

# GENERAL TERMS OF DELIVERY

of Anton Paar Australia Pty. Ltd., 2 Julius Avenue, North Ryde NSW, Australia

## 1 Scope

- 1.1. Unless otherwise agreed in writing, these General Terms of Delivery ("Terms") shall exclusively govern all sales and deliveries made by Anton Paar Australia 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 contract, even if they are referred to or contained in an order accepted by Anton Paar.

## 2 Conclusion of contract

- 2.1. Anton Paar's quotations are estimates only and are not binding. All statements, drawings, illustrations or pictures appearing in catalogues, websites, folders, promotional literature and the like with respect to the products are for illustrative purposes only and are approximate only. Oral statements are binding only if 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 form 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 order, it shall issue a written order confirmation to the Buyer. The contract is formed upon the issuance of such order confirmation or conclusively (by means of Anton Paar's performance). Oral or written statements shall only be binding, if subsequently expressly confirmed in writing in the order confirmation.
- 2.4. Amendments of or additions to the contract require Anton Paar's prior written consent. Orders, order confirmations as well as amendments to them and other written confirmations are also valid if submitted electronically.

## 3 Prices

- 3.1. Prices only cover the products and/or Services (as defined in clause 8),

including standard packaging, and are calculated EXW Anton Paar (Incoterms 2020), but excludes freight costs, insurance costs, value added tax or any other applicable sales tax, customs, import or other duties levied in respect of delivery, unloading and subsequent handling, maintenance and pre- or after sales services.

- 3.2. If applicable, these additional costs, expenses and charges will be invoiced to the Buyer separately. Packaging materials will be taken back by Anton Paar only by express agreement and in any case, at the Buyer's risk and cost.
- 3.3. Prices are based on the time of the first quotation and are subject to change prior to the dispatch of the products to the Buyer. In the event that the costs 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 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 in Australian Dollars by bank transfer to a bank account nominated by Anton Paar in the order confirmation. All payments must be made free of charges to 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, without any liability to the Buyer for such delay, until full payment has been made; and/or
  - c) claim compensation from, and be indemnified by, the Buyer on demand for all costs, charges, and expenses arising from the delay in payment prior to legal action.
- 4.3. The Buyer acknowledges that the interest charges amounts referred to in clause 4.2.a) and the compensation

# GENERAL TERMS OF DELIVERY

of **Anton Paar Australia Pty. Ltd.**, 2 Julius Avenue, North Ryde NSW, Australia

- referred to in clause 4.2.c) are a genuine pre-estimate of Anton Paar's loss resulting from the circumstances referred to in clause 4.2.
- 4.4. Title to the products will pass to the Buyer when all amounts owed are received by Anton Paar.
- 4.5. Until Anton Paar receives full payment from the Buyer, the Buyer will:
- a) hold the products as bailee for Anton Paar;
  - b) ensure that Anton Paar's interest in the products is protected at all times, including secure and proper storage and prominent marking to identify the products as belonging to Anton Paar;
  - c) inform Anton Paar of the location of the products if requested;
  - d) subrogate to Anton Paar the Buyer's entitlement to the products against any third party consequent on any transaction by the Buyer with a third party, so that in all respects Anton Paar may act in the name of and with the authority of the Buyer, including the entry onto any premises where the products may be located and to remove the products
  - e) assign its claim out of the resale, to Anton Paar to secure Anton Paar's rights, including where the products are processed or comingled into other products or property;
  - f) Not pledge or allow any lien, charge, Security Interest (as defined in clause 5) or other interest to arise over the products; and
  - g) May sell the products in the ordinary course of business, provided that the Buyer will be an agent for Anton Paar in any sale if the products are sold. The Buyer must account to Anton Paar for any part of the proceeds of any sale equal to the amount owing by the Buyer to Anton Paar for those products and most hold these proceeds on trust for Anton Paar.
- 4.6. The Buyer may not withhold or retain payments or other obligations or offset them against any amount due to Anton Paar.
- 4.7. The Buyer must bear all risk of loss or damage to the products on or after delivery.
- 4.8. The Buyer must keep the products insured against all usual risks and for the

replacement value for products of that kind from the time the products are collected from Anton Paar's premises. The Buyer holds the proceeds of that insurance on trust for Anton Paar up to the amount it owes Anton Paar in respect of those products, and must keep such proceeds in a separate account until the liability to Anton Paar is discharged and must immediately pay that amount to Anton Paar on demand by Anton Paar.

## 5 PPSA

5.1. In this clause:

- a) PPSA means the Personal Property Securities Act 2009 (Cth);
- b) the terms "Proceeds", "Register", "Purchase Money Security Interest", "Security Agreement", "Security Interest", "Verification Statement", "Financing Statement", "Register" and "Financing Change Statement" will have the meanings given to them in the PPSA.

5.2. The Buyer:

- a) acknowledges that these Terms and each order constitutes a Security Agreement for the purpose of the PPSA;
- b) grants a Security Interest to Anton Paar in all products (and the Proceeds) previously supplied by Anton Paar to the Buyer and in all future products (and the Proceeds) supplied by Anton Paar to the Buyer; and
- c) acknowledges that the Security Interest granted in accordance with clause b) is a Security Interest for the purpose of the PPSA;
- d) acknowledges that Anton Paar may register its Security Interest in the products (and the Proceeds) as a Purchase Money Security Interest on the Register;
- e) must execute documents and do such further acts and things and provide such further information as may be required by Anton Paar to enable registration of the Security Interest granted by the Buyer on the Register, or to perfect or correct any registration;
- f) agrees that to the fullest extent permitted by law, Anton Paar owns, and the Buyer waives any rights it may have to anything installed in or affixed to the products, including any rights it might otherwise have under Part 3.3 of the PPSA;

# GENERAL TERMS OF DELIVERY

of Anton Paar Australia Pty. Ltd., 2 Julius Avenue, North Ryde NSW, Australia

- g) agrees that where the PPSA applies to action taken by Anton Paar in relation to the products, that sections 116(2), 120, 125, 142 and 143 of the PPSA will not apply;
- h) waives any rights to receive any notice Anton Paar is required to give to the Buyer under the PPSA (to the extent the notice can be excluded) and includes any rights to receive a notice under sections 95, 118(1)(b), 121(4), 123(2), 130, 132(3)(d), 132(4) and 135 of the PPSA and any Verification Statements.

## 6 Delivery

- 6.1. Unless agreed otherwise, the products will be provided EXW Anton Paar (Incoterms 2020) and risk of loss of the products will pass to the Buyer upon such delivery point, whether or not the shipment 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 the delivery of the products.
- 6.2. Delivery or performance dates in relation to the supply of products are approximate only. Unless otherwise expressly stated by Anton Paar, 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 for failure to meet any delivery date.
- 6.3. The actual delivery time will depend on the fulfillment of the preliminary conditions 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 the Buyer of all the conditions, technical, commercial and other, for which it is responsible;
  - c) the date of receipt by Anton Paar of a deposit or security due before delivery of the goods in question.
- 6.4. Buyer shall obtain, and provide Anton Paar with evidence of, whatever licenses or approvals may be required from authorities or third parties for the products. If the granting of such licenses or approvals is delayed for any reason, the delivery period shall be extended accordingly.

6.5. Anton Paar may carry out, and charge the Buyer for, partial or advance deliveries. If delivery on call is agreed upon, the products shall be deemed called off at the latest one year after the order was placed.

6.6. Anton Paar shall not be in breach of a 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 or circumstances beyond the parties' 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.

## 7 Warranty

- 7.1. The express warranty given under this clause 7 is subject to clauses 7.7, 7.8. and 10.2. For the period of thirty six months from the delivery, Anton Paar warrants that the delivered Instrument as defined below a) conforms to the specifications provided by Anton Paar; and b) is free from latent or patent defects in material or workmanship that impede the use of the products as specified by Anton Paar, provided all mandatory maintenance in accordance with the Instrument's manual, if any, has been performed by Anton Paar or a representative authorized in writing by Anton Paar. An Instrument ("Instrument") means an instrument and all its accessories purchased from Anton Paar. Custom tailored solutions are explicitly excluded. The warranty will immediately

# GENERAL TERMS OF DELIVERY

of Anton Paar Australia Pty. Ltd., 2 Julius Avenue, North Ryde NSW, Australia

- lapse if mandatory maintenance is not performed according to the provisions of this clause.
- 7.2. If a product is found to be defective during the warranty period, Anton Paar shall remedy such deficiency, at its option and its cost, by the repair or replacement of the defective product at the Buyer's or Anton Paar's premises or an adequate reduction in 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 but not limited to 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.
- 7.3. Unless otherwise agreed in writing, any warranty by Anton Paar shall be to the Buyer only and may not be transferred or assigned to any third party.
- 7.4. To the extent permitted by law, this warranty shall be in lieu of all statutory warranty provisions. To the extent permitted by law, 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.
- 7.5. Anton Paar shall not be liable for a defect in the products and/or services unless the defect is notified in writing to Anton Paar at 2 Julius Avenue, North Ryde NSW, 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 thirty-six months from the date of the delivery.
- 7.6. 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 the compliance with the Buyer's specifications and does in no event extend to material supplied by the Buyer.
- 7.7. Anton Paar accepts no warranty for the sale of used goods.
- 7.8. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- Any reference to "You" in clause 7.8 is a reference to the Buyer.
- 7.9. If the Buyer is a 'consumer' (for the purposes of the *Australian Consumer Law*) and any goods supplied to the Buyer by Anton Paar under these Terms are not goods which are ordinarily acquired for personal or domestic household use, then Anton Paar's liability to the Buyer in connection with any breach of the consumer guarantees in respect of those goods is limited (at Anton Paar's discretion) to:
- the replacement of the goods or the supply of equivalent goods;
  - the repair of the goods;
  - the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - the payment of the cost of having the goods repaired
- ## 8 Cancellation
- 8.1. Unless expressly agreed otherwise, the Buyer may only cancel a contract for the purchase of products, if the delivery of the products has been delayed due to Anton Paar's gross culpability and the reasonable grace period set by the Buyer has expired. The cancellation shall be submitted by registered mail only. All rendered deliveries, performed Services and preparation acts will be invoiced to the Buyer accordingly.
- 8.2. Irrespective of its other rights, Anton Paar may cancel, in whole or in part, a contract for the purchase of products or Services without any liability to the Buyer,



# GENERAL TERMS OF DELIVERY

of Anton Paar Australia Pty. Ltd., 2 Julius Avenue, North Ryde NSW, Australia

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 or post an adequate bond prior to delivery, c) the Buyer is or becomes insolvent, or d) the delivery is delayed due to reasons set out in clause 6.6 for more than six months.

## 9 Service, maintenance and repair

- 9.1. These Terms apply mutatis mutandis to all orders for the performance of service, maintenance and repair ("Services"), unless otherwise stated herein.
- 9.2. 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.
- 9.3. Anton Paar will, upon request and at Buyer's cost, provide a quotation for the estimated costs of the Services subject to clause 2.1.
- 9.4. Anton Paar is entitled to transfer all rights and obligations regarding Services to third parties.
- 9.5. All Services on site are carried out exclusively during the business hours of Anton Paar.
- 9.6. If, upon arrival of the engineer, it is impossible to carry out the Services, the resulting costs will be charged in accordance with Anton Paar's current rates, unless the Buyer has informed Anton Paar of the impossibility of carrying out the work at least one week before the date. The Buyer shall also be separately invoiced for any waiting times of 30 minutes or longer caused by the Buyer, e.g. due to increased registration times due to safety instructions or the absence of the contact person.
- 9.7. 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. All Services performed will be invoiced to the Buyer at cost according to the current tariffs, unless such Services are covered by Anton Paar's warranty obligations according to clause 7.

- 9.8. 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.
- 9.9. Where Anton Paar provides the Services at the Buyer's site, the Buyer must provide a hazard-free environment, provide to all of Anton Paar's representatives work health and safety induction as required by law at no cost to Anton Paar, and comply with all applicable laws and regulations that relate to health and safety at work and any other relevant regulations.
- 9.10. Should Anton Paar be unable to carry out the Services on the agreed date due to demonstrable reasons such as mobilization, war, revolt, strike, lockout, pandemics or any other reasons for which Anton Paar cannot be made liable or that is beyond its control as accepted by general legal principles of "Force Majeure", a suitable new date for the work is to be agreed between the two parties.

## 10 Limitation of liability

- 10.1. To the extent permitted by law, Anton Paar shall be liable only if the damage in question is proved to be due to intentional acts or acts of gross negligence, within the limits of statutory provisions. Anton Paar shall not be liable for damage due to acts of ordinary negligence.
- 10.2. Anton Paar shall not be liable for and disclaims all warranty obligations for any damages or losses arising from the Buyer's (or any third party's) subsequent 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;

# GENERAL TERMS OF DELIVERY

of Anton Paar Australia Pty. Ltd., 2 Julius Avenue, North Ryde NSW, Australia

- c) the Buyer's (or any end user's) negligence or willful misconduct, or that of its agents or employees, or any failure to follow Anton Paar's instructions as to use of the products;
  - d) assembly, installation, modification, alteration, service or repair work not undertaken by Anton Paar or a representative authorised by Anton Paar in writing; and
  - e) compliance or non-compliance with licensing requirements.
- 10.3. Anton Paar's liability for any and all claims, whether based on contract, tort, statute, indemnity or otherwise, arising out of or in connection with this agreement are limited in their aggregate total to the value of the respective order. Any claims exceeding this limitation of liability are expressly excluded.
- 10.4. 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.
- 10.5. Subject to the preceding subparagraphs of this clause 10 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 dealt with in accordance with the respective liability insurance coverage policy of the parties.

## 11 Statute of limitations

- 11.1. To the extent permitted by law, the Buyer's right to redress for all claims against Anton Paar arising out of the Buyer's warranty obligations to a customer further to a resale of the products is excluded. Where the exclusion of the redress is prohibited by mandatorily applicable law, the right to redress is limited by the warranty period provided under clause 7.1.

- 11.2. All claims for breach of contract must be brought before the competent courts by the Buyer within six years from the date of the breach occurring, all other claims must be brought before the competent courts within such shorter period of limitation provided by law.

## 12 Intellectual property rights

- 12.1. 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.
- 12.2. The Buyer shall indemnify and hold harmless Anton Paar 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.

## 13 Export control regulations

- 13.1. 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.
- 13.2. 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.

## 14 Compliance

- 14.1. 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.

# GENERAL TERMS OF DELIVERY

of Anton Paar Australia Pty. Ltd., 2 Julius Avenue, North Ryde NSW, Australia

## 15 Applicable law and jurisdiction

- 15.1. The contract is subject to the laws of the state of New South Wales, Australia, excluding its conflict of laws provisions. The application of the UN Convention on Contracts for the International Sale of Goods is renounced.
- 15.2. All disputes arising out of or in connection with the present contract shall be exclusively brought before the competent courts in New South Wales, Australia.

## 16 Miscellaneous

- 16.1. 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.
- 16.2. 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.
- 16.3. The Buyer may not assign its rights and obligations arising out of or in connection with an order to any third party without Anton Paar's prior written consent.