

## APM Technica GmbH

### GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

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#### 1. Area of Application

1.1 These General Terms and Conditions of Sale and Delivery ("**general terms**") are applicable for the sale of products and systems ("**products**") from APM Technica GmbH ("**APM**") to Buyers ("**the Buyer**").

1.2 Our general terms shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become part of the contract if we have given our express consent to their application. This requirement of consent shall always apply, for example even if we, being aware of the Buyer's general terms and conditions, execute delivery to the Buyer without reservation.

1.3 Individual agreements made with the Buyer in individual cases (including side-agreements, amendments and modifications) shall, in all events, have precedence over these general terms. The content of such agreements must be set forth in a written contract or in a written confirmation supplied by us. Any waiver of the requirement relating to written form must itself be provided in written form.

#### 2. Conclusion of the Contract

2.1 A purchase contract between APM and the Buyer shall only become legally binding once APM has provided an order confirmation or has displayed conclusive behaviour (e.g. through the immediate dispatch of the products ("**purchase contract**"). APM's quotation, order confirmation and these general terms, along with any other side-agreements, as specified in clause 1.3, exclusively make up the provisions of the contract.

2.2 All APM quotations, descriptions and illustrations on printed, digital or electronic information carriers, as well as technical documentation, such as descriptions, drawings, brochures, etc., are legally binding and APM reserves the right to make changes at any time without notice. Only the descriptions and illustrations included in the purchase contract are legally binding.

2.3 If the Buyer requires that changes be made after the conclusion of the purchase contract, these shall only become legally effective following APM's express confirmation or conclusive behaviour.

#### 3. Intellectual Property Rights to the Documentation

All documentation regarding the products in printed form or on a digital or electronic carrier, e.g. studies, plans, reports, brochures, photographs, software, etc., shall remain the intellectual property of APM, in particular the copyright to the documentation. APM shall not grant any licences whatsoever to this documentation unless expressly agreed in writing between APM and the Buyer. The documentation may not be copied or duplicated in any other way, nor may it be used for so-called reverse engineering, or for the reproduction or manufacture of any products, nor may it be passed on to third parties, without the prior express authorization of APM.

#### **4. Information and Material Provided by the Buyer**

If APM requires specific information, services or processing material ("**provided material**") to be provided by the Buyer ("**information and material**"), the Buyer or a party chosen by him shall acquire it and guarantee that precise, complete material of suitable quality is supplied to APM in good time. APM is entitled to rely on this information and the provided material without checking it over first. APM shall notify the Buyer immediately if it notices that the information and/or the provided material is incorrect. The Buyer shall indemnify APM from, and hold it harmless against, any incorrect information and/or provided materials and shall reimburse it for any costs, charges and other damages incurred at APM in relation to this.

#### **5. Prices**

5.1 Unless agreed otherwise between the parties, our prices are to be understood as being net prices in euros (EUR), without discount, packed in line with standard commercial practice, without freight and insurance costs, without any taxes and fees, such as VAT or sales taxes, duty fees, charges, surcharge for dangerous goods and the like, all of which are to be paid by the Buyer.

5.2 If the Buyer gives instructions for special packaging to be used, or provides the packaging material, APM shall invoice the additional costs incurred in relation to this.

5.3 APM is entitled to invoice the Buyer for all price increases which are not attributed to APM, or which are the result of changes requested by the Buyer, in accordance with Clause 2.3.

#### **6. Freight and Insurance Costs**

If requested to do so by the Buyer, APM shall organize the transportation and freight insurance cover against loss, theft, destruction and any damage to the products, at the Buyer's risk and expense. Any transport damage and other irregularities noticed in relation to the transportation of the goods must be certified by the forwarding agent immediately upon delivery. The extent and the presumed reasons for the damage or the irregularity must be specified in the written confirmation.

#### **7. Payment Terms**

7.1 The payments shall be due and must be paid within 30 days from the date the invoice is issued and date of goods delivery and acceptance, unless the purchase contract expressly specifies alternative terms of payment. The payment shall have been paid once it has been credited to APM's account.

7.2 If payment has not been made by the afore-mentioned payment deadline, the Buyer shall be in default. While in default, the current default rate of interest shall be added to the purchase price. We reserve the right to claim for further damages due to default. For dealers, our claim to commercial maturity interest at the rate of 5 % from the due date (Section 353 of the German Commercial Code) remains unaffected.

7.3 The Buyer shall only be entitled to set-off rights or rights of retention if his claim is established as being legally binding or undisputed. In the case of delivery defects, the Buyer's opposing rights remain unaffected.

#### **8. Retention of Title**

8.1 The sold goods shall remain our property until all current and future payments arising from the purchase contract, and from the ongoing business relationship (secured claims), have been made by the Buyer.

8.2 The Buyer is not allowed to pledge or transfer the ownership of the goods as security to a third party until full payment is made. The purchaser shall promptly notify us in writing of any action or attempt by third parties to take hold of goods owned by us.

8.3 If the Buyer acts contrary to contract, in particular if he is in default of payment, legal regulations dictate that we are entitled to withdraw from the contract and to demand the return of any goods supplied on the grounds of the retention of title and the withdrawal. If the Buyer fails to pay the purchase price due, we may only assert these rights after having set a reasonable deadline for payment and this deadline has expired without payment being made, or in such case as the setting of any deadline is not required by law.

8.4 The Buyer is entitled to sell on or further process the goods under retention of title within accepted business practices. In this case the following provisions shall additionally apply.

8.4.1 The retention of title shall also extend to the full value of those products which are created by processing, combining or connection of the delivered goods. In such case, we shall be deemed to be the manufacturer. If our products are processed, combined or connected with third-party products and their property rights remain, we shall acquire joint ownership of the processed, combined or connected goods. Furthermore, the same shall apply to the resulting product as to the goods delivered under retention of title.

8.4.2 The Buyer herewith assigns to us in full, or, where applicable, to the value of any joint title owned by us, any claims arising against third parties from the resale of the goods or the products as security, as specified in the previous paragraph. We consent to this assignment. The obligations of the Buyer stated in 8.2 shall also apply in consideration of the assigned claims.

8.4.3 In addition to ourselves, the Buyer shall remain authorized to collect any claims. However, we shall undertake not to collect the claims as long as the Buyer meets his payment obligations to us, does not fall into arrears, provided that no request for a commencement of bankruptcy proceedings has been filed, and there is no other fault in his performance. If however, any of the aforementioned situations occur, we have the right to demand that the Buyer notifies us of the assigned claims and debtors, supplies all information necessary for us to collect the claims, hands over the associated documentation and notifies the debtors (third parties) of the assignment.

(d) If the realizable value of the securities granted exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

## **9. Deliveries and Times of Delivery**

9.1 Unless agreed otherwise, deliveries (a) within EU shall be dispatched EXW (APM Pürgen-Ummendorf factory) and (b) those sent abroad shall be dispatched EXW (APM Pürgen-Ummendorf factory), both in accordance with the 2020 Incoterms.

9.2 The delivery date shall be agreed individually by APM; it shall be specified upon acceptance of the order. If it is not specified, the delivery date shall be approx. 3 weeks after conclusion of the contract.

9.3 APM is permitted to make part-deliveries to a reasonable extent.

9.4 If we cannot keep to binding delivery deadlines for reasons beyond our control (non-availability of the goods or service), we shall inform the Buyer of this immediately while also providing information about the new, expected date of delivery. If the goods or service is still not available by the new delivery date, we shall be entitled to withdraw from the contract in whole or in part; we shall reimburse any return service provided by the Buyer immediately. The unavailability of goods or service in this context particularly includes our suppliers failing to deliver in good time if we have entered into a congruent supply transaction, if the reason for this is not attributable to us or our suppliers, or if it is not our obligation to provide the goods or service.

9.5 The occurrence of a delay in delivery is determined in accordance with legal provisions. A reminder must always be provided by the Buyer. If our delivery is delayed, the Buyer is entitled to request estimated compensation for damage due to default. Compensation shall be charged at a flat rate of 0.5% of the net price (delivery value) for each full calendar week of default, up to a maximum of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the Buyer has suffered no loss at all or only a substantially smaller loss than the flat rate specified above.

9.6 The rights of the Buyer specified in Paragraph 10 of these general terms and our legal rights, in particular those regarding the exclusion of the obligation to perform (e.g. due to the impossibility or unreasonableness of a performance and/or repair/replacement) shall remain unaffected.

9.7 The delivery date shall be extended by a reasonable period if APM and the Buyer agree to changes after conclusion of the contract or the Buyer supplies information, products and other material, in accordance with Paragraph 4, which is defective, incomplete or late in arriving.

## **10. Incoming Goods Check, Buyer's Obligation to Check Goods and Provide Notice of Defects**

10.1 The statutory regulations shall apply to the rights of the Buyer in the case of material defects and defects of title (including incorrect delivery and shortfalls in delivery as well as improper assembly or inadequate assembly instructions), unless specified otherwise below

10.2 The primary basis of our liability for defects is the agreement made concerning the quality of the goods. Product descriptions (including those of the manufacturer) which are designated as such and which are passed on to the Buyer before the placing of the order, or are otherwise included in the contract in a similar way to these general terms, shall apply as an agreement regarding the quality of the goods.

10.3 In the absence of any quality agreement, the existence or non-existence of a defect shall be assessed according to the statutory provision (Section 434 (1), Paragraph 1, Clauses 2 and 3 of the German Civil Code). However, we shall not be held liable for any public statements made by the manufacturer or other third parties (e.g. advertising messages).

10.4 Any Buyer claims regarding defects may only be made if the Buyer has followed the statutory inspection and complaint procedures (pursuant to Sections 377 and 378 of the German Commercial Code). In the event that a defect is revealed during the inspection or at a later date, we must be immediately notified about this in writing. The notification is considered to be immediate if it takes place within two weeks; this deadline shall be considered to have been observed if the notification is sent within this period. Irrespective of this obligation for inspection and notification of complaints, the Buyer must report obvious defects (including incorrect deliveries and shortfalls in delivery) within two weeks from the delivery date in writing; this deadline shall be considered to have been observed if the notification is sent within this period. If the Buyer fails to carry out the proper inspection and/or notify us of defects, we shall not be liable for the unreported defect.

10.5 If the delivered item is faulty, we can initially choose whether to remedy the defect (through repair) or to supply an item which is free of defects (replacement delivery). Our right to refuse to repair or replace a defect under the legal requirements remains unaffected

10.6 We are entitled to make any repair or replacement conditional upon the Buyer paying the purchase price due. The Buyer is however entitled to retain a part of the purchase price which is reasonable in relation to the defect; this amount must not be more than double of the cost required to remedy the defect.

10.7 The Buyer must allow us the necessary time and opportunity to repair any defects or replace any defective goods and must in particular provide us with the goods concerned for inspection. If a replacement is agreed, the Buyer must return the faulty object to us, as specified in the statutory provisions. The rectification of the defect does not include the removal of the faulty part or any subsequent installation of the repaired or replacement part if we had no original obligation to perform the installation.

10.8 The expenses which are necessary for the purpose of inspection and repair/replacement, in particular transport, route, work and material costs (not removal and installation costs) shall be borne by us if a defect actually exists. However, should the Buyer's demand for repair turn out to be unjustified, we can demand the incurred costs be reimbursed by the Buyer.

10.9 If the rectification of the defect fails, or a reasonable deadline which is to be set by the Buyer for the providing a repair or replacement expires without success or is not required according to the statutory regulations, the Buyer can withdraw from the purchase contract or lower the purchase price. However, this right of withdrawal does not exist if the defect is insignificant.

10.11 The Buyer's claims for damages or compensation for wasted expenses exist only in accordance with Paragraph 11 and are otherwise excluded.

## **11. Limitation of Liability**

11.1 Unless otherwise stated in these terms and conditions including the provisions set out below, APM shall be liable in case of any breach of contractual or non-contractual duties in compliance with the relevant legal provisions.

11.2 We shall be liable to pay compensation for damages - regardless of the legal grounds - in cases of wilful intent and gross negligence. In case of ordinary negligence, we shall only be liable

11.2.1 For damages arising from harm to life, personal injury or health impairment,

11.2.2 For damages caused by the breach of a fundamental contractual obligation (obligation which must be performed for the contract to be rendered possible and in the compliance of which the contractual partner trusts and may trust on a regular basis); in this instance, however, our liability is limited to the compensation typically incurred through such damage.

11.3 The liability restrictions which can be derived from 11.2 shall not apply if we have fraudulently concealed a defect or have provided a guarantee for the condition of the goods. The same shall apply for claims of the Buyer according to the Product Liability Act.

11.4 In case of any violation of duty other than a defect, the Buyer shall only be entitled to withdraw from or terminate the contract if the violation was our fault. A free right of cancellation for the Buyer (in particular in accordance with Sections 651 and 649 of the German Civil Code) is excluded. Statutory requirements and legal consequences also apply.

## **12. Withdrawal Clause**

If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is endangered as a result of insufficient financial status on the part of the Buyer (e. g. as a result of an application to open insolvency proceedings), we shall be entitled to withdraw from the contract (see Section 321 of the German Commercial Code) in keeping with the stipulations relating to refusal of performance - possibly after setting a time limit. In case of contracts covering the manufacture of unjustifiable items (one-off productions), we may withdraw from the contract immediately; the statutory provisions concerning the non-requirement of deadlines shall remain unaffected.

## **13. Applicable Law and Jurisdiction**

13.1 The laws of the Federal Republic of Germany apply exclusively to these general terms, under exclusion of Private International Law and the U.N. Convention on Contracts for the International Sale of Goods dated 11.4.1980 (Vienna or UN Convention). The conditions and consequences of the retention of title in accordance with Paragraph 8 are subject to the law of the country where the item is stored, in so far as this states that a choice in favour of German legislation is inadmissible or ineffective

13.2 If the Buyer is a dealer as defined by the Commercial Code, a legal person under public law or Federal Special Funds, the registered place of business of APM Technica GmbH in Pürgen-Ummendorf, Germany shall be the exclusive - and international - legal venue for any dispute arising from, or in connection with, this contractual relationship. APM shall, at its sole discretion, also have the right to take action before the courts of law having jurisdiction at the place of business or domicile of the Buyer.

## **14. Severability Clause**

Should individual provisions of these terms and conditions be or become invalid in whole or in part, the validity of the contract shall not be affected. The parties shall replace the invalid or void provision with a valid provision which most closely reflects the intended economic purpose. The same applies in the case of a loophole.

Pürgen-Ummendorf, Januar 2020

APM Technica GmbH