

# General Terms of Sale and Delivery

## AEL Apparatebau GmbH Leisnig

### § 1 Scope of application/General

1. Our General Terms of Sale and Delivery (GTS) apply for all the contracts for the supply and other services with enterprises, legal entities, and special funds under the public law (Customers). The GTS cover, in particular, the contracts concerning the sale and/or the delivery of movable items regardless of the fact whether we produce the goods ourselves or purchase them from the subcontractors (§§ 433, 651 BGB Civil Code).
2. The GTS are valid also for all the prospective contracts of the type specified in sec. 1 with Customers even if they have not yet been concluded.
3. The Customer's Terms and Conditions conflicting or deviating from our GTS shall not be recognized unless their validity is expressly agreed upon in writing. Our GTS shall also apply if we, being aware of such conflicting or deviating Terms of Sale and Delivery of the Customer, unconditionally perform the delivery to the Customer or refer to a letter containing or referring to the Customer's Business Terms and Conditions.
4. Individual agreements reached with the Customer in an individual case (inclusive of collateral agreements, amendments, and alterations) shall prevail over these GTS in every case. The written contract or our written confirmation shall be decisive for the contents of such agreements.
5. Legally relevant declarations and notifications to be submitted to us following the contract conclusion (e.g., deadline settings, defect notices, recession or reduction declaration) shall be only effective in writing.
6. References to the application of the statutory regulations shall only serve for the purpose of clarification. Therefore, the statutory regulations shall apply even without such clarification, unless modified directly or expressly excluded in these GTS.

### § 2 Conclusion of contract

1. Our proposals/cost estimates are subject to alteration and non-binding. This shall also apply if we provide the Customer with catalogues, technical documents (e.g., drawings, plans, calculations, references to DIN standards), product descriptions or other documents, in electronic format as well.
2. We shall unlimitedly reserve our property rights and copyrights for the cost estimates, catalogues, technical documents (e.g., drawings, plans, accounts, calculations, references to DIN standards), product descriptions, and other documents. The documents shall be handled with proper care and must not be accessible to third parties without our prior written consent, as well as shall be returned to us immediately upon request if we have not received any order.
3. The order for the goods by the Customer shall be considered as a binding order proposal. As far as nothing else results from the order we shall be entitled to accept this order proposal within 3 weeks after its receipt.
4. The acceptance can be performed either in writing (e.g., by confirming the order) or by delivering the goods to the Customer.
5. Verbal agreements, promises, assurances and warranties in connection with the contract conclusion shall only become binding after our written confirmation.
6. All the data, such as dimensions, weights, diagrams, descriptions, schemes, and drawings in design documents, price lists etc. shall be only approximate, however, optimally determined, and shall not be binding for us. We expressly reserve all the property rights and copyrights for the diagrams, drawings, calculations, and other documents.

### § 3 Prices

1. Unless otherwise individually agreed, our prices valid upon the conclusion of the contract shall apply, both ex-works/ex-warehouse inclusive of the legal sales tax.
2. Unless otherwise agreed, the Customer shall be liable for any possible acceptance services of the acceptance agencies according to an order specification, as well as bear costs for a transport insurance, packing costs, shipping costs, customs fees, taxes, and similar expenses.
3. If we have arranged the installation or mounting the Customer shall, in addition to the compensation agreed, bear all the necessary extra costs, such as travel and transport costs and accommodation allowances, unless otherwise agreed in writing.
4. We shall reserve the right to increase the price agreed for the items not yet delivered if a change in the raw materials and/or economy situation causes certain circumstances that make the production and/or the purchase of the respective products by the time of the price setting significantly expensive. In this case, the Customer may terminate the contracts the prices of which have been increased. This right must be immediately asserted in writing after the notification of the price increase.

### § 4 Payment terms and conditions

1. The purchase price is due and shall be paid within 30 days after the invoice receipt. For the contracts with a delivery price of over € 50,000, we shall be, however, entitled to demand two installment payments - the first payment after the order confirmation, the second - upon the notification of the receipt of the main materials - in the amount of 1/3 of the purchase price. The installment payments are due and shall be performed within 30 days after the invoice receipt. All the payments shall be carried out so that we could obtain the sum upon the expiry of the payment period. The Customer shall bear the costs of the payment transfer.
2. Even in terms of any current business relationship, we shall be anytime entitled to perform a complete or partial delivery only with the prepayment. Any right reservation in this respect shall be expressed by us at the latest upon the order confirmation.
3. The discount requires the specific written consent.
4. Any discount agreed is always based on the net invoice amount for the goods (without transport costs, customs charges, packing expenses, fees, taxes, etc.).
5. When the payment period given in sec. 1 expires the Customer falls into arrears. The purchase price shall bear a corresponding legal default interest during the delay. The right for the enforcement of any other damage caused by delay shall remain reserved. Our claim for the commercial maturity interest (§ 353 HGB German Commercial Code) against merchants shall remain unaffected.
6. If, after signing the contract, we notice that our payment claim is at risk due to the insufficient financial solvency of the Customer we shall be entitled to raise an objection to unsteadiness (§ 321 BGB Civil Code) and declare all the obligations of the current business relationship with the Customer due and payable. The objection to the unsteadiness is limited to all further deliveries and services resulting from the business relationship with the Customer.
7. The Customer shall only have the right to the offset and retention if its counterclaims have been declared legally valid, are indisputable or recognized by us. The Customer shall only be entitled to the retention right if its counterclaims are based on the same contractual relationship.

### § 5 Delivery term and delay

1. The delivery term shall be agreed upon individually or specified by us upon the acceptance of the order.
2. The delivery term data is only approximate and serves only as a guidance for the contract parties. Any deviating agreements - particularly the setting of the binding delivery periods - shall be explicitly performed in writing.
3. Our supply obligation depends on correct and timely deliveries from our suppliers unless we are responsible for the incorrect and late delivery from our suppliers.
4. The observance of our delivery obligation requires timely and appropriate fulfillment of the (cooperation) obligations of the Customer, in particular, the timely receipt of the documents to be submitted by the Customer, all the necessary permits and approvals e.g. of plans, as well as the compliance with the payment conditions agreed, and other obligations of the Customer. If these requirements are not timely met the delivery periods shall be extended correspondingly; this shall not apply if the delay has been caused by us.
5. Delivery periods start with the date of our order confirmation, or earlier if all the documents/information required from the Customer to execute the contract is given and all the details of the contract are clarified.
6. The time of dispatch ex-works or ex-warehouse shall be decisive for the compliance with delivery periods and appointments. The periods shall be considered as complied with upon the notification of the dispatch readiness if the goods cannot be dispatched in due time without a default on our part.
7. Force-majeure circumstances and strikes lead to a respective extension of the delivery period. The force-majeure events include any circumstances beyond our control that render deliveries considerably difficult or impossible. In this case, it makes no difference whether these circumstances occur on our site, at the delivery plant or at the pre-supplier's. If the execution of the contract for one of the parties becomes unreasonable due to the above events, especially if the contract execution period is delayed for over 6 months this party may cancel the contract.
8. If we cannot meet the binding delivery deadlines due to reasons that we are not responsible for (unavailability of the services) we shall inform the Customer about it and, at the same time, specify a new expected delivery deadline. If the service is unavailable even within the new delivery period we shall be entitled to withdraw from the contract completely or partially; we shall promptly reimburse any service in return that has been already rendered by the Customer. In this respect, a late delivery from our suppliers shall be deemed as the unavailability of the service if we have entered into a congruent covering transaction, if neither we nor our supplier is liable or if we are not responsible for the handling in an individual case.
9. The beginning of our delivery delay shall be determined according to the statutory regulations. In every case, however, a reminder from the Customer shall be required. If we fall into a delay in delivery the Customer may, if able to prove the damage incurred by itself due to this delay, demand a lump sum for the compensation of its delay damage. The lump sum damage shall amount to 0.5 % of the net price (delivery value) per complete calendar week of the delay, the total amount shall not exceed 5 % of the delivery price of the goods delivered lately. We shall reserve the right to prove that the Customer has incurred no damages or only a smaller damage than the above lump sum.
10. Both Customer's claims for the compensation of delayed delivery damages and compensation claims in lieu of performance exceeding the limits given in sec. 9 shall be excluded in all the cases of late deliveries, even after expiry of any delivery deadline specified for us. This shall not apply in cases of wilful intent, gross negligence or due to life, limbs or health injury. In terms of legal provisions, the Customer may only withdraw from the contract if we are responsible for the delivery delay. Any alteration to the burden of proof in favour of the Customer shall not be connected with the preceding regulations.

11. The Customer shall be obliged, upon our request, to declare within an adequate period of time whether he withdraws from the contract due to the delivery delay or insists on the delivery.
12. The rights of the Customer acc. to § 13 of these General Insurance Terms and Conditions and our legal rights, in particular, if the performance obligation is excluded (e.g., due to impossibility or unacceptability of the performance and/or supplementary performance), shall remain unaffected.

### § 6 Delivery, transfer of risk, delay in acceptance

1. We mainly deliver the goods unpacked ex-works/warehouse, also being the place of performance.
2. The goods shall be packed at Customer's request and costs. Unless otherwise individually agreed, we shall be entitled to determine the method of packing at our reasonable discretion.
3. The goods may also be dispatched to another place of destination at Customer's request and costs (sale to destination). Unless otherwise agreed, we shall be entitled in this case to define the type of shipment (in particular, transport enterprise, dispatch route, dispatch method, packing).
4. According to the Packaging regulation, the transport and all other packages are non-returnable and shall become the property of the Buyer, exclusive of the pallets.
5. The delivery may only be provided with a transport insurance upon the express and written instruction of the Customer. The Customer shall bear the corresponding costs.
6. The values determined by us (dispatch weight, filling quantity) shall be relevant for weights and quantities.
7. The risk of an accidental loss and/or deterioration of the goods shall transfer to the Customer at the latest upon the transfer. In the event of the sale to the destination, the risk of an accidental loss and deterioration of the goods, as well as the delay risk shall transfer upon the dispatch of the goods to the forwarder, to the freight carrier or to the person or agency authorized for the dispatch arrangement. If the Customer is responsible for the delay in transfer or dispatch or falls into a delay in acceptance the risk of an accidental loss and/or deterioration of the goods shall transfer to the Customer.
8. If the Customer delays the acceptance, fails to act in cooperation or our delivery is delayed due to Customer's fault or request we shall be entitled to demand a compensation of the respective damages inclusive of possible extra expenses (e.g., storage costs). In this case, we shall charge a lump sum compensation in amount of 0.5 of the price of the delivery items per complete week, the total amount, however, shall not exceed 10 %, starting upon the expiry of the delivery deadline or - if no delivery deadline - upon the notification of the goods readiness for a dispatch. Our right to verify a higher damage and our legal claims (particularly, the reimbursement of extra expenses, an adequate compensation, termination) shall remain unaffected; however, the lump sum shall be charged against any further monetary claims. The Customer shall reserve the right to prove that we have incurred no damages or only a damage smaller than the above lump sum.

### § 7 Acceptance

The Customer shall not refuse to accept the deliveries due to insignificant deficiencies.

### § 8 Partial deliveries

1. We shall be entitled to perform partial deliveries in a reasonable volume. We shall be entitled to adequately exceed and undercut the scopes of delivery agreed. The indication of any „circa“-quantity shall entitle us to exceed/undercut the respective calculation up to 10 %.
2. In the case of any deviation, the invoice amount shall increase or reduce respectively.

### § 9 Call-off orders

In cases of call-off orders, the total contractual quantity shall be called off for one year, counting from the receipt of the order. The quantities that have not been called off shall be announced ready for dispatch at the latest after one year. The goods announced ready for the dispatch must be called off immediately. Otherwise, we shall be entitled at our own discretion to send the goods at Customer's costs and risk after the reminder or to store them and charge immediately. If any individual calls-off exceed the contractual quantity in total we shall be entitled to deliver extra quantity, however, not obliged. We may charge the bigger quantity with the price valid upon the call-off or delivery.

### § 10 Reservation of title

1. We shall reserve the title for the goods delivered by us (reserved goods) up to the complete settlement of all the claims against the Customer resulting from the entire business relationship. This shall apply, in particular, for balance claims arisen in terms of the business relations (balance reservation) and for claims made unilaterally by the insolvency administrator when choosing the performance. The reservation of title is limited to prospective and/or conditional claims. The balance reservation ceases ultimately upon the settlement of all the claims outstanding at the time of payment and covered by the balance reservation.
2. The Customer is obliged to carefully handle the reserved goods, in particular, to insure the goods against the fire, water, and theft at its own costs, with the insured sum being adequate to cover the replacement value. If any maintenance and inspection services are required the Customer shall timely carry them out at its own costs.
3. The goods subjected to the reservation of title must be neither pledged to third parties nor assigned as a security until the full payment of the secured claims. In the event of seizures or other interventions by third parties, the Customer shall immediately inform us in writing so that we can file a lawsuit acc. to § 771 ZPO Code of Civil Procedure. If the third party is not able to reimburse our judicial and extrajudicial costs of the lawsuit acc. to § 771 ZPO Code of Civil Procedure the Customer shall be liable for the resultant failure.
4. The Customer shall be entitled to resell the reserved goods in terms of the normal business course; however, the Customer assigns to us in advance any claim to the amount of the invoice total (incl. of VAT) of our claim which the Customer may have against its clients or third parties, i.e. irrespective of whether the purchase items have been resold without or after the processing. We shall accept such assignment. The Customer shall be authorized to collect the assigned claim even after the assignment. Our right to collect the claim ourselves remains thereby unaffected. We shall, however, be obliged to refrain from collecting the claim as long as the Customer fulfills its payment obligations arising from the proceeds collected, is not in default of payment and has not particularly filed a petition for the opening of the composition or insolvency proceeding or payments have not been suspended. Otherwise, we may demand that the Customer discloses the assigned claims and respective debtors to us, provide us with all the details required for the collection, submit the related documents to us and notify its debtors (third parties) about the assignment.
5. Any processing or reconstruction of the reserved goods shall be performed for us as a manufacturer in terms of § 950 BGB Civil Code, without our legal binding. If the purchase item is processed with other objects not belonging to us we shall acquire the joint ownership of the new item based on the ratio to the value of the reserved item (invoice total incl. of VAT) and other compounded objects at the time of compounding. Provided that the compounding is made in such a manner that the item of the Customer is considered as the main component it shall be agreed that the Customer transfers to us a proportionate joint ownership. With the due diligence of a proper businessman, the Customer shall retain the resulting sole ownership or co-ownership on our behalf. The new item shall be considered (in this respect) as the reserved goods.
6. To secure our claims against him, the Customer shall also assign claims against third parties arisen due to the connection of the reserved goods to the property. We shall accept such assignment.
7. We shall be entitled to take back the reserved goods if the Customer falls into arrears. For this purpose, we shall be also possibly authorized to enter the Customer's premises. The right of return shall

apply even if, after signing the contract, it is evident that our payment claim arisen out of this and other contracts with the Customer is at risk due to its insufficient solvency. The return of goods shall not be deemed as the withdrawal from the contract. The provisions of the Insolvency Regulation shall remain unaffected.

8. At the Customer's request, we are obliged to release the securities we are entitled to as far as the realisable value of our securities exceeds the claims to be secured inclusive of extra claims (interests, costs etc.) by more than 10 %; the choice of the securities to be released is within the scope of our responsibility.

### § 11 Warranty

1. Unless otherwise stipulated below, the statutory regulations shall apply for the rights of the Customer in cases of quality and title deficiencies. In all the cases, the special statutory provisions remain unaffected in the event of a final delivery of the goods to the user (supplier regress acc. §§ 478, 479 BGB Civil Code).
2. Customer's claims for defects require that the Customer properly complies with its obligation of inspection and defect notice according to § 377 HGB German Commercial Code. Such notice of quality defects shall be immediately carried out in writing. If the quality defects cannot be detected by the most accurate inspection within this period the notice shall be made immediately after the detection of defects. The notice shall be considered immediate if it is carried out within 7 days after the delivery (sec. 2) or after the detection (sec. 3). Any possible processing and treatment, in this case, shall be immediately suspended. Irrespective of the inspection and notice obligation specified in section 1, the Customer shall notify about the evident defects in writing (inclusive of the incorrect and short delivery) within two weeks after the delivery. If the Customer fails to implement its inspection and notice obligation we shall not be liable for the defects that have not been detected. Our liability for defects shall be mainly based on the agreement achieved on the quality of goods. Product descriptions marked as binding and included in the contract shall only be considered as an agreement concerning the goods quality. If the quality has not been agreed upon, the judgement whether a defect is present or not shall be made on the basis of the statutory regulations.
3. In the case of an insignificant decrease in value or fitness of goods, the warranty for the quality defects shall be excluded. This shall particularly apply only in cases of an insignificant deviation from the quality agreed, insignificant impairment of serviceability, natural wear or damages, incorrect or negligible handling after the transfer of risk, excessive loads, unsuitable operating resources, deficient construction works, improper construction ground or any other external influences that have not been detected, neither after the signing the contract nor by means of non-repeatable software errors. If any unauthorized modifications or repair works are performed by the Customer or third parties, there shall be no right to any warranty claims for these and further resulting consequences.
4. In the case of a timely legitimate notice of defects, we may, at our option, remove the defect or deliver a defect-free item. In the event of the defect removal or substitute delivery, we shall be obliged to bear all the expenses necessary for the supplementary performance, in particular, transport, travel, work and material costs (not dismantling and installation costs) as long as these are not increased by the fact that the purchase item has been delivered to a place other than the place of performance. The above obligation shall only apply if a defect actually exists. If the Customer's claim for damage removal proves to be illegitimate, we may demand from the Customer to reimburse the costs resulting therefrom.
5. We shall be entitled to make the owed supplementary performance dependent on the fact that the Customer pays the due purchase price. The Customer is, however, entitled to withhold a part of the purchase price reasonable in the ratio to the defect.
6. The Customer shall provide us with the time and opportunity necessary for the supplementary performance, especially to hand over the rejected goods for the inspection. In the case of the substitute delivery, the Customer shall return the defective item to us according to the statutory regulations. The supplementary performance shall imply neither a disassembly of the defective item nor a new installation unless we were responsible for the installation from the very beginning.

7. In the urgent cases (e.g. if the operational safety is at risk or to avoid disproportionate damages), the Customer shall have the right to remove the defect itself and demand from us a compensation of damages reasonably required for this purpose. We shall be immediately informed about such self-remedy, if possible, even in advance. The right of self-remedy shall not apply if we would have been entitled to refuse the respective supplementary performance according to the statutory regulations.
8. If the supplementary performance fails, the Customer may, at its option, reduce the purchase price or withdraw from the contract after setting the deadline which is not adhered to. If the defect is insignificant, the Customer shall have the right only to reduce the purchase price.
9. We shall provide no warranty for the corrosion resistance of the applied materials, for any specific application or suitability of the goods unless otherwise expressly agreed in writing. In the rest of the cases, the Customer shall bear the risk of use and application. In particular, we shall give no warranty in cases of any vibrations, oscillations, contamination and wastes due to incorrect maintenance and/or installation conditions.
10. The data referring to the heating capacity contained in our order confirmation or, if missing, in our proposal shall be relevant for the heat exchangers; this data shall apply for clean surfaces unless otherwise specified. The values of consistent pressure loss are approximate; in this case, they shall apply only to the steady flow and clean surfaces. The same shall apply for the other technical data.
11. Claims for a supplementary performance lapse in 12 months after the statutory limitation period has begun; the same applies for the withdrawal or reduction. This period shall not apply if the law acc. to §§ 438 sec. 1 No. 2 (Construction works and Objects for Construction work), 479 sec. 1 (Right of recourse) and 634 a sec. 1 No. 2 (Construction defects) stipulates longer periods in cases of intention, fraudulent concealment of the defect, and failure to comply with a quality guarantee. The statutory regulations concerning the expiry suspension, interruption, and recommencement of the periods shall remain unaffected.
12. Customer's claims for the damage compensation or compensation of futile expenditures shall only be valid under the provisions of § 13 and otherwise be excluded.

#### **§ 12 Liability for the absence of assured properties**

1. The assured properties shall only include those properties that have been explicitly specified in our contract or can be clearly identified in the contract as assured.
2. If the goods delivered by us lack the assured properties, we shall grant the warranty according to § 11.

#### **§ 13 Other liability**

1. Unless otherwise stipulated by these General Insurance Terms and Conditions inclusive of the following provisions, we shall be liable in the case of a violation of contractual and non-contractual obligations according to the relevant statutory regulations.
2. Irrespective of any legal basis, we shall be liable for the wilful intent and gross negligence. In cases of ordinary negligence, we shall only be liable
  - a) for damages resulting from death, physical injury or harm to human health,
  - b) for damages resulting from the breach of an essential contractual obligation (obligation the implementation of which makes the proper execution of the contract possible and on the observance of which the contractual partner regularly relies and may rely); in this case, our liability shall be, however, limited to foreseeable and typically occurring damages.
3. The liability restrictions given in sec. 2 shall not apply if we have intentionally concealed a defect or have guaranteed the quality of the

goods. The same shall apply to the claims of the Customer according to the Product liability law.

4. The Customer may only withdraw from the contract or terminate the contract due to a breach of an obligation not constituted by a defect if we are responsible for this breach. Any free termination right of the Customer (in particular, acc. to §§ 651, 649 BGB Civil Code) shall be excluded. In other cases, the statutory regulations and legal consequences shall apply.

#### **§ 14 Reservation of performance right**

1. The performance of the contract is subject to the condition that the performance is not prevented by any obstacles due to German, American and other applicable national, EU or international regulations of the foreign trade law, as well as by embargo or other sanctions.
2. The Customer is obliged to submit all the information and documents required for the export, shipment, and import.

#### **§ 15 Place of performance and jurisdiction, applicable law**

1. Unless otherwise stipulated in the contract, our registered office shall be considered a place of performance and payment.
2. These GTS and all the legal relations between us and the Customer are subject to the legislation of the Federal Republic of Germany; the application of the International uniform law, in particular, the UN Sales Convention is excluded. The conditions and effects of the reservation of title acc. to § 9 are subject to the legislation at the respective place of storage of the items if the choice of German law would be inadmissible or invalid.
3. If the Customer is a registered merchant in terms of HGB Commercial Code, legal entity or a special fund under the public law, our registered office in Leisnig shall be considered as an exclusive and international place of jurisdiction for all the disputes directly or indirectly resulting from the contractual relationship. We shall be, however, entitled to file a lawsuit in the common place of jurisdiction of the Customer.

#### **§ 16 Partial invalidity**

Should any part of these General Insurance Terms and Conditions be or become invalid, the validity of the rest of the provisions and the agreement shall remain unaffected. The invalid provision shall be replaced by a regulation that is allowable and most closely approximates to the intended economic purpose.