2 usually barred after 12 months, after receipt of the product; for products that are in operation day and night, but after 6 months.

For replaced parts - and only for these - the statute of limitation of the warranty claim commences according to the above regulation.

#### *14.4. Further provisions for warranty*

Excluded from the warranty are damages due to natural wear and tear, inadequate maintenance, disregard of operating instructions, excessive use, unsuitable equipment, chemical or electrolytic influences, inadequate construction and assembly work not carried out by APAG and for other reasons for which APAG is not responsible.

The warranty claim is forfeited if the customer or a third party undertakes improper changes or repairs to the ordered products or if the customer, in the event of a defect, does not immediately give APAG the opportunity to remedy the defect.

#### **15. Product liability**

The ordered products may only be used for the agreed use (e. g. installation in a certain other product). For other applications, the written approval of APAG must be obtained first.

The distribution of the ordered products - also as part of another product - may only take place in those countries that have been previously announced and accepted by APAG

The customer is entitled and obliged to do everything in order to ward off claims of its customers (subcontractors or end users) from product liability. The customer must notify APAG immediately in writing of any threatened or asserted claims.

#### **16. Exclusion of further liability of APAG**

All cases of breaches of contract and their legal consequences as well as all claims of the customer, regardless of their legal grounds, are finally regulated in these General Terms and Conditions. In particular, all claims for damages, reduction, cancellation of the contract or withdrawal from the contract are expressly excluded. In no case shall the customer be entitled to compensation for damage not caused to the product itself, such as loss of production, loss of use, loss of orders, loss of profit and other direct or indirect damages. This disclaimer of liability does not apply to unlawful intent or gross negligence on the part of APAG, however, it also applies to unlawful intent or gross negligence on the part of APAG assistants.

#### **17. Retention of title**

APAG retains ownership of the ordered products until full payment of the purchase price.

APAG is entitled to register the retention of title with the responsible registry office without the cooperation of the customer and to take out insurance against all risks at the expense of the customer during this time.

The customer is obliged to take all actions and measures necessary to protect the property of APAG. In the event of any encroachment on the property rights of APAG (for example by garnishment), the customer shall notify APAG immediately.

#### **18. Packaging**

The packaging will be invoiced separately by APAG and will not be taken back unless otherwise agreed. However, if it has been designated as the property of APAG, it must be returned to its domicile, carriage paid.

#### **19. Own property rights**

The customer acknowledges that all intellectual property rights in the products supplied by APAG as well as in inventions, processes, know-how, described, reports, drawings, patents, other industrial property rights, etc. remain exclusively with APAG. The customer is obliged to refrain from any actions that could infringe APAG's intellectual property rights.

#### **20. Confidentiality**

Each party is obliged to keep confidential information of the contracting party (in particular manufacturing and trade secrets, etc.) both during and after the fulfillment of the contract secret and not to third parties. The parties further undertake to ensure that their employees also treat such information confidentially. The obligation to maintain secrecy applies regardless of whether the confidential information was obtained by chance or whether it was deliberately entrusted to one party.

#### **21. Severability clause**

Should any of the above provisions or individual provisions of the contract be or become ineffective, the validity of the remaining provisions (these general conditions or the contract) shall not be affected thereby. In these cases, APAG and the customer are obliged to agree on arrangements that correspond as far as possible to the ineffective one.

#### **22. Applicable law and jurisdiction**

All legal relationships between the parties are subject to the provisions of Swiss law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Article 6 UNCLOS).



**Jurisdiction for all disputes arising from and in connection with the contractual relationship is Pfäffikon (CH-8808), Switzerland.** However, APAG is entitled to sue the customer before any other competent court.