

# General Terms of Delivery

of Anton Paar Canada Inc.

4920 Place Olivia, Montreal, H4R 2Z8, Canada



## 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 Canada Inc. ("Anton Paar").
- 1.2 Any deviation from these Terms is only valid and binding if it is expressly agreed to in writing by Anton Paar. Buyer's general terms of purchase or any similar unilateral terms of Buyer shall 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, 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 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 upon 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 an order confirmation to the Buyer. The contract is concluded upon the issuance of such order confirmation or conclusively (by means of Anton Paar's fulfillment of the order). Oral or written statements shall only be binding if expressly confirmed by Anton Paar in the order confirmation.
- 2.4 Amendments of or additions to the contract require Anton Paar's written consent. Orders, order confirmations as well as amendments thereto and other written confirmations are also valid if confirmed electronically by the parties.

## 3 Prices

- 3.1 Prices only cover the products and/or services, including standard packaging,

and are calculated EXW Anton Paar (Incoterms 2020), excluding freight, insurance, value added tax, goods and services tax, Quebec sales tax, provincial sales tax, harmonized sales 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 according to the agreed delivery term (Incoterms 2020), these costs, expenses and charges will be invoiced to Buyer separately. 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 the time of the first quotation. 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 Canadian dollars by bank transfer to one of Anton Paar's bank accounts free of charges for Anton Paar. Invoices paid with a credit card are subject to a 2.6% processing fee at the time of payment, as permitted per law.
- 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 the Buyer for all costs and expenses arising from

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the delay in payment prior to legal action, and for all fees and costs incurred by Anton Paar to recover the overdue amount and applicable interest.

- 4.3 Title to the products will pass to the Buyer upon the date of delivery, provided all outstanding sums owed by the Buyer to Anton Paar have been fully paid by then; otherwise title is retained by Anton Paar until all due sums are fully paid. In case of a resale of a product for which Anton Paar retains title, the Buyer assigns his claim arising out of the resale to Anton Paar to secure 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 other obligations or offset them against any amount due to Anton Paar.

## 5 Delivery

- 5.1 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.
- 5.2 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.
- 5.3 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 Buyer of all the conditions, technical, commercial and other, for which he is responsible;

c) the date of receipt by Anton Paar of a deposit or security due before delivery of the goods in question.

- 5.4 Buyer shall obtain whatever licenses or approvals that 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.
- 5.5 Anton Paar 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.
- 5.6 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 Anton Paar's control, which impede compliance with the agreed delivery time, including but not limited to fire, flood, earthquake, snowstorm, 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.

## 6 Warranty

- 6.1 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

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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 9.2. 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.

- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 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 thirty-six from the date of the delivery.

- 6.6 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.
- 6.7 Anton Paar provides no warranty for the sale of used goods.

## 7 Cancellation

- 7.1 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 negligence and only after the expiration of a reasonable grace period set by the Buyer in a written notice to Anton Paar. The cancellation shall be submitted by registered mail only. All rendered deliveries, performed Services (as hereinafter defined) and preparation acts will be invoiced to the Buyer accordingly.
- 7.2 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, 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 provides adequate security or collateral prior to delivery, c) the Buyer is or becomes insolvent, or d) the delivery is delayed due to reasons set out in clause 5.6 for more than six months.
- 7.3 Cancellation of the contract shall have no consequences other than those stipulated above.

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## 8 Service, maintenance and repair

- 8.1 These Terms apply mutatis mutandis to all orders for the performance of service, maintenance and repair ("Services"), unless otherwise stated herein.
- 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 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. All Services performed will be invoiced to the Buyer at cost according to the then current tariffs, unless such Services are covered by Anton Paar's warranty obligations according to clause 6.
- 8.5 The place of performance shall be the place at which the Services are rendered. Risk in respect of Services passes to the Buyer upon performance of the Services.

## 9 Limitation of liability

- 9.1 Outside the scope of the applicable legislation in respect of products liability, 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.
- 9.2 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;
- 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 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, 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.
- 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 section 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 dealt with in accordance with the respective liability insurance coverage policy of the parties.

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## 10 Statute of limitations

- 10.1 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 6.1.
- 10.2 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.

## 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 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.

## 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.

## 14 Applicable law and jurisdiction

- 14.1 The contract is subject to and governed by the applicable federal and provincial laws of Canada, 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 contract shall be exclusively brought before a court of competent jurisdiction in Canada.

## 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 its rights and obligations arising out of or in connection with an order to any third party without Anton Paar's prior written consent.