

# GENERAL TERMS OF DELIVERY



of Anton Paar Southern Africa (Pty) Ltd

Gazelle Close, Anton Paar Building Corporate Park South, Old Pretoria Road, Randjiesfontein, PO Box 50471  
Randjiesfontein 1683, 1685 Midrand, SOUTH AFRICA

## 1 Scope

- 1.1. Unless otherwise agreed in writing, these General Terms of Delivery ("Terms") shall exclusively govern all sales and deliveries to the entity identified in the Order ("Buyer") made by or on behalf of Anton Paar Southern Africa (Pty) Ltd ("Anton Paar").
- 1.2. Any deviation from these Terms is only valid and binding if it is expressly agreed in writing by Anton Paar. Buyer's general terms of purchase or any similar unilateral terms of Buyer do not become part of the Order, even if they are referred to or contained in Buyer's order that is accepted by Anton Paar.

## 2 Conclusion of contract

- 2.1. Anton Paar's quotations are estimates without legal implications. No rights can be derived from statements or pictures appearing in catalogues, websites, folders, promotional literature and the like. Oral statements are binding only if specifically confirmed by Anton Paar in writing.
- 2.2. When the Buyer wishes to place an order for Anton Paar's products, it shall submit an order or other request to Anton Paar. Such order shall be treated as an offer by the Buyer to contract with Anton Paar, but shall not be binding on Anton Paar until accepted in accordance with clause 2.3.
- 2.3. If Anton Paar, at its discretion, accepts the Buyer's purchase order with or without amendment, it shall issue an order confirmation to the Buyer. The contract is concluded (comprising these Terms and the specific terms set out in the order confirmation) upon the issuance of such order confirmation or conclusively by means of Anton Paar's performance ("Order"). Oral or written statements shall only be binding if expressly confirmed in the order confirmation.
- 2.4. Amendments of or additions to the Order require Anton Paar's specific written consent. Orders, order confirmations (contracts) as well as amendments to them and other written confirmations are also valid if submitted electronically.

## 3 Prices

- 3.1. Prices stated in the Order are calculated EXW Anton Paar (above address) (Incoterms 2010) and to avoid doubt, only cover the products and/or services, including standard packaging, and exclude freight, insurance, value added tax, customs, import or other duties and any withholding taxes levied in respect of delivery, unloading and subsequent handling, maintenance and pre- or after sales services. Buyer will be

liable for such additional costs, expenses and charges.

- 3.2. Packaging materials will be removed by Anton Paar only by express agreement and at the Buyer's risk and cost.
- 3.3. Contract prices are based on the time of the first quotation. If costs or other price variants have increased by the time of delivery or if the order placed is not in accordance with the quotation, Anton Paar reserves the right to adjust the Order prices accordingly.

## 4 Payment

- 4.1. Unless agreed otherwise, the Buyer shall effect payment to Anton Paar within 30 days from the date of the delivery. Payments shall be made by EFT to Anton Paar's bank account specified on the applicable invoice free of charges or deductions for Anton Paar.
- 4.2. If the Buyer fails to make any payment to Anton Paar by the due date, Anton Paar may without prejudice to its other rights:
  - a) charge interest on the overdue amount at the rate of 1.25% per month, such interest accruing on a daily basis from the due date until the date of actual payment of the overdue amount; and/or
  - b) suspend performance of its obligations until full payment has been made; and/or
  - c) claim compensation from the Buyer for all costs and expenses arising from the delay in payment.
- 4.3. Title to the products will only pass to the Buyer upon receipt by Anton Paar of all outstanding amounts. In case of a resale of a product for which Anton Paar retains title, the Buyer will be deemed to have assigned all of its rights arising from such resale, to Anton Paar as security for Anton Paar's rights, even if the product is processed, transformed or combined with other commodities.
- 4.4. The Buyer may not withhold or retain payments or offset them against any amount due to Anton Paar.

## 5 Delivery

- 5.1. Unless specified otherwise in the Order, the products will be delivered EXW Anton Paar (above address) (Incoterms 2010) and risk of loss, damage and/or destruction of the products will pass to the Buyer upon it taking delivery, whether or not the delivery is effected, organized or supervised by Buyer or Anton Paar and regardless of any installation or assembly work to be performed by Anton Paar after delivery of the products.

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- 5.2. Delivery or performance dates in relation to the supply of products are approximate only. Accordingly, time is not of the essence for delivery of the products and Anton Paar will not be liable for any losses, damages, penalties, or expenses or failure to meet any delivery date.
- 5.3. The actual delivery time will depend on the fulfillment of any preliminary conditions stated in the Order and shall start at the latest of the following dates:
- a) the date of order confirmation by Anton Paar;
  - b) the date of fulfillment by Buyer of all the technical, commercial and other conditions for which it is responsible;
  - c) and, if a deposit is required by Anton Paar in the Order, the date of receipt by Anton Paar of a deposit or security due before delivery of the products in question.
- 5.4. Buyer shall obtain whatever licenses or approvals may be required from authorities or third parties for the construction of plant and equipment. If the granting of such licenses or approvals is delayed for any reason, Anton Paar may extend the delivery period/date accordingly.
- 5.5. Anton Paar may carry out, and charge Buyer for, partial or advance deliveries. If delivery on call is agreed upon, the product shall be deemed called off at the latest one year after the order was placed.
- 5.6. Anton Paar shall not be in breach of contract nor liable for any failure or delay in performance of any of its obligations and the delivery time shall be extended accordingly in case of unforeseeable circumstances and/or circumstances beyond its control, which impede compliance with the agreed delivery time including but not limited to fire, flood, earthquake, windstorm or other natural disaster, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination or sonic boom; labor disputes; voluntary or mandatory compliance with any law; accidental damage; loss at sea; adverse weather conditions; shortage of raw materials; loss of major suppliers; interruption or failure of utility service, including but not limited to electric power, gas or water, delays in transport or customs clearance, damages in transit; regardless if they affect Anton Paar or any of its subcontractors.
- Anton Paar; and b) are free from latent or patent defects in material or workmanship that impede the specified use of the products.
- 6.2. If a product is found to be defective during the warranty period, Anton Paar shall remedy such deficiency by the repair or replacement, at its option and its cost, of the defective product at the Buyer's or Anton Paar's premises or Anton Paar may determine an adequate reduction in the contract price. The warranty period for the repaired or replaced product shall run for the remainder of the initial warranty period. Any and all other costs and/or expenses, including shipping, travel costs and accommodation costs shall be borne by the Buyer. For warranty work on the Buyer's premises, the Buyer shall make available free of charge any assistance, hoisting gear, scaffolding and sundry supplies and incidentals that may be required. Replaced parts shall become the property of Anton Paar.
- 6.3. This warranty shall be in lieu of all statutory warranty provisions. All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for a specific purpose (whether statutory or otherwise) other than those expressly set out in these Terms are excluded to the fullest extent permitted by law.
- 6.4. Anton Paar shall not be liable for a defect in the products and/or services unless the defect is notified to Anton Paar within 10 days from the date of delivery, or if the defect would not be apparent on reasonable inspection, within the long stop warranty period of twelve months from the date of the delivery.
- 6.5. If a product is manufactured by Anton Paar on the basis of design data, design drawings, models or other specifications provided by the Buyer, Anton Paar's warranty obligation is limited to compliance with the Buyer's specifications and does not extend to materials supplied by the Buyer.
- 6.6. Anton Paar's warranty is given solely to Buyer and is not transferable.

## 7 Cancellation

- 7.1. Unless expressly stated otherwise in the Order, the Buyer may only cancel the Order if it has given Anton Paar written notice to remedy non-timeous delivery within a reasonable period and then only if the delivery of the products has been delayed due to Anton Paar's gross negligence. All notices to remedy and subsequent cancellation notice shall be given in writing. The Buyer will be liable for all direct and indirect wasted costs as assessed and certified in writing by an officer of Anton Paar. Buyer will pay such wasted costs

## 6 Warranty

- 6.1. For the period of twelve months from the delivery, Anton Paar warrants that the delivered products
- a) conform to the specifications provided by

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within 30 days of receipt of Anton Paar's invoice in respect thereof.

- 7.2. Irrespective of its other rights, Anton Paar may cancel, in whole or in part, an Order without any liability to the Buyer, if a) the delivery of the products or performance of the Services is rendered impossible or delayed despite setting a reasonable grace period due to reasons attributable to the Buyer; b) concerns about the Buyer's solvency emerge and the Buyer, upon Anton Paar's request, does not make an advance payment and/or provide security for payment prior to delivery, c) the Buyer is or becomes insolvent or subject to business rescue, and/or d) the delivery is delayed due to reasons set out in clause 5.6 for more than six months.
- 7.3. Unless expressly and explicitly referenced and contained in writing in the Order (including to avoid doubt, these Terms), Buyer irrevocably waives all and/or any other rights and/or remedies it may have arising from any applicable statute or regulation in respect of its cancellation of the Order.

## 8 Service, maintenance and repair

- 8.1. These Terms apply mutatis mutandis to all orders (contracts) for the performance of service, maintenance and repair ("Services"), unless otherwise expressly stated herein, or in the applicable Order.
- 8.2. The Buyer shall, at Anton Paar's discretion, make available the products at its premises or return them to Anton Paar's premises at Buyer's cost and risk for performance of the Services.
- 8.3. Anton Paar will, upon request and at Buyer's cost, provide a quotation for the estimated costs of the Services the acceptance of which will be subject to clause 2.1.
- 8.4. If, while carrying out Service orders, Anton Paar finds the products to be in improper condition, Anton Paar may perform all Services Anton Paar deems required to restore and/or maintain the proper condition of the products in question without having to obtain the Buyer's prior consent. Subject to Anton Paar's warranty obligation in clause 6, Buyer will be liable to pay for all Services performed and all replacement parts issued by Anton Paar in accordance with its current prices.
- 8.5. The place of performance shall be the place at which the Service is rendered. Risk in respect of Services passes to the Buyer upon performance of the Services.

## 9 Limitation of liability

- 9.1. Subject to its warranty obligations in clause 6, Anton Paar shall be liable only if the loss or damage arises from the intentional or grossly negligent conduct of Anton Paar.
- 9.2. Without derogating from any express or implied limitation in these Terms, Anton Paar shall not be liable for all warranty obligations for any damages or losses arising from the Buyer's (or any third party's) use or misuse of the products and/or Services including, without limitation
- a) fair wear and tear;
  - b) abnormal working or operating conditions beyond those referred to in the product specification, including atmospheric discharges, excess voltage and chemical influences;
  - c) the Buyer's and/or its employee's, end user's, agent's or other representative's negligence or willful misconduct and/or any failure to follow instructions as to use of the products;
  - d) assembly, installation, modification, alteration, service or repair work not undertaken by Anton Paar or a representative authorized by Anton Paar in writing; and
  - e) compliance or non-compliance with licensing requirements.
- 9.3. Anton Paar's liability for any and all claims, whether based on contract, negligence, statute, or otherwise, arising out of or in connection with an Order are limited in their aggregate total to the contract price.
- 9.4. In no event shall Anton Paar be liable to the Buyer for (i) any indirect, special, consequential, incidental or punitive loss or damage; or (ii) loss of data or other equipment or property; or (iii) economic loss or damage; or (iv) incurring of liability for loss or damage of any nature whatsoever suffered by third parties, including in each case incidental and punitive damages; or (v) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill in connection with or arising out of an order.
- 9.5. Subject to the preceding subparagraphs of this clause 9 and the limitations of liability set out herein, any and all claims that may arise out of or in connection with an order shall, to the extent legally possible, be assessed and determined in accordance with the respective liability insurance coverage policies of each party.

## 10 Statute of limitations

- 10.1. The Buyer's right to claim against Anton Paar, if any, arising out of the Buyer's obligations to a customer pursuant to its onward sale of the

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products is excluded. Where such exclusion is prohibited by applicable law, Buyer's right is limited by the warranty period provided under clause 6.1.

- 10.2. All other claims of whatever nature (excluding for fraud) must be instituted by the Buyer against Anton Paar out of the competent court within two years from the earliest to occur, as the case may be, of either the date of delivery of the product or completion of the Services or the date on which Buyer's claim against Anton Paar under the Order arises.

## 11 Intellectual property rights

- 11.1. No rights in relation to Anton Paar's existing or future intellectual property rights (which include copyright, database rights, topography rights, design rights, trade marks, patents, domain names and any other intellectual property rights of a similar nature, whether or not registered, subsisting anywhere in the world in or associated with its products), are granted or conferred to the Buyer.
- 11.2. The Buyer hereby indemnifies and holds Anton Paar harmless from any claims, damages or losses arising out of or in connection with any infringement of industrial property rights of any design data, design drawings, models or other specifications provided by the Buyer.

## 12 Export control regulations

- 12.1. The Buyer acknowledges and agrees that any delivery made by Anton Paar is subject to, and the Buyer is obliged to comply with, all applicable export control regulations.
- 12.2. The Buyer may not resell, (re)export or otherwise transfer any products of Anton Paar in violation of applicable export control regulations and shall be liable to and keep indemnified and hold harmless Anton Paar from any claim arising out of the breach of this provision.

## 13 Compliance

- 13.1. The Buyer agrees to comply with all applicable laws, statutes, regulations, codes and other legal requirements, including without limitation, health, safety, security and environment, anti-corruption and anti-bribery in relation to its use of the products.

## 14 Applicable law and jurisdiction

- 14.1. The Order is subject to the law of South Africa excluding its conflict of laws provisions. The

application of the UN Convention on Contracts for the International Sale of Goods is renounced.

- 14.2. All disputes arising out of or in connection with the present Order shall be exclusively brought before the competent courts in South Africa.

## 15 Miscellaneous

- 15.1. If a provision of these Terms is or becomes ineffective, invalid or unenforceable, the other provisions of these Terms shall remain unaffected. The ineffective, invalid or unenforceable provision shall be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the commercial intention of the invalid, illegal or unenforceable term or provision.
- 15.2. The Buyer shall keep in strict confidence all information, including quotations, tender documents and the like, obtained in the course of its relationship with Anton Paar and shall immediately return any information to Anton Paar upon request or in case the Buyer does not place the respective order with Anton Paar.
- 15.3. The Buyer may not assign the Order nor cede its rights nor delegate its obligations arising out of or in connection with the Order to any third party without Anton Paar's prior written consent.