

# GENERAL TERMS OF DELIVERY



of Anton Paar Anton Paar Brasil Importacao, Exportacao e Comércio

Rua José Magalhães 646, 04026-090 - São Paulo, SP, Brasil

## 1. Scope

- 1.1. Unless otherwise specified and expressly agreed between the parties, these General Terms of Delivery ("Terms") shall exclusively govern all sales and supplies made by Anton Paar Brasil ("Anton Paar Brasil").
- 1.2. Any deviation from these Terms is only valid and binding, if it is expressly agreed in writing by Anton Paar Brasil.
- 1.3. Buyer's general terms of purchase or any similar unilateral terms of Buyer, even if they are referred to or contained in a purchase order shall not constitute an obligation and shall not be binding upon Anton Paar Brasil, even if accepted by Anton Paar Brasil together with the the Purchase Order.

## 2. Conclusion of contract

- 2.1. Anton Paar Brasil's quotations, offers, proposals or budgets are estimates without legal implications until confirmed by the Buyer or until the formalization of the contract
- 2.2. The data that integrate the offers, quotations, proposals and / or budgets, such as: drawings, projects, picture or graphics, operations and process data, tables and technical specification are approximate unless expressly mentioned as being "guaranteed"
- 2.3. Amendments of or additions to the contract require Anton Paar Brasil's written consent through issuance of a new offer, quotation, proposal, budget or addendum.
- 2.4. The Buyer's purchase order will only be considered accepted by Anton Paar Brasil, if it is confirmed in writing by Anton Paar Brasil. The confirmation of the negotiation will take place through the ORDER CONFIRMATION by Anton Paar Brasil,
- 2.5. Any requests by the Buyer related of modifications and/or variations to the scope of the technical or commercial conditions included in the Request or the Offer, shall be formally presented in writing and with the respective justification and shall be valid and effective only when expressly accepted through the issuance of new offer, quotation, proposal, budget and / or contractual addendum by Anton Paar Brasil
- 2.6. Anton Paar Brasil reserves the rights and copyrights of the offers, proposals, quotations and budget, drawings and other documents and these cannot be made available to third parties without authorization from Anton Paar Brasil.

## 3. Prices

- 3.1. Prices only cover the products and/or services, including standard packaging, and are offered directly by Anton Paar Brasil and are calculated EXW Anton Paar Brasil (Incoterms 2020), or by direct import in EXW (Incoterms 2020) conditions by companies based in Anton Paar GmbH (Áustria), Anton Paar OptoTec GmbH (Alemanha), Anton Paar ProveTec GmbH (Alemanha), Anton Paar TriTec SA (Suíça), excluding freight, insurance, value added tax or any other applicable sales tax, customs, import or other duties levied in respect of delivery, unloading and subsequent handling or maintenance.
- 3.2. If applicable according to the agreed delivery term (Incoterms 2020), these costs, expenses and charges will be add in the Offer. Packaging materials will be taken back only by express agreement and in any case, at the Buyer's risk and cost.
- 3.3. Prices are based on import costs and are valid for the period of validity described in the proposal.

## 4. Payment

- 4.1. The term of payment is advance for the modality of direct importation and advance or cash-on delivery payment in the national purchase modality or another term expressly described in the Offer/Purchase Order request and agreed between the Buyer and Anton Paar Brasil.
- 4.2. If the Buyer fails to make any payment to Anton Paar Brasil by the due date, Anton Paar Brasil may at its sole discretion and cumulatively, without prejudice to its other rights.
  - a) charge interest on the overdue amount at the rate of 2,0 % per month, such interest accruing on a daily basis from the due date until the date of actual payment of the overdue amount, plus 3,0% of fine and adjustment for inflation based on the National Consumer Price Index (INPC - Índice Nacional de Preço ao Consumidor ) and/or
  - b) immediately suspend performance of its obligations, without any liability or penalty to the Buyer for such delay, 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. The Buyer may not withhold or retain payments or other obligations or offset them against any amount due to Anton Paar Brasil without the written authorization.

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## 5. Transfer of title

- 5.1. According Article 521 of Brazilian Civil Code Anton Paar Brasil reserves the title of the parts and equipment supplied, until said property is fully paid, and a property reservation clause is hereby constituted. In view of the recording of the object with the property reservation clause, the transfer of the effective title will occur only after the discharge by the Buyer of all adjusted payments.
- 5.2. The Buyer undertakes to maintain parts and equipment in perfect state of conservation and use, until the final payment and settlement of the total price, defending of his possession in the event of trespass by others, otherwise, shall liability for losses and damages caused by for the deterioration or destruction of the goods, and it is stipulated for this compensation the invoice of the goods.
- 5.3. During the period of reserve of title by Anton Paar Brasil, Buyer undertakes to take out insurance, at its own expense or include them in its current insurance policy with coverage against theft, fire and flood, among others.

## 6. Delivery

- 6.1. Unless agreed otherwise, the products will be provided EXW (Incoterms 2020) and risk of loss of the products will pass to the Buyer upon such delivery point, considered when the equipment has been dispatched or delivered to the carrier indicated by the Buyer or made available to the Buyer, whichever occurs first.
- 6.2. Delivery or performance dates in relation to the supply of products are approximate only. Unless otherwise expressly stated by Anton Paar Brasil, time is not of the essence for delivery of the products and Anton Paar Brasil 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 Brasil;
  - b) the date of fulfillment by Buyer of all the conditions, technical, commercial and other, for which he is responsible;
  - c) the date of receipt by Anton Paar Brasil of a deposit or security due before delivery of the goods in question.
- 6.4. 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, the delivery period shall be extended accordingly.

- 6.5. Anton Paar Brasil may carry out, and charge Buyer for, partial or advance deliveries. If delivery on call is agreed upon, the commodity shall be deemed called off at the latest one year after the order was placed.
- 6.6. Anton Paar Brasil 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. 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 and subject to the provisions of **Error! Reference source not found.** An Instrument ("Instrument") means an instrument and all its accessories purchased from Anton Paar. Custom tailored solutions are explicitly excluded. The warranty will immediately 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 Brasil 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 Brasil's premises or an adequate reduction in price. The warranty period for the repaired or replaced product shall

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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.

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. 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.

7.5. Replaced parts shall become the property of Anton Paar Brasil.

7.6. 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.

7.7. Anton Paar Brasil 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.

7.8. Excluded from the Anton Paar Brasil's warranty are damages resulting from improper use or incorrect operation of the equipment (s) by the Buyer in disagreement with the operating and maintenance manuals and specific instructions provided and other parts which by their nature, even in normal operation, have a shorter useful life than the period covered by the warranty; failure to observe the instructions for storing, discharging and installing the equipment; or natural wear.

## 8. Term and 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 Brasil's gross culpability and the reasonable grace period set by the Buyer has expired, never less than 30 (thirty) days, granted in formal notification by the Buyer. The cancellation shall be submitted by registered mail with return receipt, only. Buyer shall pay Anton Paar Brasil all costs proven to have been incurred, with services performed, acquisition of components and preparatory acts and shall be billed to the Buyer within 05 (five) days after receipt of the notice of cancellation.

8.2. Irrespective of its other rights, Anton Paar Brasil may cancel, in whole or in part, a purchase order, budget, offer or contract for the purchase of products or Services 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 Brasil's request, does not make an advance payment or post an adequate bond prior to delivery,

c) the Buyer is or becomes insolvent, or bankruptcy or propose judicial reorganization.

## 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 Brasil's discretion, make available the products at its premises or return them to Anton Paar Brasil's premises at Buyer's cost and risk for insurance and freight.

9.3. Anton Paar Brasil will, upon request and at Buyer's cost, provide a quotation for the estimated costs of the Services subject to clause 2 of this General Terms.

9.4. If, while carrying out Service orders, Anton Paar Brasil finds the products to be in improper condition, Anton Paar Brasil may perform all Services Anton Paar Brasil 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 Brasil's warranty obligations according to clause 7 of this General Terms.

## 10. Limitation of liability

10.1. For all legal intents and purposes shall Anton Paar Brasil, its officers, directors, employees, subcontractors, be liable to Buyer only for direct damage, so IN NO EVENT be liable for: (i) loss of profits, revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Products, loss of future contracts, claims of customers, cost of money or loss of use of

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capital, in each case whether or not foreseeable, or (ii) for any indirect, special, incidental or consequential damages of any nature.

- 10.2. The aggregate liability of Anton Paar Brasil, its officers, directors, employees, subcontractors, to Buyer for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with the Products, Services or this Agreement or from the performance or breach thereof, together with the cost of performing make liability, losses and damages, penalties shall in no event exceed 10% (Ten percent) of the contract net price.
- 10.3. Subject to the preceding subparagraphs of this section 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. The Buyer's right to redress for all claims against Anton Paar Brasil 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 or if applicable the Consumer Defense Code, Anton Paar Brasil's liability shall not pass the deadline of (90) days or the warranty period established in Section 6 of these General Terms, whichever occurs first.
- 11.2. All other claims must be brought before the competent courts by the Buyer within two years from the delivery, except in cases statutory law provides for a shorter period of limitation.

## 12. Intellectual property rights

- 12.1. No rights in relation to Anton Paar Brasil'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 Brasil 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 Brasil 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 Brasil in violation of applicable export control regulations and shall be liable to and keep indemnified and hold harmless Anton Paar Brasil 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, environment, anti-corruption and anti-bribery, money laundering, tax evasion, economic sanctions, registration, authorization and restriction of chemicals, slave labor and environmental protection, and will not carry out, or will allow illegal or illicit activities to be carried out.

## 15. Applicable law and jurisdiction

- 15.1. The contract is subject to the law of the Federative Republic of Brasil excluding its conflict of law 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 São Paulo/SP - Brasil.

## 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 Brasil and shall immediately return any information to Anton Paar Brasil upon request or in case the Buyer does not place the respective order with Anton Paar Brasil.
- 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 Brasil's prior written consent.