

# General Terms and Conditions of Sale of APWORKS GmbH

## 1 Definitions

- 1.1 Vendor refers to APWORKS GmbH
- 1.2 Customer refers to the party entering into agreement for the purchase of goods and/or services from APWORKS GmbH

## 2 Application

- 2.1 These terms and conditions of sale shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing.
- 2.2 These terms and conditions of sale shall also govern all future transactions between the parties and shall also apply if we perform delivery despite our knowledge of differing or contrary terms.
- 2.3 These terms and conditions of sale shall only apply vis á vis merchants, governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code).

## 3 Orders, Specifications

- 3.1 Insofar as the order constitutes an offer within the meaning of § 145 BGB we are entitled to accept the offer within two weeks.
- 3.2 Any specification, sales literature, quotation shall be strictly confidential and must not be made available by the Customer to third parties.
- 3.3 The Customer shall be responsible for ensuring the accuracy of any order submitted to him. The Customer shall provide us with any necessary information relating to the goods within a sufficient time to enable us to perform the contract in accordance with its terms.
- 3.4 If the goods are to be manufactured or any process is to be applied to the goods by us in accordance with a specification submitted by the Customer, the Customer shall indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or

intellectual rights of any other person which results from our use of the Customer's specification.

- 3.5 Any documents and programs submitted to the Customer during the course of the contract negotiations shall remain our property and shall be returned to us in case that a contract is not concluded.

## 4 Prices, Payment, Offset

- 4.1 Prices are ex works (Incoterms EXW), exclusive of the respective statutory VAT and exclusive of costs for packaging, except as otherwise expressly agreed upon.
- 4.2 The purchase price is due and payable net within 30 days from the date of the invoice. From the due date interest in the amount of 8% above the respective base interest rate p. a. shall accrue. We reserve all rights to claim further damages for delay.

## 5 Offset, Retainer

- 5.1 The Customer shall be entitled to offset only insofar as the Customer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgment. The Customer is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

## 6 Delivery, Shipment

- 6.1 Delivery is conditioned upon timely and proper performance of all duties of the Customer. Defences based on non-performance of the contract are reserved.
- 6.2 In case of default in acceptance or other breach of duties to cooperate by the Customer we are entitled to claim any resulting damage including but not limited to additional expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the Customer at the time of such default or breach of duty to cooperate.

## 7 Passing of Risk, Shipment

- 7.1 If the Customer demands shipment of the goods the risk of loss or damage to the goods passes to the Customer upon dispatch.

## 8 Retention of Title

- 8.1 We retain title to the goods until receipt of all payments in full. In case of breach of contract by the Customer including, without limitation, default in payment, we are entitled to take possession of the goods.
- 8.2 The Customer shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.
- 8.3 As long as the purchase price has not been completely paid, the Customer shall immediately inform us in writing if the goods become subject to rights of third persons or other encumbrances.

## 9 Warranty

- 9.1 The Customer shall examine the goods as required by German Law (§ 377 of the German Commercial Code) and in doing so check every delivery in any respect.
- 9.2 We warrant that the delivered items will be free from defects in material and workmanship, conform to applicable specifications, and, to the extent that detailed designs have been furnished by the Customer, will be free from design defects.
- 9.3 Our warranty as per subsection (8.2) above is given subject to the following conditions:
- 9.3.1 We shall not be liable in respect of any defect in the goods arising from any design or specification supplied by the Customer;
- 9.3.2 We shall not be liable if the total price for the goods has not been paid by the due date for payment;
- 9.3.3 Our warranty does not extend to parts, materials or equipment manufactured by or on behalf of the Customer unless such warranty is given by the manufacturer to us.
- 9.4 We shall not be liable for the goods being fit for a particular purpose unless we expressly guaranteed the fitness for that particular purpose.
- 9.5 Our warranty does not cover defects in or damage to the products which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application.
- 9.6 Our discharge from liability will be void if a defect results from a gross negligent or intentional breach of contract on our part or if we will be held responsible for the breach of any further essential contractual

obligation.

- 9.7 Warranty claims shall be time barred after 12 months of the passage of risk.

- 9.8 In case of nonconformity of the goods the Customer is entitled to alternative performance in the form of remedy of the defect or delivery of conforming goods. If such alternative performance has failed, the Customer is entitled to reduce the purchase price or to withdraw from the contract.

## 10 Liability

- 10.1 In case of intent or gross negligence on our part or by our agents or assistants in performance we are liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent the breach of contract is unintentionally our liability for damages shall be limited to the typically predictable damage, up to a maximum amount of Euro 250,000 per each damaging event.
- 10.2 Our liability for culpable damage to life, body or health as well as our liability under the Product Liability Act shall remain unaffected.
- 10.3 Any liability not expressly provided for above shall be disclaimed.

## 11 Compliance with Laws and Anti-Corruption

- 11.1 Customer represents and warrants that, in relation to the activities or transactions contemplated by this Agreement, neither it nor its respective executives, employees, agents or any individuals or companies acting on its behalf, have violated or will violate, or cause any Party to violate, any Laws.
- 11.2 In particular, Customer, its executives, employees, agents and any individuals or companies acting on its behalf shall comply with any Applicable International Anti-Corruption Laws, including by refraining from:
- 11.2.1 Offering, promising, arranging for or paying, either directly or indirectly, anything of value (including but not limited to monies, gifts and entertainment and special favours) to any individuals, including Public Officials, for the purpose of improperly inducing that individual to perform or fail to perform his/her official duties, or to assist any Party in obtaining business, retaining business or securing any

- improper advantage.
- 11.2.2 Offering or paying Facilitation Payments.
- 11.2.3 Engaging in any action or allowing any such action to take place which could, as a result of the enforcement of the Applicable International Anti-Corruption Laws: (a) render the Vendor, its representatives, employees, any Party, or shareholders liable; or (b) lead to the commencement of investigations or legal or administrative proceedings against the Vendor, its representatives, employees, any Party, or shareholders in any jurisdiction.
- 11.3 Customer represents and warrants that unless disclosed to Vendor in a separate written statement, neither Customer nor any of its affiliated persons (defined as its directors, shareholders, officers, executives, employees, or agents) are Public Officials nor have they been in the last five years nor are Sanctioned Persons. If at any time during the term of this Agreement, Customer and/or any Affiliated Person is named, appointed, or otherwise becomes a Public Official or a Sanctioned Person, Customer will notify Vendor in writing within three (3) business days. If, in the opinion of Vendor, such changes substantially increases the risks related to its relationship with Customer, such changes will constitute grounds for termination of this Agreement pursuant to clause 20 Termination of Services.
- 11.4 Customer represents and warrants that neither it nor its executives, directors, or employees is a Sanctioned Person nor have been investigated, prosecuted, convicted of, pleaded guilty to, or charged with any offense involving fraud, corruption, bribery, sanctions, export control or any other financial crime in any jurisdiction or country in the preceding five years, unless disclosed to Vendor in a separate written statement.
- 11.5 Customer shall not employ any sub-agent, person, entity or representative to perform any duties or obligations of Customer under this Agreement, perform any act which Customer cannot perform pursuant to this Agreement or which would breach this Agreement without the prior written agreement of Vendor.
- 11.6 Customer warrants that it has not and will not pay or tender, directly or indirectly, any commission, finder's or referral fee, or any similar compensation to any person or firm in connection with the Work rendered to or its activities on behalf of the Vendor without the prior written agreement of Vendor.
- 11.7 Customer warrants that in respect of any business for which it provides or may have provided to the Vendor, Customer has not paid, offered, or agreed to pay any political contributions or donations.
- 11.8 Customer agrees that full disclosure of information relating to a possible violation by Customer of applicable Law that could create liability for Vendor, including a violation of Applicable International Anti-corruption Laws, may be made by Vendor at any time and for any reason to relevant government authorities unless prohibited by applicable law.
- 11.9 Customer warrants that it fully understands these provisions relating to its business conduct and will ensure that it and all Affiliated persons fully understand and comply with these provisions.
- 11.10 Customer shall as soon as practicable notify Vendor of any investigation or proceeding formally initiated by a public authority relating to an alleged violation of Laws by such Customer or its officers, directors, executives, employees, agents or any individuals or companies acting on its behalf, concerning operations and activities under this Agreement. Customer shall use reasonable efforts to keep Purchase informed as to the progress and disposition of such investigation or proceeding, except that such Customer shall not be obligated to disclose to Vendor any information that would be considered legally privileged.
- 11.11 Notwithstanding anything in this Agreement to the contrary, in the event that Customer has materially breached any of the provisions in this agreement, committed a material violation of any applicable Laws in connection with the work governed by this Agreement, a Party becomes a Sanctioned Person or performance of a Party's obligations under the Agreement would constitute a breach of Sanctions and Export Control Laws Vendor may request that Customer commence and diligently pursue remedial action.
- 11.12 For the purposes of this section, a material violation of a Law shall mean a violation or breach that was deliberately or with deliberate indifference approved, authorised, or committed by a senior official of Customer.
- 11.13 If the requested remedial action is not pursued by Customer within fifteen (15) days or another agreed upon time or under the Laws it is not possible to implement remedial action, then Vendor will be entitled and authorised to terminate this Agreement

in accordance with clause 20.

- 11.14 Customer shall also indemnify and hold harmless Vendor for any fines, penalties, legal and professional fees, or other direct damages proximately caused by Customer's violation.

## 12 Export Control

- 12.1 The Parties shall comply with the United States of America ("U.S."), European Union ("E.U.") and any other applicable national export control, sanctions and embargoes laws and regulations ("Export Regulations") and acknowledge that diverting from such Export Regulations is prohibited.
- 12.2 The Customer must not provide any Technical Information listed in any of the applicable Export Regulations Governmental lists.
- 12.3 In case export authorisations are required, the Customer is responsible for obtaining any and all export authorisations and providing the Vendor with copies of aforementioned authorisations as well as any approval documents, provisos and limitations applicable to the transaction.
- 12.4 The Customer represents that, at the date of signature of the Contract, the Customer is not directly or indirectly subject to any sanctions lists or located in a comprehensive embargoed country according to Export Regulations.
- 12.5 In the event that the Customer becomes, directly or indirectly subject, to sanctions or embargo lists according to Export Regulations and/or the performance of a Party's obligations under this Contract would constitute a breach of Export Regulations, the Vendor will be entitled to:
- 12.5.1 suspend performance of its obligations under the Contract without prior notice and with immediate effect; and/or
- 12.5.2 terminate the Contract/Order with a prior written notice and with immediate effect;
- In either case, the Vendor shall bear no liability arising from such suspension or termination and retains all rights to legal remedies, including but not limited to claims for liquidated damages.
- 12.6 Notwithstanding any other provision of the Contract or the Order, the Customer shall be liable for all damages, losses, costs and expenses incurred by the Vendor as the result of the Customer's non-compliance

with its obligations under this Article 12 "Export Control"

## 13 Applicable law, Jurisdiction

- 13.1 These terms and conditions shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods).
- 13.2 Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Munich, Germany.
- 13.3 Should any one of the above provisions be or become void, the validity of the remaining provisions hereof shall remain unaffected.

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