

Dübendorf, 07.04.2015

# General Sales, Delivery und Payment terms

## 1. General

When declared valid in the offer from APAG, these general sales, delivery and payment terms (hereinafter: „General Terms“) are binding. By accepting the offer from APAG, the customer acknowledges the below general terms.

Contrary general terms of the customer, namely even those which were together declared as accepted, are fundamentally not recognised by APAG. They are valid if and only to the extent to which they are accepted by APAG explicitly in writing.

The general terms at hand are valid subject to other contractual provisions.

All verbal and telephonic agreements must be confirmed in writing for them to be binding. An e-mail declaration also fulfills the condition of written form.

## 2. Offers

If nothing contrary is recorded, offers from APAG are binding starting 3 weeks from the date of issue.

## 3. Contract formation

The contract is formed when the customer accepts the offer from APAG in writing and the acceptance declaration reaches APAG within the deadline as per aforementioned point 2. A declaration by the customer is treated as a valid acceptance only if it corresponds to the APAG offer without reservations. Should this not be the case, or in case the acceptance declaration reaches APAG after the acceptance timeline (as per aforementioned point 2), the acceptance from the customer is received as a counter offer. In this case, an agreement is formed only if APAG accepts the counter offer from the customer in writing. No response from APAG against this counter offer from the customer is not to be considered as an acceptance declaration under any circumstances.

## 4. Scope of delivery

The order confirmation is binding with respect to the delivery execution. Services not included therein will be additionally calculated. Weights of materials and packing are specified non-bindingly.

## 5. Technical documents

Technical documents (Drawings, descriptions, illustrations etc.), worked out by APAG for the purpose of the offer are only roughly/approximately relevant. APAG explicitly reserves the right to necessary amendments. All technical documents are the intellectual property of APAG and may not be copied or duplicated or brought to the notice of any third party by any means or be used for production of any works or components. These may be used for maintenance or service as long as it is accordingly labeled by APAG. Any rights to patents, registered design/pattern etc. are the exclusive property of APAG even if not yet applied for. Duplication of APAG products is allowed only after written consent from APAG. Technical documents for offers that would not materialise into orders are to be returned immediately.

## 6. Provisions for exports

APAG commits to finish the ordered products in a manner that they comply with the current state of technique as well as the relevant Swiss provisions (legal, technical provisions and norms, standards etc.) at the time of the order placement.

APAG is only then liable for attention to provisions (laws, technical provisions and norms, standards etc.), that are not relevant in Switzerland for the said product, if this was agreed upon in writing and in fact explicitly under definition and designation of the provision. The clarification of the relevant provision not being pertinent in Switzerland is the exclusive responsibility of the customer.

The customer is responsible to organise the customs formalities and other regulatory approvals (esp. import and export licences).

## **7. Price**

All prices from APAG are to be understood as „net cash“ (strictly without any discount), excluding sales tax / VAT (Switzerland) unless specified otherwise. Any transport charges (including import and export duty or residual import / export duty) are not a part of the price quote.

## **8. Costs for testing, conformity evaluation, application, accreditation and certification processes**

The costs for the complete testing, conformity evaluation, application, accreditation and certification processes in Switzerland or any foreign land are to be completely borne by the customer if the named processes are not already arranged for by the customer.

## **9. Delivery site**

Subject to an explicit or another contractual provision, the delivery site of the project is Dübendorf (CH-8600).

## **10. Delivery lead-time**

The delivery lead-time begins as soon as the contract is closed, all official formalities (e.g. import and payment licences) are organised, all advance payments and guarantees are accomplished as well as all technical points are settled.

The delivery lead-time is met when the ordered goods are ready for despatch ex works Dübendorf (CH-8600) in suitable packing before their expiry.

The delivery lead-time encompasses the time that APAG requires to manufacture and pack the ordered products efficiently, using standard work equipment and manpower. In case of a strike, lock-out, accidents, operational disruption, failure of a required part, dearth of material or in case of violence, whether internally at APAG or at a sub-contractor, the delivery lead-time will be extended automatically. The delivery lead-time would also be extended in case the specifications required by APAG for executing the order are not available on time or if the customer makes any retrospective changes. In case of delivery lead-time extensions APAG is not liable for a debtor's delay.

Also, in case of a debtor's delay from APAG, the customer neither has the right to deny subsequent payment, nor to withdraw from the agreement, nor to demand damage compensation (Art. 107 ff. OR). This is applicable also when the debtor's delay was caused by minor negligence by APAG or when an auxiliary of APAG caused debtor's delay with illegal intent or gross negligence.

## **11. Transfer of risk, Transport and Insurance**

The risk of loss (esp. destruction, theft, withdrawal by expropriation or confiscation) or deterioration (esp. damage) of the ordered products transfers onto the customer immediately upon departure from the plant. This provision is applicable when all of the ordered products are affected with the destruction/loss or deterioration or even when the hazard is realized only part of the same. Also in case of partial destruction or deterioration, the complete payment is due.

In case despatch is delayed or made impossible for reasons that APAG is not responsible for, the delivery would be stored at the cost and risk of the customer.

APAG is authorised to issue the necessary shipping and transport orders as per general conditions in the name and on behalf of the customer. The corresponding is also applicable for all insurances against property damage desired by the customer. Special requests pertaining to transport (freight forwarder / transport carrier etc.) and insurances would be considered as long as they are intimated to APAG in time. The transport and insurance costs in this case are at the expense of the customer in case APAG closes the necessary forwarding, transport and insurance agreements as an exception in their own name instead of a third party.

## **12. Payment terms**

Payments are to be made „net cash“ (without any discounts) within 30days of the invoice date. Offsetting with not recognised or not legally determined counterclaims by the customer is not acceptable.

In case the customer remains in arrears for more than four weeks after a partial payment or the provision of agreed bill of exchange or promissory note, the entire balance will be due immediately. In case the contractual payment date is exceeded, without further notice, an interest rate of a standard bank discount rate – but no less than 5% - is payable by the customer. After closing the contract, in case there are any changes in economic factors (foreign exchange position, transfer options, etc.) in the relation between Switzerland and the destination country or the country of the customer, APAG has the right to suspend the production of ordered products or withhold their dispatch or publication and in fact so long till the complete returns (work price, complete transport and insurance costs etc.) are indemnified by the customer. The same is applicable in case the agreed payment is in question on account of violence, war, civil war, disturbances of any kind etc.

### **13. Testing time limit and time limit for complaints**

The customer is expected to test the ordered products as soon as it is possible alongside common business routine and report any known shortcomings immediately. Should he omit or avoid the same, the ordered product is considered as approved. An approval is taken for granted if the customer does not forward a written complaint about shortcomings within the following time lines: 14 days for individual objects or 2 months for complete devices and conversions/re-furbishments, calculated from the date of receipt of the ordered product or if APAG undertakes the installation, from the date of conclusion of the same.

Flaws that were not identifiable during the due testing are to be reported to APAG in writing immediately upon discovery, failing which the ordered products would be considered as approved even in view of these flaws.

For flaws that were reported in time in accordance with this point, the following provisions are applicable (points 14.1 to 14.4).

### **14. Warranty**

#### *14.1. Contractual status*

APAG is liable to finish the ordered products in a way that they are fit for the agreed use. Should the ordered and delivered products not be useable because they are not in accordance with foreign (i.e. not Swiss) provisions (laws, technical provisions and norms Standards etc.) then it is considered as flawed only when the provision in question was accepted by APAG as per aforementioned point 6.

Should the parties not have agreed on any contractual provisions for the prospective use, APAG still would produce the products exactly in a manner as demanded by the customer and therefore the ordered products are flawless even when they are not suitable as per the customer's one sided view

Additionally, the ordered products need to exhibit all the assured characteristics. A characteristic is considered as assured only if it was clearly mentioned in the agreement or the offer.

#### *14.2. The right for corrections as exclusive warranty claim.*

APAG is liable to correct or replace all flawed products as soon as possible per free will on receipt of written request from the customer. Replaced parts are the property of APAG. APAG will bear the costs accruing to their plant for correction. Should correction not be possible in the plant of APAG, the related claimed costs are to be borne by the customer as well as related common transport, personnel, travel and lodging costs and disassembly and installation charges if it exceeds the cost of the defective parts

Further warranty claims by the customer – namely the right to compensation, price reduction or withdrawing from the contract are explicitly ruled out. This disclaimer/exclusion of liability covers all claims that compete with the warranty rights, whether from the agreement (Art. 97 ff. OR), or delict (Art. 41 ff. OR), or rescission of the contract due to errors (Art. 23 ff. OR) etc.

#### *14.3. Statute of limitations*

The aforementioned warranty claim of the customer expires as per point 14.2 after 12 months as a general rule, and within 6 months for products that are operational day and night.

The Statute of limitations begins at the time the customer is informed that the ordered products are ready for despatch or in case APAG has undertaken the installation, with the conclusion of the same.

For replaced parts – and only for these – the statute of limitations for warranty claims begins anew according to the above provision.

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

Damages occurring due to natural wear and tear, use, inadequate maintenance, disregarding operational provisions, excessive stress, unsuitable operational material, chemical or electrolytic factors, flawed construction and installation works not executed by APAG as well as damages due to other reasons that APAG is not responsible for are ruled out.

The warranty is void when the customer or a third party undertakes inappropriate changes or repairs to the ordered products or when the customer does not give APAG a prompt opportunity to correct the flaw in case a flaw were to emerge.

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

The ordered products may only be used for the claimed and agreed use (e.g. installation into a specific other product). For other applications, a prior written consent needs to be taken from APAG.

Sales and distribution of the ordered products – even as part of another product – may follow only in those countries which were pre-informed to APAG and accepted by them.

The customer is authorised and liable to do everything to ward off product liability claims of his customer (mediator or end customer). The customer needs to inform APAG immediately in writing about any threats of or proven/asserted claims.

#### **16. Exclusion of further liabilities by APAG**

All cases of agreement breach and their legal consequences as well as all claims of the customer, irrespective of the legal ground that it is based on, are conclusively regulated in these general terms. Especially, all claims to compensation of damage claims, reduction, annulment of the contract or withdrawal from the contract that are not explicitly named are ruled out. Under no circumstances is a claim by the customer for damage compensation valid for damages that were not sustained by the product itself, like namely loss of production, wear and tear, loss from orders, loss of profit as well as other direct or indirect damages. These liability exclusions are not applicable for illegal intent or for gross negligence by APAG, but is applicable for illegal intent or for gross negligence by auxiliaries of APAG.

#### **17. Reservation of proprietary rights**

APAG reserves the ownership of the ordered products upto the complete payment of the buying price. APAG is authorised to register the reservation of proprietary rights with the authorised registration office even without the co-operation of the customer and to insure these against all risks during this time at the expense of the customer.

The customer is liable to undertake all activities and measures that are necessary for protection of the ownership of APAG. In case of any interferences in the proprietary rights of APAG (e.g. through seizure), the customer is to inform APAG immediately.

#### **18. Packing**

The packing is to be calculated by APAG additionally and not to be taken back unless there is an agreement to the contrary. However, in case this is marked as property of APAG, it needs to be sent back to its domicile on postage free basis.

#### **19. Internal Property/trademark/copyright rights**

The customer recognises that the complete intellectual property rights for products delivered by APAG as well as discoveries, processes, know-how, descriptions, reports, drawings, patents, other industrial property rights etc. are exclusive property of APAG. The customer is liable to refrain from any actions that might injure the intellectual property rights of APAG.

#### **20. Confidentiality clause**

Each party is liable to keep confidential information of the contractual partners confidential (exp. Manufacturing and business secrets etc.) during as well as after completion of the agreement and not to pass it onto a third party. The parties are further obligated that their personnel handles such information confidentially. The obligation to confidentiality is applicable irrespective of whether the confidential information was accidentally brought to the notice of a third party or whether it was intentional.

#### **21. Salvatorius clause**

Should an individual aforementioned provision or individual provisions of the contract become defunct, the applicability of the rest of the provisions (of these general terms or the agreement) herewith is not affected. APAG and the customer are in these cases obligated to agree to provisions which correspond to the meaning and purpose accordingly as best as possible.

**22. Applicable Law and Jurisdiction**

All legal relations between the parties are subject to the Provisions of Swiss law under exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Art. 6 CISG).

**The legal domicile for all disputes from and related to the contractual relationship is Dübendorf (CH-8600), Switzerland.** APAG is however entitled to sue the Customer at any other legally competent court.