

Conditions of purchase of AP&S International GmbH, Donaueschingen

I. Applicability of the conditions and other agreements

1. Solely the following conditions are applicable for all our purchasing transactions, insofar as no deviating conditions were agreed upon in writing and no additional conditions apply for specific products. This also applies if the seller uses his own deviating conditions of sale and has made them available together with an offer. Any counter-confirmation by the seller referring to his possibly deviating terms and conditions is hereby objected. The seller's silence regarding our conditions of purchase is regarded as consent.
2. Any other agreements, modifications or side agreements are only valid if we agree to them in writing.

II. Offers and Order

1. Offers are always to be made to us free of charge and without obligation. Unless expressly otherwise agreed, there will be no remuneration for any visits, elaborations of planning documents or similar services.
2. All orders require the written form. Verbal agreements are only effective if and insofar as we confirm them in writing.
3. Every order has to be confirmed by the supplier in writing. If the confirmation is not dispatched within two weeks of the order date (the post stamp date is decisive), we are no longer bound to our order.
4. Every order is to be treated separately in the required correspondence. In any written documents, such as letters, dispatch notes, invoices, delivery notes etc., our complete order number, our reference number and the order date have to be listed in detail.

III. Conditions of delivery and time limits

1. Delivery times start from the date of the order. If the supplier does not deliver within the agreed time frame, he is liable as per statutory provisions. The day of the goods reception at our facilities or at a contractually agreed place of delivery, shall be deemed a delivery.
2. As soon as the supplier has cause to assume that it will not be possible for him to make the delivery, or parts thereof, within the agreed time frames, he shall notify us in writing detailing the reasons and the probable duration of the delay. In case, he is at fault, our claims remain unaffected as per item III, section 1.
3. Deliveries are always to be made free to our facility (DDP ICC Incoterms® 2010) or free to the respective contractually agreed place of delivery (e.g. the place of use). The supplier always bears the transport risk up to the goods reception at our facilities or another place of delivery, agreed with us in writing, in any case, i.e. also for exceptionally agreed deliveries ex-works.

IV. Dispatch and insurance, packaging

1. The supplier shall, for each individual shipment, post a detailed dispatch note separately from the goods and the invoice on the day of dispatch. The dispatch note shall include the following information: Order number, order date, type, quantity and weight of the goods, mode of shipment.
2. All shipping documents shall include all the details necessary for a proper and error-free transaction (for example dispatch address, number of packages etc.)
3. Insofar as no special agreements have been made, the supplier shall select the means of transport most affordable and most suitable for us. For rail shipments, a dispatch to our address has to be made to the Donaueschingen station.
4. Insofar as not otherwise agreed, the supplier covers the transport insurance.
5. The supplier shall be obliged to ensure the most careful and inexpensive packaging at his cost. Against a corresponding credit, we can return the packaging.

V. Payment

1. Payment periods start from the agreed delivery date, at the earliest from the date the goods or invoice was received, depending on which was the later date. A payment does not mean an acceptance of terms and conditions and prices. The time of the payment has no effect on the supplier's liability for material defects nor on our right to make a claim for defects.
2. Invoices shall be sent in duplicate immediately upon delivery including order number and order date. If any invoice is sent later than that, we shall in no case pay for any interest losses or any other disadvantages resulting thereof.
3. The due date of the payment is determined from the time when the conditions stipulated in section 1, sentence 1 and section 2, sentence 1 (subsequently referred to as due date) are fulfilled for the first time in accordance with the following:
 - Due date between the 1st and 15th of the month: payable on the 30th of the same month minus 3 % discount or on the 30th of the following month in net value;
 - Due date between the 16th and the 31st of the month: payable on the 15th of the following month minus 3 % discount or on the 15th of the second subsequent month in net value.
4. Complaints and notices of defect regarding the delivery items entitle us to withhold, to a reasonable extent, payments due.

VI. Notice of defect and liability for material defects

1. The obligation to inspect for and to notify of defects, starts in any case only upon receipt of the delivery at the contractually agreed place of destination and once a proper dispatch note or delivery note has been received. If an acceptance inspection is required by statutory provisions or contractual agreements, these obligations only start from the time of the inspection.
2. For the duration of two years, the supplier shall bear liability for material defects for delivery items having no defects within the meaning of the German Civil Code (Bürgerliches Gesetzbuch) and fulfill any warranties granted. Furthermore, the supplier shall ensure that the delivery items fulfill all statutory and official regulations. Limitation starts with the delivery of the delivery item to us or insofar as the supplier is responsible for the execution of further actions required for commissioning or using the delivery item, with the execution of these actions. The statutory provisions regarding limitation in case of fraudulent intent remain unaffected.

3. Liability for material defects does not include any defects resulting from normal wear, non-intended use, or use not conforming to the contract or wrong or neglectful handling.
4. Liability for material defects covers parts of delivery items produced or delivered by sub-suppliers.
5. Any parts rejected within the liability of material defects remain available to us until replaced and again become the property of the supplier upon replacement.
6. In case of a notice of defect, the period for liability of material defects is extended by the period between the notice of defect having been made and the remedy of the defect.
7. In case the delivered item is subject to a consumer goods purchase between us and our buyer (subsequently: consumer) and if the consumer makes claims against us due to the defectiveness of the delivered item, we are entitled to statutory recourse claims against the supplier in full.
8. In case, claims are made against us on the basis of manufacturer's liability, for which the supplier is at fault, the supplier shall release us from such claims.

VII. Industrial property rights

The supplier warrants that the delivery items and their use do not infringe upon patents, utility models, registered designs, trade marks or any other third-party industrial property rights.

VIII. Documents, confidentiality

1. Process descriptions, formulations, analytical methods, drawings or any other information that was made available to the supplier by us for the production of the delivery, or drawings made by the supplier following specific information provided by us, must not be used for any other purposes, reproduced or made available to third parties (subsequently: confidentiality obligation). Upon request, they are to be returned to us immediately together with any copies or reproductions.
2. The aforementioned obligations of the supplier exist also for the pre-contractual phase, irrespectively whether a contract is concluded and continue indefinitely for the time following contract termination.
3. The confidentiality obligation as per the preceding section 1 is also applicable to any of our other information, insofar as we have not made it publicly available and no disclosure obligation under statutory provisions exists. This applies in particular for the conclusion and execution of a contract between us and the supplier, including any documents relating to this.
4. The supplier is liable for any damage resulting from the infringement of the aforementioned obligations.
5. Documents of any type that we require for use, operation, processing, maintenance, storage and transport, have to be made available to us by the supplier in a timely manner, unrequested and free of charge.

IX. Provisions

Materials and parts provided by us, remain our property. Processing of materials and assembly of provided parts are done for us. It is agreed that we are co-owner of the products produced using our materials and parts in proportion to the value of the provisions at the value of the created product, insofar as the supplier keeps those safe for us.

X. Acceptance inspection

1. If an acceptance inspection is provided for by law or contract, the supplier shall bear any inspection costs.
2. The inspection date has to be definitely specified at least one week before it takes place, if not already determined in the order.

XI. Reservation of title

As a matter of principle, we only accept a simple reservation of title and do not in any case assign to the supplier any co-ownership in the finished product, insofar as the ownership of the goods delivered by the supplier was compromised through mixing or combining.

XII. Limitation periods for claims for damages

Any claims for damages against the supplier that we are entitled to - irrespective of its legal basis- lapse generally only three years after the delivery of the delivery item to us or, insofar as the supplier is responsible for the execution of further actions required for commissioning or using the delivery item, with the execution of these actions. The statutory provisions regarding limitation in case of fraudulent intent remain unaffected.

XIII. Applicable law - place of performance and jurisdiction

1. For this contractual relationship the law of the Federal Republic of Germany applies under exclusion of the Vienna UN-Convention on the Purchase of Goods dated 11/04/1980.
2. Place of performance is the receiving point intended by us, insofar as nothing else is explicitly provided for in the order.
3. Sole international and local place of jurisdiction is Constance.