

General Business and Delivery Terms and Conditions of APRO Apparate- und Rohrbaugesellschaft mbH

Section 1: General - Area of Application

- (1) These general business and delivery terms and conditions of APRO Apparate- und Rohrbaugesellschaft mbH (supplier) only apply to merchants and legal persons under public law or special funds under public law.
- (2) Sale and delivery shall be exclusively according to the provisions of the supplier's general delivery and performance terms and conditions that follow. Terms and conditions of the orderer that contradict or deviate from these general delivery and performance terms and conditions shall not be recognised unless they have been expressly accepted by the supplier in writing. The general delivery and performance terms and conditions apply even in case of delivery or performance by the supplier without reservation and with knowledge of terms and conditions of the orderer that contradict or deviate from these general delivery and performance terms and conditions.
- (3) These general delivery and performance terms and conditions also apply to all future transactions with the orderer.

Section 2: Offer – Contract Conclusion – Offer Documentation

- (1) The offers of the supplier are subject to change without notice. Each order only becomes binding after it is expressly accepted by the supplier and exclusively according to the contents of the offer.
- (2) Ownership rights and copyrights to illustrations, drawings, calculations and other documents that the supplier makes accessible to the orderer or a third party named by the order are reserved by the supplier; the documents may not be made accessible to third parties without the consent of the supplier. This applies in particular to written documents designated as "confidential". Before disseminating the documents to third parties, the orderer requires the express written consent of the supplier.

Section 3: Prices – Payment Terms

- (1) Unless anything to the contrary is specified in the order confirmation, the prices of the supplier are ex works Tönisvorst excluding packaging, freight and insurance.
- (2) VAT as required by law is not included in the supplier's prices. It is added according to the rate required by law on the day of invoicing and reported separately.
- (3) Reasonable price adjustments due to changing wage, material or distribution costs for deliveries are reserved. This does not apply in case of a fixed price agreement. Furthermore, this does not apply if the price adjustment applies to goods or services where performance is to take place within three months after conclusion of the contract, unless the goods or services are provided under a contract for the performance of a continuing obligation.
- (4) Unless anything to the contrary is specified in the order confirmation, payment shall be remitted immediately after delivery of the goods or acceptance of the services by means of a bank transfer to the account specified on the invoice.
- (5) If the orderer fails to pay within 14 days after delivery of the goods or acceptance of the service, the orderer shall be in default. Upon default, the orderer is obligated to pay interest at the statutory rate for late payment interest of 8 percentage points above the prime lending rate.
- (5) In case of default, the supplier at its discretion has the right to demand payment in advance or cash on delivery for subsequent deliveries of goods or the performance of services.
- (6) The orderer only has a right to set-off if its counter-claims are legally established, undisputed or accepted by the supplier. This applies correspondingly for exercising a right of retention. Furthermore, the orderer is only authorised to exercise a right of retention insofar as its counter-claim is based on the same contractual relationship.

Section 4: Delivery Terms

- (1) The commencement of the delivery term specified by the supplier in the order confirmation presumes the binding clarification of all technical questions.
- (2) In case of force majeure – in particular operating disruptions, delays in the delivery of essential raw materials, auxiliary materials and lubricants, strikes and lockouts – the contractual obligations of the parties are suspended for the duration of the disruption and according to the scope of its effects. If force majeure leads to a final, ongoing or insurmountable obstacle to performance, either party has the right to withdraw from the contract. If force majeure continues for a period of more than six weeks, this constitutes such a final, ongoing or insurmountable obstacle to performance.
- (3) When the supplier at the time the contract was concluded with the orderer has entered into a congruent covering transaction with its respective own supplier, compliance with delivery terms is subject to the receipt in good order of the supplier's deliveries from its own suppliers. If an incorrect or late delivery of one of the supplier's own

suppliers causes the delivery term to be exceeded by more than six weeks, the supplier has the right to withdraw from the contract.

- (4) Meeting the supplier's delivery obligations presumes that the orderer meets its obligations properly and in a timely manner.
- (5) If the orderer is in default of acceptance or culpably violates other obligations to cooperate, the supplier is entitled to demand compensation for the respective incurred damages including possible additional costs. In this case the risk of accidental perishing or accidental impairment of the delivery item also passes to the orderer at the point in time when the orderer is first in default of acceptance.
- (6) The supplier has the right to make partial deliveries to a reasonable extent. The orderer may refuse to accept partial deliveries if it is justified in having no interest in a partial delivery.

Section 5: Passing of Risk

- (1) Unless anything to the contrary is specified on the order confirmation, performance shall be on account and at the risk of the orderer. Risk passes to the orderer as soon as the delivery is transferred to the transportation company.
- (2) Transport insurance for the delivery is obtained by request of the orderer. The costs incurred for the same shall be borne by the orderer.

Section 6: Retention of Title

- (1) Delivery of the goods is subject to the retention of title until all claims existing at the time of delivery as well as all future claims arising from the business relationship are paid in full (**goods subject to the retention of title**). These include all incidental claims such as the cost of drafts, financing costs or interest.
- (2) The orderer does not have the right to pledge the goods subject to retention of title nor to transfer them by way of security. In case of pledging and other interventions by third parties, the orderer is obligated to inform the supplier promptly in writing and provide the supplier with all information and documentation required to assert the rights of the supplier. The executory officer or third party shall be notified of the supplier's ownership rights. The orderer shall bear all costs that have to be incurred to reverse said access and reclaim the delivery item insofar as these cannot be collected from third parties.
- (3) The orderer has the right to resell the goods subject to retention of title in the course of regular business operations. However, the orderer assigns all claims from resale against its customers or third parties in the final invoice amount (including VAT) to the supplier now and in advance, regardless of whether the goods subject to retention of title were resold without or after further processing (**assignment in advance**). The orderer remains authorised to collect said claims even after their assignment. The authorisation of the supplier to collect said claims itself remains unaffected. However, the supplier obligates itself to refrain from collecting the claims as long as the orderer is not in default of payment, an application for the commencement of insolvency proceedings has not been submitted and there has been no cessation of payment. In any of these cases, the supplier may demand that the orderer discloses the assigned claims and corresponding debtors, and that the orderer provides all information required to collect the claims, hands over the corresponding documents and informs the respective debtors of the assignment in advance.
- (4) The orderer is obligated to store and identify the goods subject to retention of title separately. The orderer has the right to further processing of the goods subject to retention of title. It acts as the supplier's agent in doing so. The supplier is a manufacturer pursuant to Section 950 of the German Civil Code (BGB) and, with processing, obtains ownership of the product.
- (5) The orderer is obligated to treat the goods subject to retention of title with due care; in particular, the orderer is obligated to obtain insurance coverage against fire, water damage and theft. If maintenance or inspection work is required, the orderer has to perform or have it performed at its own expense.
- (6) If the value of the realisable security exceeds the total secured claim by more than 20%, the supplier by request of the orderer is obligated to release adequate security insofar as at its discretion.

Section 7: Warranty

- (1) Asserting warranty claims of the orderer presumes that the orderer has properly met its inspection and complaint obligations pursuant to commercial law.
- (2) The information in sales documents and brochures constitutes a description corresponding to the goods and services. The information they contain regarding performance, operating costs, operating time, dimensions and weights is not guaranteed.
- (3) If the orderer asserts a defect, the orderer is obligated to promptly provide the supplier with samples of the goods in question upon request.
- (4) Insofar as the goods are defective, the supplier at its discretion is obligated to correct the defect or to deliver goods that are free of defects. In case of correcting the defect, the supplier is obligated to bear all costs incurred for the correction of defects, in particular transportation, travel, work and material costs, insofar as these are not increased because the goods were taken to a location other than the delivery location.

- (5) Insofar as correcting the defect or delivering goods that are free of defects fails, the orderer at its discretion has the right to withdraw from the contract. Two attempts at the correction of defects are deemed reasonable for the orderer as a rule. Withdrawal is excluded in case of immaterial breaches of duty.
- (6) The one-year period of limitation for defect claims begins when the delivery item is delivered.

Section 8: Other Liability

- (1) The supplier is liable for the full amount of damages in case of its own intent and own gross negligence as well as the intent and gross negligence of assistants. Furthermore, the supplier is liable for the full amount of damages for the breach of guarantees, assuming a procurement risk, culpable physical injury, death or the impairment of health and in case of liability pursuant to the Product Liability Act.
- (2) The supplier is liable on the merits in case of any culpable breach of essential contractual obligations, i.e. obligations where the orderer justifiably trusts and can trust that they will be met to achieve the purpose of the contract.
- (3) Further liability of the supplier is excluded. Insofar as liability on the part of the supplier is excluded or limited, this also applies to the personal liability of its employees, staff, personal, agents and assistants.
- (4) In case of fabrication and delivery according to drawings or other information from the orderer, the orderer indemnifies the supplier from all claims arising from the violation of proprietary rights or other third-party rights.

Section 9: Place of Fulfilment, Jurisdiction and Applicable Law

- (1) The place of fulfilment is Tönisvorst.
- (2) The jurisdiction for all disputes arising from the contractual relationship, how it came into being and its effectiveness is the district court/regional court at the headquarters of the supplier. However, the supplier also has the right to sue the orderer in its general jurisdiction.
- (3) The laws of the Federal Republic of Germany apply exclusively; the application of the United Nations Convention on the International Sale of Goods (CISG) is excluded.

Section 10: Final Provisions

Should individual provisions of these general delivery and performance terms and conditions be or become ineffective in whole or in part, the effectiveness of the remaining provisions shall remain unaffected. In this case the parties obligate themselves now and in advance to enter into negotiations with the objective of replacing the ineffective provision with a clause that comes as close as possible to the economic intent of the parties with the previous provision.

APRO Apparate- und Rohrbaugesellschaft mbH
Maysweg 16
47918 Tönisvorst

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