

GENERAL TERMS AND CONDITIONS OF BUSINESS AND DELIVERY AP&P EXPORT & CONSULTING GMBH

1. Applicability

1.1. These General Terms and Conditions of Business and Delivery ('GTC') apply to contracts between AP&P Export & Consulting GmbH ('AP&P') and all natural and legal persons ('Clients'), especially companies in the sense of Section 1 of the Austrian Commercial Code (UGB).

1.2. The contractual relationship between AP&P and the Client is governed exclusively by these GTC and all legal actions and agreements are subject to these GTC. All deviating terms and conditions of business, sale and delivery of the Client are expressly rejected. These will not be recognised at any time or in any way. Therefore, these GTC apply on an exclusive basis. The Client expressly agrees to this. Any acknowledgements of the Client that refer to deviating terms and conditions are hereby rejected. If individual clauses of the GTC of AP&P and the Client should contradict one another, the relevant statutory regulations apply.

1.3. General terms and conditions of the Client are only binding for AP&P if recognised in writing by the management.

1.4. The GTC of AP&P are available in full online at www.app.co.at and can be downloaded free of charge.

2. Quotations

2.1. AP&P reserves all ownership and exploitation rights to quotations, technical documents, schedules of services and other documents. The Client may only disclose the documents to third parties with prior consent and must return them to AP&P immediately if prompted to do so.

3. Offers and conclusion of contract

3.1. AP&P makes offers exclusively in writing, by email or by fax; such offers are to be considered non-binding. An offer may only be accepted with regard to the full delivery or service.

3.2. Unless they are already based on a binding offer submitted by AP&P, contracts or orders submitted to AP&P require written confirmation from AP&P for a contract to come into existence.

3.3. Promises, assurances, guarantees and agreements deviating from these GTC in connection with the conclusion of a contract are only legally binding in connection with the Client once confirmed in writing by AP&P.

4. Prices, terms of payment, offsetting, maturity and retention

4.1. The prices are ex works, do not include packaging and are subject to VAT at the applicable rate.

4.2. Unless agreed otherwise, half of the remuneration is payable when the contract is awarded and half upon delivery. Entitlement to a discount requires the express written consent of AP&P.

4.3. Payments owed to AP&P must be paid immediately, in full and in euros. If the Client does not object in writing to invoices of AP&P within one month of the invoice date, they shall be considered accepted and acknowledged in full by the Client.

4.4. In the event of default, AP&P is entitled to charge default interest at a rate of 9.2% above the base rate.

4.5. If, between the conclusion of the contract and the rendering of the services, salary costs and/or material procurement costs should change, be it due to legislation, ordinance, a collective bargaining agreement, articles of association, official recommendation, other official measures or changes in global market prices, the relevant prices shall increase or decrease accordingly unless the awarding of the contract and rendering of the services take place within two months of one another.

4.6. Even if fixed prices have been agreed, AP&P is entitled to charge the Client for any additional work if the execution of the contract is delayed for reasons not due entirely to intent or gross negligence on the part of the Client. In particular, this is possible if the Client has the contract executed through non-contractual partial deliveries, if contractual objects are withdrawn for any reason, if change requests of the Client are implemented or if the scope of services changes.

4.7. AP&P is entitled to pass on all increases in freight and delivery charges, insurance premiums and the like occurring after the conclusion of the contract to the Client. The same applies to customs, duties, taxes and the like that directly or indirectly increase the price.

4.8. The Client must ensure that old material is disposed of properly and in an environmentally friendly manner. If AP&P is engaged to dispose of such material in a separate contract, an agreed fee must be paid. If no remuneration agreement is concluded, the Client must pay AP&P a reasonable fee instead.

4.9. AP&P is entitled to reasonable remuneration for deliveries and services that are required by the Client and not covered by the original contract.

4.10. The Client can only offset with claims against AP&P if the claims have been recognised in writing by AP&P or established by final legal judgement.

4.11. Unless a shorter limitation period or period allowed for proving claims is provided for by law, all claims of the Client against AP&P will become time-barred if they are not filed in court within six months.

4.12. The Client is not entitled to withhold payments to AP&P on the grounds that the contractual object contains a defect that does not significantly hinder use of the contractual object and, in particular, that can be remedied by improvement or replacement of the object.

5. Retention of title

5.1. All deliveries and goods are subject to retention of title. The delivered goods shall remain the property of AP&P until the full satisfaction of all claims against the Client under the business relationship.

5.2. The Client is obliged to store the goods subject to retention of title separately and insure them sufficiently against all conventional risks, especially theft and fire. The Client hereby assigns all claims against the insurance companies to AP&P.

5.3. If the goods subject to retention of title are combined or mixed with third-party items, AP&P shall become a joint owner in line with the statutory provisions. If the goods are combined or mixed in such a way that the items not belonging to AP&P are to be considered the main item, the Client shall transfer proportionate ownership to AP&P. The same applies to the new goods created by processing as to the goods delivered subject to retention of title.

5.4. If the goods subject to retention of title are re-sold, the Client hereby assigns its claims from the re-sale in the amount of the final invoice amount including VAT, regardless of whether or not the delivered goods were processed before they were re-sold. AP&P hereby accepts the assignments. If the goods subject to retention of title that are re-sold are the joint property of AP&P, the assignment of claims is limited to the amount corresponding to the proportion of the joint ownership of AP&P.

5.5. With regard to contracts in which the delivered goods are subject to retention of title, AP&P is entitled to withdraw from the contract on the basis of which the goods were delivered if the buyer does not pay the contractual purchase price for the goods and fails to meet a reasonable subsequent deadline, or if the Client breaches one of its duties in connection with the goods subject to retention of title.

6. Performance and delivery deadlines

6.1. Expressly binding agreements notwithstanding, any delivery and completion periods and deadlines are to be considered rough approximations.

6.2. For AP&P to meet its assured delivery deadlines, the Client must punctually submit all documents, necessary licences and authorisations, especially of plans, and adhere to the agreed terms of payment and other obligations. If the Client fails to meet these requirements punctually, the deadlines shall be extended reasonably. This does not apply if AP&P is responsible for the delay.

6.3. If a failure to meet the deadlines assured by AP&P is due to force majeure (such as mobilisation, war, terrorism, unrest, strikes or lockouts), viruses or other third-party attacks against the IT system of AP&P, the deadlines shall also be extended reasonably, provided that the obstructions – occurring in spite of due care having been taken to implement protective measures – are due to Austrian, American or other relevant national, EU or international foreign trade regulations, other circumstances for which AP&P is not responsible, or unpractical or incorrect deliveries to AP&P.

6.4. Unless agreed otherwise, deliveries shall be made ex stock to the delivery address specified by the Client. The delivery address can no longer be changed once the agreed price has been paid. Nevertheless, the Client is free to agree a change of delivery address with the carrier specified by AP&P at its own risk.

6.5. AP&P is entitled to carry out partial deliveries. If it does carry out partial deliveries, AP&P shall bear the increased delivery costs.

7. Transfer of risk, transportation risk and insurance

7.1. If the Client is an entrepreneur, the risk of accidental destruction and degradation of the goods shall transfer to the Client upon the handover of the goods or, in the case of a contract of sale involving the carriage of goods, upon the transfer of the goods to the carrier or forwarding agent. If the Client is a consumer, the risk of accidental destruction and degradation of the goods shall transfer to the Client upon the handover of the goods, even in the case of a contract of sale involving the carriage of goods. If the Client defaults on acceptance, the goods will still count as having been handed over.

7.2. The goods will only be covered by goods in transit insurance at the express request of the Client. The Client must bear the resulting costs.

7.3. AP&P shall select the means of transportation and the route.

8. Warranty

8.1. Negligible deviations between the goods delivered by AP&P and the goods ordered do not represent defects if AP&P has not made any assurances or issued a warranty as to the condition of the goods and the deviations do not limit or impede the contractual use of the goods.

8.2. Defects in the delivered goods that the Client discovered or could have discovered through an examination upon delivery (in the normal course of business) must be reported to AP&P in writing immediately or within no more than 10 days of the handover. Likewise, concealed defects must be reported within 10 days of being noticed. Section 377 of the UGB applies. If a defect is not reported immediately within this period, the goods shall be deemed contractual and accepted.

8.3. In the event of a defect, AP&P is initially entitled to either deliver a replacement or carry out subsequent improvement. If these options should fail twice, the Client is entitled to a reduction in price or to withdraw from the contract. If the Client withdraws from the contract following a failed replacement delivery or subsequent improvement, the Client will not be entitled to additional compensation due to the defect.

8.4. The remediation of a defect reported by the Client does not represent acknowledgement on the part of AP&P. If the allegations of defects by the Client prove unfounded, the Client is obliged to compensate AP&P for the expenses incurred.

8.5. In particular, AP&P has no warranty claim for structural defects in custom designs manufactured to specifications of the Client, for defects caused by natural wear or improper handling, or for conventional deviations in dimensions caused by technology.

8.6. For entrepreneurial Clients, the warranty period for services of AP&P is 12 months as of the handover. Unless agreed otherwise (in the form of a formal acceptance, for example), the handover date is the delivery date.

8.7. If the Client is an entrepreneur, it must always provide evidence that the defect was present at the moment of the handover.

8.8. The statutory warranty provisions apply with regard to consumers.

9. Compensation

9.1. As a rule, the liability of AP&P is limited to damage caused through intent or gross negligence on the part of AP&P or its vicarious agents. The Client must provide evidence of intent or gross negligence on the part of AP&P.

9.2. AP&P can only be held liable for ordinary negligence in the event of injury to life, limb or health, or if it has breached a material contractual obligation. A material contractual obligation is an obligation that must be fulfilled before the contract can be duly executed and on the fulfilment of which the Client can normally rely. This does not affect product liability claims of the Client.

9.3. AP&P cannot be held liable for damage caused by improper handling or storage, overloading, failure to follow operating instructions or improper installation, operation, maintenance or repair by the Client or third parties, or for natural wear, provided that this was the cause of the damage. This disclaimer also covers claims filed against employees, representatives and vicarious agents of AP&P due to damage they cause to the Client.

9.4. If AP&P is liable for breaches of duty on the grounds of ordinary negligence, its liability is limited to the typical damage for that type of contract foreseeable as at the conclusion of the contract or as at the breach of duty at the latest. This does not apply in the event of injury to life, limb or health.

9.5. Claims of the Client to compensation for default on the part of AP&P are limited to 10% of the agreed net remuneration unless AP&P has acted with intent or gross negligence. Generally, the liability of AP&P is limited to the maximum amount of any active liability insurance policy.

9.6. Claims for compensation must be filed in court by the Client within six months of the Client becoming aware of the damage, otherwise they will lapse.

10. Condition of the goods and product liability

10.1. As a rule, only the product description of the manufacturer is considered a description of the condition of the goods with regard to entrepreneurs. Public statements, sales pitches or advertisements of the manufacturer do not represent contractual assurances of the condition of the goods. The same applies to technical descriptions and information relating to colour, shape and size in catalogues, brochures and price lists of AP&P.

10.2. The rendered services and the delivered goods, equipment and systems of AP&P only provide the level of safety that can be expected on the basis of approval regulations, operating instructions or other regulations on maintenance and handling, especially with regard to scheduled inspections of equipment and systems or information provided for any other reason.

10.3. AP&P provides no specific warranty with regard to the condition of the goods. If the manufacturer of the products has issued a warranty, the claims of the Client are subject to the warranty conditions of the manufacturer and can only be filed against the manufacturer.

11. Place of fulfilment, applicable law, place of jurisdiction and severability clause

11.1. Unless provided for otherwise by these GTC or the order confirmation, the place of fulfilment for all mutual obligations is the registered office of AP&P.

11.2. All legal relationships between AP&P and the Client arising from or in connection with this Agreement are subject to Austrian law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG). The choice of law for consumer transactions is determined by the relevant statutory provisions.

11.3. The place of jurisdiction for all disputes between AP&P and the Client arising from the business relationship is the registered office of AP&P if the Client is an entrepreneur or, at the option of AP&P, the place of general jurisdiction of the Client or a place of special jurisdiction. If the Client is a consumer, this person can file lawsuits against AP&P in Austria or at the courts of the signatory state in which this person resides. If, upon the conclusion of the contract, the place of residence or habitual abode or place of employment of the consumer is in Austria, the Client can only file claims against AP&P in Austrian courts.

11.4. If any individual provision of these GTC should become ineffective, this shall not affect the effectiveness of the remaining provisions. The ineffective provision is to be supplemented by a provision that simulates its economic and legal purpose.

12. Data protection

12.1 AP&P always process personal data in accordance with the applicable data protection regulations.

12.2 The customer confirms receipt of the AP&P information sheet on the data protection declaration, which contains all the information required for processing customer data and the customer's rights in this regard.

12.3 The information sheet on the data protection declaration, which contains all the information required for processing data and rights, can also be consulted and accessed at any time at <https://www.app.co.at/datenschutzerklaerung/>

12.4 The customer agrees that his data may be processed in AP&P's EDP system and transferred to third parties in the course of the execution of the contract. This consent can be revoked at any time. Corresponding information on revocation can be found in AP&P's data protection declaration.

Please duly note that the legally binding version of this GTC is the current German version: <https://www.app.co.at/datenschutzerklaerung/>