



General Terms and Conditions of APS Antriebs-, Prüf- und Steuertechnik GmbH

Clause 1 General, Scope

(1) These General Terms and Conditions shall apply to all business relationships between APS and our clients (hereinafter: "Customer"). These General Terms and Conditions shall only be valid if Customer is an entrepreneur (Section 14 of the German Civil Code, hereinafter BGB), a legal person under public law or a special fund under public law.

(2) These General Terms and Conditions shall particularly apply to contracts governing the sale and/or delivery of movable things (hereinafter also "Goods"), not taking into account whether APS manufactures the Goods themselves or procures them from suppliers (Sections 433, 650 BGB). The respective version of these General Terms and Conditions shall also be valid as a framework agreement for future contracts governing the sale and/or delivery of movable things entered into with the same Customer, without APS having to refer to these General Terms and Conditions in each individual case.

(3) These General Terms and Conditions shall apply exclusively. Derogating, conflicting or supplementary General Terms and Conditions of Customer shall only become part of the contract if and to the extent that APS explicitly agrees to their validity. This requirement of permission applies in any case, especially if APS despite knowledge of the General Terms and Conditions of Customer conducts delivery without reservation.

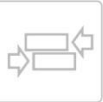
(4) Individual agreements made with Customer in individual cases (including collateral agreements, supplementary clauses and amendments) shall always take priority over these General Terms and Conditions. A written contract or written confirmation by APS is authoritative for the content of such agreements.

(5) Legally binding declarations and notifications that are to be made by Customer to APS after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) must be made in writing in order to be effective.


(6) References to the applicability of statutory provisions are only for the purpose of clarification. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these General Terms and Conditions.



Clause 2 Offers, orders and deliveries



(1) All offers by APS shall be non-binding and non-committal until conclusion of contract, insofar as they are not explicitly marked as committal or if they contain a specific acceptance period.



(2) Orders shall require the written form in order to be legally binding. An order shall only be binding with a valid order confirmation.

(3) Customer shall be obligated to diligently check the order confirmation from APS. Any derogations from its order shall be reported immediately. Failing this, the contents of the contract shall be based on the contents of the declaration of acceptance/order confirmation by APS.

(4) If Customer orders the Goods electronically, the contract shall be saved as a document file by APS and transmitted by email to Customer together with the legally effective General Terms and Conditions incorporated after the contract has been entered into.

(5) Oral collateral agreements shall not be valid.

(6) In individual cases, the conditions for special equipment fabrication and/or for customer-specific production or any specific modification requests shall be confirmed in the order confirmation. In these cases, a reasonable instalment amounting to 30% of the net value of the Goods can be demanded.

Clause 3 Prices





(1) The price lists in effect at the time of order shall become part of the contract unless otherwise agreed.

(2) Unless otherwise specified in the order confirmation, the prices are ex warehouse plus the applicable statutory value-added tax. Packaging, transport and insurance expenses as well as all other ancillary costs shall be invoiced separately.

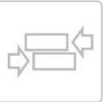
(3) All prices shall be quoted in Euro. If delivered to countries outside the European currency union, APS shall apply the exchange rate of the European Central Bank (ECB) officially trading on the day of delivery. The basis shall be the equivalent value of the Goods in Euro.

Clause 4 Payments


(1) The invoices issued by APS are generally payable without any deductions within 30 days from the date of the invoice. Any derogating agreements regarding due date and deductions must be made in writing.



(2) If the payment deadline is not met, APS has the right to charge dunning fees for their administrative efforts and commercial late fee interest accruing from the due date onwards in the amount of 5% p.a. over the base rate of the ECB.



(3) Goods that have not been paid for may not be passed on to third parties without the consent of APS.



(4) A payment shall not be deemed to have been made unless APS can dispose of the amount. Payment accepted by checks or bills of exchange shall not be deemed to have been made until the check or bill of exchange has been honoured.

(5) Customer may offset counterclaims of APS or assert a right of retention only if his counterclaims are undisputed or have been legally adjudicated.

(6) Settlement of invoices by checks or bills of exchange is accepted only on the basis of special agreements; dis-counts, exchange fees and costs shall be borne by Customer.

(7) If there are justified doubts about the creditworthiness of the customer due to facts which only become known to APS after entering into the contract, the seller is entitled to require advance payment or corresponding collateral. If, despite the setting of a deadline and the threat to reject services of Customer after the expiration of said deadline, the customer neither makes advance payment nor provides security, or if he finally refuses to do so, then APS may with-draw from the contract.

(8) Payments may be made to employees of APS only if said employees have valid debt collection authority.

Clause 5 Delivery

(1) Information regarding delivery lead times shall be approximate and always subject to correct and timely delivery by the selected upstream suppliers.

(2) The written order confirmation from APS shall govern the scope of delivery.

(3) Delivery deadlines or dates shall only be binding if designated as such in the order confirmation.

(4) The delivery period shall begin with dispatch of the order confirmation or commissioning by Customer and shall only be valid under the proviso of timely clarification of all details of the order.

(5) Force majeure, operational disturbances, strikes or other obstacles at APS not attributable to APS or its suppliers shall release APS from the obligation to deliver for the duration of the disturbance and its consequences.

(6) In the case of delays in delivery, Customer may assert the following rights:

a) Right to hold APS liable according to the statutory regulations, provided that the delay in delivery is due to an intentional or grossly negligent contractual breach attributable to APS. If the delay in delivery is not due to an intentional or grossly negligent contractual breach attributable to APS, then accountability for compensation shall be limited to foreseeable, typically occurring damages.

b) Pursuant to the statutory regulations, to likewise make APS liable if the delay in delivery attributable to APS is due to a culpable breach of an essential contractual obligation; in this case, however, the liability for damages shall be limited to foreseeable, typically occurring damages. Essential contractual obligations are such obligations that make the proper execution of the contract possible in the first place and the adherence to which Customer may regularly rely on.

c) To the extent that the delay in delivery is based on a culpable breach of a non-essential contractual obligation, Customer is entitled to demand lump-sum delay compensation for each full week of delay in the amount of 3% of the delivery value, but not exceeding 10% of the delivery value. No compensation shall be paid beyond this in such cases.

(7) APS shall also be entitled to fulfil an order in partial deliveries.

(8) Delivery contracts without fixed delivery date ("on demand") can be agreed upon separately. APS reserves the right to accept the call order if it contains a fixed call-off period. If the quantity of Goods agreed upon is not called up within the call-off period, APS has the right to demand the (remaining) purchase price step-by-step in exchange for delivery of the remaining Goods.

Clause 6 Dispatch and passing of risk

(1) Absent any special agreement, the route and method of dispatch are left to the choice of APS. The shipment of the ordered Goods shall always be carried out at the cost and risk of Customer. The Goods shall be insured only upon explicit request of Customer.

(2) The risk of accidental loss and accidental deterioration of the Goods shall pass to Customer at the latest upon handing over the Goods to Customer. In the case of sales shipment, the risk of accidental loss and accidental deterioration of the Goods



and the risk of default shall pass to Customer as soon as the Goods are handed over to the for-warrier, carrier or other person or body specified to carry out the shipment. If acceptance has been agreed, this shall be authoritative for the passing of risk.

(3) In case of delay in acceptance or culpable breach of the duties to cooperate by Customer, APS shall have the right to demand compensation for the resulting damages, including possible additional expenses. The right to assert additional claims is reserved.

(4) Delivered objects, even if they have minor defects, shall be accepted by Customer without prejudice to its existing rights under the Contract and at law. In the case of damage in transit, Customer shall obtain a confirmation of the improper condition of the Goods from the transport company and undertake to claim compensation for damages from them.

Clause 7 Retention of title

(1) The delivered Goods shall remain the property of APS (Reserved Goods) until full payment of the invoice has been made, including any and all other claims arising from the business relationship.

(2) The Goods subject to retention of title may neither be pledged to third parties nor be transferred for security before the full payment of the secured debt. Customer must immediately notify APS in writing when and if third parties access the Goods belonging to APS.

(3) Customer shall have the right to resell the Goods subject to retention of title in the course of normal commerce. In this case, however, Customer assigns all claims to APS from such a resale, whether these occurred before or after a possible processing of Goods subject to retention of title; APS accepts this assignment by Customer. Notwithstanding APS's power to recover the debt itself, Customer shall retain its rights to recover the debt even after the assignment. In this context, APS undertakes not to recover the debt as long as and to the extent that Customer meets its payment obligations, does not apply to open insolvency or similar proceedings, and there has been no suspension of payments.

(4) The processing, combination or other reconstruction of the Goods by Customer shall always be carried out for APS. If the Goods are processed with other objects not belonging to APS, then APS shall enjoy joint ownership of the new thing in the ratio of the value of the Goods (invoice total plus VAT) to the other processed objects prevailing at the time of processing. The thing created by processing shall be otherwise subject to the same provisions as the Goods subject to retention of title.

(5) If the Goods are inextricably combined with other objects not belonging to APS, then APS shall enjoy joint ownership of the new thing in the ratio of the value of the Goods (invoice total, including VAT) to the other objects combined at the time of combination. If the combination occurs in a way that the thing of Customer is to be deemed the main thing, then it shall be agreed that Customer transfers proportionate joint ownership to APS. Customer shall safeguard sole ownership or joint ownership thus created for APS.

(6) Customer shall undertake to treat the Goods with care as long as they are subject to retention of title. Customer undertakes to notify APS in writing of all cases of access to the Goods by third parties, particularly in cases of execution of judgment as well as any damages or destruction of the Goods. Customer undertakes to immediately notify APS whenever the Goods change ownership or it changes its address. Customer undertakes to compensate APS for all damages and expenses arising from a breach of these obligations and the intervention measures required against third-party access to the Goods.

(7) If Customer is in breach of contract, particularly by defaulting on payment, APS shall have the right to revoke the contract and demand return of the Goods. This also applies to breaches of a duty by Customer according to paragraph (6) if it can no longer be reasonably expected to uphold the contract.





(8) If the value of the delivered Goods subject to retention of title exceeds the value of the debt to be secured from the ongoing business relationship with Customer by twenty percentage, APS is obligated to release the delivered Goods subject to retention of title or securities upon Customer's demand.

Clause 8 Right of intervention


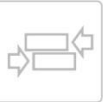
(1) APS and the customer hereby agree that, upon entry into the contract for delivery of the Goods, all of Buyer's accounts receivable arising from the future resale or lease of the delivery to third parties or based on any other legal grounds (insurance, tort, etc.) shall pass to APS to secure all Supplier's claims arising from the business relationship with customer.

(2) Customer hereby assigns in full to Supplier all accounts receivable, including ancillary rights to which it is entitled, from the resale or lease of the delivery. APS herewith already accepts this assignment. However, Customer shall have the right to collect these assigned accounts receivable until Supplier demands disclosure of the assignment. Buyer shall be forbidden from re-assigning the accounts receivable already assigned to Supplier.

(3) Buyer undertakes to transfer the property rights or any and all such rights arising from the objects accepted in lieu of payment in the context of resale, machine components and used machines, no matter in which way, the moment Buyer obtains



the property rights or other rights thereto. Buyer undertakes to store the aforementioned objects for Supplier free of charge, to treat them with care and to insure them appropriately.



Clause 9 Warranty

(1) The statutory laws governing the remedy of defects shall apply to the Goods delivered by APS. In event of a defect or the absence of a warranted characteristic, APS shall therefore be liable according to the statutory provisions unless limitations arising from the following apply.

(2) APS guarantees that the Goods are free from material and legal defects pursuant to Sections 434 and 435 BGB at the time of the passing of risk.


(3) Customer undertakes to immediately inspect the received and transferred Goods for obvious defects (e.g. quantity, condition, assured properties) and to notify APS in writing thereof within 10 days of receipt. Not obvious – hidden – defects which only become apparent over time (e.g. after commissioning) shall be reported to APS in writing immediately after discovery within 10 days. If these defects are not reported within the aforementioned deadline, any and all claims by Customer in this regard are excluded. Any commercial inspection and notification obligations are unaffected by this regulation. The aforementioned does not apply if APS has fraudulently concealed the defect or assumed a guarantee for the condition of the Goods.

(4) In the event of defects under warranty, APS shall, at Customer's choice, remedy these within the scope of its claim for performance or cure (remedy of defects) or shall deliver new Goods (new delivery). APS has the right to refuse to remedy the defects or effect replacement delivery if said cure is possible only by incurring disproportionate costs and an alternative way to remedy the defect exists that does not entail significant disadvantages for Customer.

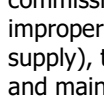
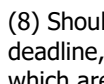
(5) APS shall be granted reasonable time and opportunity to remedy the defects. In particular, Customer shall ensure that the defective/faulty Goods are made available to APS or its delegated agents for inspection and carrying out the repair. If Customer refuses this, APS shall be released from its liability for defects.

(6) Neither suspension nor interruption of the original warranty periods shall result from any repair or improvement of the delivered Goods to remedy defects. These periods shall be extended with respect to those parts which could not be operated for the intended purpose as a result of the interruption by the duration of the operational interruption caused by the repair, replacement delivery or compensation.

(7) No warranty claims shall exist for defects arising from improper handling or overuse, where statutory provisions or operating or installation instructions issued by APS were not followed; in the case of the following: faulty assembly or



commissioning by Customer or third parties, natural wear, transport damages, improper storage, operating conditions that disrupt function (e.g. insufficient power supply), the presence of chemical, electrochemical or electrical influences, servicing and maintenance conducted poorly or not at all. The same applies to improper modifications or other maintenance by Customer or third parties.

(8) Should APS fail to remedy the defects in the delivered Goods within a reasonable deadline, Customer shall have recourse to its statutory rights. In the case of defects which are only minor, however, Customer shall not have the right to revoke. To the extent that Customer demands compensation for damages, APS shall be liable according to the rules governing the limitations of liability set forth in Clause 9 hereunder.

(9) In respect of the delivery of new Goods, the limitation for claims for defects shall be two years starting from passing of risk. In respect of used Goods, the warranty obligation shall be one year uniformly, starting from the passing of risk. This does not apply to claims for damages resulting from defects. With respect to claims for damages resulting from a defect, the stipulations set forth in Clause 9 of these General Terms and Conditions shall apply.

(10) In the first six months after handover of the Goods Customer must prove the existence of a defect at the time of handover, the time of detection and the timeliness of the notification of the defect. If the defect does not become apparent until six months after the handover, Customer shall provide proof that the Goods were already defective at the time of passing of risk. Conversely, APS shall be free to produce proof that the Goods were free from material defects.

(11) In the case of an unjustified complaint about a defect, Customer shall bear the costs incurred by APS for the assertion of said unjustified claim.

(12) APS shall not assume the warranty for those parts of the delivery not manufactured by APS unless said warranty was also granted by the suppliers.

(13) APS shall not give to Customer guarantees in the legal sense. If the manufacturers of specific items give a guarantee, this shall be valid irrespective of the warranty rights to which Customer is entitled. The details of any manufacturer's guarantee, particularly its scope of coverage as well as the guarantor's name and address are to be taken from the terms of guarantee pertaining to that respective item. The assertion of claims arising from a guarantee given shall be made against the guarantor under the terms of its guarantee.

Clause 10 Liability

(1) Unless otherwise stated in these General Terms and Conditions, APS shall be liable for any breach of contractual and non-contractual obligations according to the

pertinent statutory regulations.

(2) APS shall be liable for damage compensation – regardless of the legal basis – in the event of intent and gross negligence. The culpability of APS must be proven by Customer.

(3) In the event of simple negligence, APS shall only be liable

a) for damages arising from injury to life, limb, or health,

b) for damages arising from a breach of an essential contractual obligation (i.e. of an obligation that makes the proper execution of the contract at all possible in the first place and the adherence to which the contractual partner regularly trusts and may trust in); in this case, however, APS's liability shall be limited to the foreseeable, typically occurring damages.

(4) The aforementioned exclusions of liability and limitations of liability apply to the same extent in favor of those organs, legal representatives, employees and other vicarious agents of APS.

(5) The limitations of liability under paragraph (2) do not apply if APS has concealed the defect by deceit or assumed a guarantee for the condition of the Goods. The same applies to Customer's claims under the German Product Liability Act (Prod. Haft G).





(6) APS's liability for any and all personal injury and material damage including consequential loss directly resulting therefrom shall basically be insured in the appropriate amount under APS's existing business and product liability insurance, which however shall not exceed EUR 3,000,000.00 per loss event.

Clause 11 Confidentiality

(1) The contractual parties undertake mutually to treat all information received within the scope of the business relationship with APS as strictly confidential and not to disclose it or make it accessible to third parties without written permission.

(2) Customer shall only pass on confidential information to employees if and to the extent required for the execution of their tasks within the scope of its business relationship with APS.


(3) The obligation for confidentiality shall continue to apply after termination of the business relationship.



(4) Further agreements relating to confidentiality, if required, shall be governed by separate agreements.



Clause 12 Industrial property rights



(1) APS reserves any and all property rights and copyrights to all images, drawings, calculations and other documents that APS has made available to Customer in connection with the contractual delivery or to which Customer otherwise becomes privy. None of the aforementioned documents may be used for other purposes, duplicated or made accessible to third parties without the express permission of APS.

(2) If the Goods are produced based on drawings or other information from Customer, Customer shall be solely re-sponsible for preventing any and every infringement of third-party rights.

(3) Customer shall indemnify APS against all claims from third parties arising from infringement of industrial property rights (including litigation costs) and shall support APS in any legal dispute.

Clause 13 Export control law

(1) Customer shall not export the delivered Goods or re-export them, either directly or indirectly, without the approvals required according to the laws or provisions for export control of that country the jurisdiction of which the contractual parties are subject to.

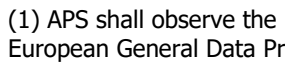
(2) Customer shall not export or re-export the Goods delivered by APS, either directly or indirectly, to a country upon which the Security Council of the United Nations has imposed a sanction, as long as the respective resolution is in force and to the extent that the Goods delivered by APS continue to be subject to an export ban to that country.

(3) If Customer violates one of the conditions of paragraphs (1) and (2), Customer shall be liable for any and all direct and indirect damages incurred by APS as a result of this violation. In this case, APS shall have the right to immediately terminate the contract without any liability whatsoever thereby arising vis-à-vis Customer.

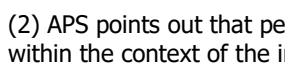
(4) In the case of violations of export limitations that were identified and attributable to Customer, Customer shall explicitly release APS from any liability and responsibility in external relations, regardless of the legal basis, and Customer shall thereby bear all damages incurred by APS in the event of an infringement.



Clause 14 Data protection



(1) APS shall observe the relevant data protection provisions, particularly the European General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG). APS has taken technical and organizational measures which ensure that the provisions for data protection are observed by both APS as well as by external service providers.



(2) APS points out that personal data (customer data) are saved and processed within the context of the intended purpose of the contract.

(3) APS shall have the right to pass customer data on to market information providers for checking and monitoring creditworthiness, as appropriate. When processing and passing on data, the Customer's interests worthy of protection shall be safeguarded according to the statutory provisions.

(4) For detailed information regarding data protection, please refer to our Data Protection Policy. It is accessible at <https://www.wille-geotechnik.com/en/privacy-policy.html>.

Clause 15 Place of performance, general jurisdiction, applicable law

(1) The laws of the Federal Republic of Germany shall apply to these General Terms and Conditions and the entire legal relationships between Customer and APS under exclusion of the UN Sales Law (United Nations Convention on Contracts for the International Sale of Goods).

(2) Place of performance shall be 37124 Rosdorf, Germany.

(3) Göttingen, Germany shall be the exclusive place of jurisdiction for all disputes arising from or in connection with contracts.


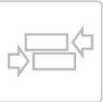
(4) If the English version of these General Terms and Conditions deviates from the German version of the General Terms and Conditions, the wording of the German version shall prevail.

(5) Any additional or collateral agreements must be made in writing.

(6) Any changes to the General Terms and Conditions shall be reported to Customer as soon as possible. Customer has the right to object to these changes. The changes shall be deemed to have been accepted if Customer does not object within one month of being notified of changes to these General Terms and Conditions.



Clause 16 Final provisions



(1) If a provision of these General Terms and Conditions becomes fully or partially ineffective or unenforceable or the effectiveness or unenforceability is later lost or if a loophole is found, the validity of the remaining provisions shall not be affected thereby. In place of the ineffective or unenforceable provision or to close any loopholes, the appropriate clause or rule shall be deemed to be agreed upon, to the extent legally permissible, which comes closest to what the parties intended or would have intended according to the sense and purpose of the contract had they considered that point.

(2) The parties agree that the ineffective provision shall be replaced by a valid clause or rule that is reasonable for both contractual partners and comes closest to the economical purpose of the ineffective clause or rule.

APS Antriebs-, Prüf- und Steuertechnik GmbH
Revision 04/21

Kommentiert [BBB1]:

Kommentiert [BBB2]: Ersetze Supplier durch APS

Kommentiert [BBB3R2]: