



General Terms of Sale for APL Apparatebau GmbH – Dormagen



As of: June 2009

1. General Stipulations

1.1

All deliveries and other services (assembly, commissioning, repairs, servicing, services, consultancy services etc.) from us shall be based exclusively on these Terms of Business. We shall not recognise conflicting terms of business or purchase of the client, unless we have given our express written consent to their application. Our Terms of Business shall apply even if we carry out the delivery to the client unconditionally despite knowing of terms conflicting with or deviating from our Terms of Business.

1.2

We shall retain, without limitation, all rights of title and copyrights in illustrations, drawings and other documents (hereinafter "documents"). These documents must not be made accessible to third parties, unless we have given our express written consent. Documents forming part of quotations shall be returned to us without undue delay in so far as no order is placed and we request the return of the documents. Sentences 1 and 2 apply mutatis mutandis to documents of the client. However, these may be made accessible to third parties whom we have permissibly appointed to carry out deliveries or other services.

1.3

We shall be entitled to use the services of other companies for the performance of our obligations.

1.4

Following the execution of other services, we shall be entitled in relation to the client to have the rendered services signed, particularly the corresponding time sheets. The forms necessary for this shall be provided by us.

1.5

If individual stipulations of these General Terms of Business are ineffective, this shall not affect the validity of the other provisions or of the contract itself. This shall not apply, if continued adherence to the contract would constitute unreasonable hardship for one of the parties to the contract.

1.6

In so far as compliance with the written form is prescribed in these general terms, this shall also be deemed met in the case of communication by telefax or email.

2. Content of the Contract/Conclusion of the Contract

2.1

Precontractual notifications drawn up by us, such as quotations, cost estimates and specifications, shall be non-binding, unless otherwise agreed upon in writing.

2.2

The documents forming part of the quotation, such as drawings, illustrations, technical data, references to standards, as well as statements in advertising material, shall not be deemed to be information on qualities, representations as to features or guarantees, except where they are expressly referred to as such in writing.

2.3

Catalogue information, prospectus information, information sheets, application-related notices and other information shall not form part of the contract, unless otherwise agreed upon in writing.

2.4

Purchase orders shall only be binding upon us in so far as we have acknowledged them in writing or dispatched them within two weeks of receipt at our company. The orderer shall be bound by its purchase order until the expiry of this period.

3. Prices/Payment Terms

3.1

Except where otherwise ensues from our acknowledgement of the order, our selling prices shall apply ex works (Incoterms 2000) from the place named in our quotation or in our written acceptance. If no place of destination is indicated in our quotation/written acceptance, ex works from our registered office shall be deemed agreed upon. Our selling prices exclude packaging. Packaging shall be invoiced separately. The same applies mutatis mutandis to other ancillary services.



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3.2

Prices for other services shall be calculated on the basis of an agreed fixed price or, in the absence of such an agreement, on the basis of time and outlay in accordance with our service rates applicable at the time of execution of the service, plus incidental expenses (travel expenses, replacement parts etc.).

3.3

The services rendered for the submission of a cost estimate shall be chargeable to the client, if no contract ensues. No. 3.2 applies.

3.4

All payments shall be governed by the respective agreed payment terms. In the absence of a separate agreement, all invoices shall be due immediately and be payable, strictly net cash, within 14 days of the invoice date.

3.5

All payments to us shall be transferred, free of charge, to a bank account designated by us. Unconditional crediting to the bank account shall be authoritative for the timeliness of payment.

3.6

In the case of performance by instalments, we shall be entitled to payment by instalments.

3.7

Statutory value-added tax is not included in our prices. It shall be shown separately on the invoice at the statutory rate prevailing on the day of issuance of the invoice.

3.8

Submission of bills of exchange shall require our consent. Charges and expenses in connection therewith, as well as the risk of late presentation or protestation shall be fully borne by the client.

3.9

If the client defaults on payment, we shall, with reservation of the right to assert a further loss, charge interest at the rate customary in banking, at least 8 % points above the respective base interest rate of the European Central Bank.

3.10

In the event of default in payment and justified doubts as to the client's ability to pay its debts or as to the client's credit-worthiness, we shall - without prejudice to our other rights under section 321 of the German Civil Code [BGB] (plea of uncertainty) - be authorised to demand security or advance payment for outstanding deliveries or other services, retain services or deliveries still outstanding and/or declare immediately due all claims arising from the business relationship.

3.11

Only claims which are uncontested or have been determined with legal finality shall entitle the client to set off or retain.

4. Retention of Title

4.1

Until full payment of our claims arising from the business relationship with the client, the goods sold shall remain our property. The client shall be revocably authorised to dispose of the purchased goods in the ordinary course of business.

4.2

The retention of title shall also extend to the products - at their full value - resulting from processing, mixing or combining of our goods. However, this does not establish any obligation on our part. If the third party's right of title remains in effect in the event of processing, mixing or combining with third-party goods, we shall acquire joint title in the ratio of the invoiced values of those goods processed.

4.3

As security, the client assigns to us here and now, as a whole or in a sum equal to any co-ownership share which we acquire (cf. section 4.2), the claims against third parties ensuing from reselling. We accept this assignment. The client shall be authorised to collect those claims for our account until further notice or until the client ceases its payments to us. This authorisation shall, without requiring revocation, discontinue upon the filing of a petition for insolvency concerning the client's assets. Furthermore, the client shall not be authorised to assign those claims for the purpose of collection by way of factoring, unless the factor is at the same time placed under an obligation to effect the counter-performance, in a sum equal to the portion of our claim, directly to us as long as we still have claims against the client.



4.4

The client shall be obliged to treat the goods with care. In particular, it shall be obliged to adequately insure the goods at its own expense against fire damage, water damage and theft on a replacement value basis. In so far as servicing or inspection work is necessary, the client shall carry this out in due time at its own expense.

4.5

The client shall notify us without undue delay, by registered letter, of any third-party seizure, e.g. attachment, of the goods or claims belonging to us.

4.6

Neither the goods nor the claims substituting them may be pledged, transferred or assigned to third parties as security prior to full payment of our claims.

4.7

At the client's request, we shall release security to which we are entitled, in so far as the value of our security exceeds by more than 10 % the claims to be secured. We shall be responsible for choosing the security to be released.

5. Delivery/Performance

5.1

Periods for delivery or performance shall only be binding, if we have expressly confirmed them as binding.

5.2

Periods for delivery or performance shall commence on the date of the acknowledgement of the order. Except where otherwise agreed upon, the period for delivery shall be deemed complied with, if the client has received by the agreed point in time, or within the agreed period, notification that the delivery item is ready for dispatch. In the case of other services, the period for performance shall be deemed complied with, if the other service is commenced within the period for performance.

5.3

The prerequisite for compliance with the periods for delivery or performance is that all technical issues must have been cleared up. In particular, all documents to be supplied by the client and all essential permits and approvals must have been received in due time and the agreed payment terms and other obligations of the client must have been complied with. If the aforestated prerequisites are not met, the periods for delivery or performance shall be reasonably extended. This shall not apply in so far as the delay is imputable to us.

5.4

If we are impeded in delivering or performing in due time as a result of official orders or measures, force majeure, mobilisation, war, insurrection, strike, lockout or incorrect or late delivery by our suppliers or as a result of the occurrence of unforeseen impediments which lie outside of our will or outside that of our suppliers, the period for delivery or performance shall be reasonably extended.

5.5

If the impediments to delivery or performance set out under section 5.4 persist for an unreasonably long period, both parties to the contract shall be entitled to rescind the contract. The client shall only be entitled to the right of rescission after the expiry of a reasonable grace period to no avail, except in cases where a transaction where time is of the essence under commercial law has been agreed upon in writing. The client shall not be entitled to any other claims.

5.6

If the period for delivery or performance is exceeded for reasons imputable to us, the client shall be entitled to rescind the contract after the expiry of a reasonable grace period. Damage claims shall be determined in accordance with the stipulations of section 11.

5.7

If the client causes a delay in the delivery or shipment of the delivery items or in the execution of other services, we shall be entitled to demand compensation for the loss resulting to us in this respect, including any extra expenditures. Claims or rights beyond the foregoing remain reserved.

5.8

If the client defaults on payment, we shall be entitled to assert a right of retention in respect of further deliveries or other services.



5.9

We shall be entitled to deliver by instalments, if

- the client is able to use the delivery instalment for the purpose intended under the contract,
- delivery of the residual goods has been secured and
- no substantial extra expenditures or additional costs result to the client as a consequence of delivery by instalments, unless we agree to bear the costs.

6. Duties of Co-operation

In so far as we carry out other services at a place other than our registered office or in so far as our other services are dependent upon preliminary work by the client or by a contractor of the client, the client shall carry out or bring about, at its expense and in such a timely fashion that no hindrance to us is to be expected as regards the commencement and/or execution of the other services, all preliminary work/acts of co-operation necessary for the execution of the work. In particular, the client shall hand over to us, of its own accord, all essential documents (permits, plans etc.) prior to execution of the work. Moreover, the client shall be obliged to make available necessary items, protective devices and, where applicable, tools and essential information.

7. Passage of Risk

7.1

Except where we have made an agreement contrary hereto, ex works (Incoterms 2000) from the place named in our quotation or in our written acceptance is also agreed upon for the passage of risk. If no place of destination is indicated in our quotation/written acceptance, ex works from our registered office shall be deemed agreed upon. In the case of deliveries, therefore, the risk of accidental destruction and accidental deterioration of the delivery item shall pass to the client once the client receives by the agreed point in time, or within the agreed period, notification that the deliver item is ready for dispatch.

7.2

If, at the client's request, the delivery item is dispatched at a later date than the agreed date for delivery, the risk of accidental destruction and accidental deterioration shall pass to the client on the originally agreed date for delivery.

7.3

In the absence of a separate agreement, the risk of destruction and accidental deterioration of other services as a whole, or of independent subsections, shall pass to the client from notice of completion. If a trial operation is agreed upon, the risk shall pass to the client upon completion of a successful trial operation, but no later than 14 days after receipt of notification of readiness for a trial operation.

7.4

If the other services or the trial operation are interrupted, delayed or discontinued for reasons not imputable to us, the risk of accidental destruction and accidental deterioration of the other services already rendered shall pass to the client upon receipt of the notice of the hindrance.

8. Acceptance

8.1

An acceptance inspection in respect of other services shall only take place if agreed upon in writing. If an acceptance inspection is agreed upon, we shall be obliged to give notice of readiness for acceptance.

8.2

In the absence of an agreement on the precise point in time of the acceptance inspection, the acceptance inspection shall be carried out immediately after execution of the service or, in the case of major projects, within a period of 7 days from receipt of notification of readiness for acceptance.

8.3

Acceptance must not be refused on account of defects which do not impair, or only insubstantially impair, the functionality.

8.4

If, for reasons not imputable to us, the acceptance inspection does not take place within a period of 14 days from receipt of notification of readiness for acceptance, the acceptance inspection shall be deemed to have taken place upon the expiry of this period.



8.5

Acceptance shall also be deemed to have occurred in cases where the client has put the item concerned to use prior to the expiry of the period stated in section 8.4.

8.6

In so far as acceptance is agreed upon, the passage of risk shall, contrary to section 7.3, occur upon acceptance.

8.7

The cost of the acceptance inspection shall be borne by the client.

8.8

A certificate of completion from an assessor, within the meaning of the statutory provisions, shall be deemed equivalent to acceptance.

9. Liability for Defects in Quality

9.1

All information on suitability, processing or application of our products, all technical advice and all other information shall be provided on the basis of our best knowledge. This information shall not release the client from its obligation to carry out its own inspections and tests, nor from its obligation to use or appoint qualified personnel. We shall be liable for a particular use of our products, or a particular filling of our products, only if we have been notified thereof in writing beforehand and we have given confirmation.

9.2

The prerequisite for the client's liability for defects in quality is that the client must have properly met its examination and complaint-lodging obligations owed under section 377 of the German Commercial Code [HGB].

9.3

Our obligation within the scope of liability for defects in quality shall be limited to rectification or replacement (supplementary performance), at our option.

9.4

Claims of the client on account of essential expenditures for the purpose of supplementary performance, particularly transportation costs, transport infrastructure charges, labour costs and costs of materials, are excluded, in so far as the expenditures have increased as a result of the delivery item having been transported to a place other than the client's place of establishment.

9.5

Only on the conditions set out under section 11 shall the client be entitled to demand compensation for loss of production in connection with preparations for rectification or supplementary performance or for loss of production during the period of rectification or supplementary performance.

9.6

The client shall grant us the time and opportunity necessary, according to reasonable discretion, for supplementary performance. If supplementary performance has failed twice, the client shall be entitled to the statutory rights arising from liability for defects in quality and, subject to the prerequisites set out under these terms, to compensatory damages.

9.7

Excluded from liability for defects in quality are, in particular, defects caused by the client or a third-party contractor of the client after the passage of risk due to incorrect transportation, improper storage, unsuitable foundation soil, improper installation, incorrect assembly, incorrect use, incorrect connection, incorrect or improper operation or which have arisen after the passage of risk as a result of excessive use or unforeseen operating conditions, in particular, but not limited to, uncontrollable natural occurrences (e.g. earthquakes, storms) or chemical or electrical influences or as a consequence of normal depreciation or wear and tear. Beyond the foregoing, all liability for defects in quality in cases of deterioration or destruction of our delivered goods after the passage of risk shall be excluded, except where the defect in quality causing the deterioration or destruction was already present at the time of the passage of risk.

9.8

Claims arising from liability for defects in quality shall cease to apply, if operating, installation or servicing instructions are not followed, alterations or modifications are made to the delivery item or non-approved replacement parts or consumables are used.



General Terms of Sale for APL Apparatebau GmbH – Dormagen



As of: June 2009

9.9

Goods complained of must only be sent back with our express consent. In this case, the client shall choose packaging which is appropriate and safe for transportation.

9.10

The parts which are replaced in performance of the obligation arising from liability for defects in quality shall become our property upon their removal.

9.11

We shall be liable for rectifications or replacements to the same extent as for the original delivery item, that is, up to the expiry of the time-bar period for defects in quality which applies to the original item of delivery or performance.

9.12

The time-bar period for defects in quality in respect of new delivery items and other services shall be twelve months from delivery or, in so far as acceptance has been agreed upon, from acceptance. This does not apply to damage claims arising from injury to life, body or health or arising from intentional or grossly negligent breach of duty by us, our statutory representatives or our agents in contract.

9.13

All liability for defects in the quality of used items delivered by us is excluded. This does not apply to damage claims arising from injury to life, body or health or arising from intentional or grossly negligent breach of duty by us, our statutory representatives or our agents in contract.

9.14

If, within the framework of supplementary performance or rectification, it emerges that no defect in quality is present, the client shall compensate us for all expenditures made by us for the elimination of defects.

9.15

The client shall not be entitled to claims beyond or other than the claims provided for in this section 9, unless otherwise ensues from section 11.

10. Industrial Property Rights and Copyrights; Defects in Title

10.1

Except where otherwise agreed upon in writing, our obligation to effect delivery free from third-party industrial property rights and copyrights shall be limited to the country of delivery. If use of the delivery item leads to infringement of third-party industrial property rights or copyrights in the country of delivery, we shall, at our option and at our expense, provide the client with a right of use or modify the delivery item in a manner which is reasonably acceptable to the client, to such an extent that the property rights are no longer infringed, or alternatively exchange the delivery item. The time-bar period shall be the same as the time-bar period for defects in quality which is provided for in section 9.11.

10.2

If supplementary performance as described in section 10, subsection 1 is not possible on economically reasonable terms or within a reasonable period, the client shall be entitled to the statutory rights of rescission or abatement.

10.3

Our obligations stated above shall only apply in so far as the client informs us, in writing and without undue delay, of the claims asserted by the third party, the client supports us to a reasonable extent in defending against the claims asserted and/or the client enables us to render supplementary performance in accordance with section 10.1, the client does not acknowledge an infringement and we retain the right to take all defensive measures and conduct all settlement negotiations.

10.4

Claims of the client arising from liability for defects in title shall be excluded in so far as the infringement of third-party industrial property rights or copyrights is imputable to the client, particularly in so far as such an infringement is due to the client's particular specifications, due to an application not foreseeable by us or due to the client having autonomously altered the delivery item or having autonomously combined it with products not delivered by us, causing the infringement of rights.

10.5

The client shall not be entitled to claims beyond or other than the claims provided for in this section 10, unless otherwise ensues from section 11.



11. Compensatory Damages

11.1

Damage claims of the client on whatever legal basis, particularly on account of breach of duties arising from the obligational relationship or on account of tort, shall be excluded, except where otherwise ensues from the following stipulation.

11.2

We shall be liable without limitation for

- losses arising from injury to life, body or health due to a breach of duty imputable to us; and/or for
- other losses due to an intentional or grossly negligent breach of duty on our part and/or for
- violations of the Product Liability Act [Produkthaftungsgesetz].

11.3

Likewise, the limitation of liability in section 11.1 shall not apply in cases of breach of a duty whose fulfilment is a prerequisite for the proper implementation of the contract, whose breach jeopardises the attainment of the purpose of the contract and/or upon whose compliance the client may rely. In such cases, we shall be liable up to the sum of the foreseeable loss, also in the event of ordinary negligence. Claims based on lost profit, saved expenditures, third-party losses or indirect or consequential losses shall be excluded in such cases, except where a quality which we have guaranteed is specifically aimed at protecting the client against such losses. In cases of breach of other duties, we shall not be liable for ordinary negligence.

11.4

Any liability on account of fraudulent failure to disclose a defect or on account of breach of a guarantee which we have assumed shall remain unaffected.

11.5

A breach of duty by our statutory representatives or our agents in contract shall be deemed equivalent to a breach of duty by us.

12. Extended Lien

12.1

Claims arising from an order where works form the basis of the contract shall entitle us to a contractual lien in the items coming into our possession as a result of the order.

12.2

We shall also be entitled to assert the contractual lien on account of claims arising from work carried out at an earlier date or arising from other services or deliveries, in so far as the claims relate to the subject of the order. In the case of other claims, the contractual lien shall only apply in so far as the claims are uncontested or a legally enforceable instrument is present and the client owns the subject of the order.

13. Place of Performance, Place of Jurisdiction and Applicable Law

13.1

The place of performance for deliveries and other services is our respective registered office.

13.2

In so far as the client is a merchant, a legal entity under public law or a public law entity with special public funds, our registered office is hereby agreed upon as the exclusive place of jurisdiction, except where otherwise ensues from no. 13.2. However, we shall also be entitled to bring an action against the client at the court in whose district the client's domicile is located.

13.3

Section 13.2 shall not apply in so far as the client's domicile is located in a country which is neither a member of the EU nor a member of the EFTA (member states of the EFTA are Iceland, Norway, Switzerland and Liechtenstein). Instead, all disputes ensuing from or in connection with the present contract shall be definitively decided in accordance with the Arbitration Code of the International Chamber of Commerce (ICC) by three arbitrators designated in accordance with the above provision. The venue for the arbitration proceedings shall be Düsseldorf / Germany. The laws of the Federal Republic of Germany, excluding the provisions of the law on conflict of laws under international private law and excluding the provisions of the UN sales law (CISG), shall be the applicable substantive law. The language of the arbitration proceedings shall be German.



General Terms of Sale for
APL Apparatebau GmbH – Dormagen



As of: June 2009

13.4

All contracts concluded by us concerning deliveries and other services shall be exclusively subject to the laws of the Federal Republic of Germany, excluding the provisions of the law on conflict of laws under international private law and excluding the provisions of the UN sales law (CISG).

14. Authoritative Version

In cases of doubt, the German version of these General Terms of Business shall be authoritative.