

# General Terms of Delivery



**Anton Paar**

of Anton Paar USA, 10215 Timber Ridge Drive, Ashland, VA, 23005, USA

## 1. Scope

1.1 These General Terms shall govern offers for sale and legal transactions made by Anton Paar USA ("Seller"), namely the delivery of commodities and, mutatis mutandis, the rendering of services. These Terms shall be applied unless details of the individual transaction are otherwise agreed upon in writing.

1.2 Any departure from the terms and conditions mentioned in 1.1 above shall be valid only if expressly accepted in writing by Anton Paar USA. Contradicting General Terms of Purchase of the Buyer are expressly objected to, so that they do not become part of the contract.

## 2. Submission of offers

2.1 Seller's offers shall be deemed offers without engagement.

2.2 Tender documents and project documentation must not be duplicated nor made available to third parties without the permission of Seller. They may be claimed back at any time and shall be returned to Seller immediately if the order is placed elsewhere.

## 3. Conclusion of contract

3.1 The contract shall be deemed concluded upon written confirmation by Seller of an order received or upon dispatch of a delivery.

3.2 Particulars appearing in catalog, folders etc. as well as any oral or written statements shall only be binding if Seller makes express reference to them in the confirmation of the order.

3.3 Subsequent amendments of or additions to the contract shall be subject to written confirmation.

## 4. Prices

4.1 Prices shall be quoted ex works or ex Seller's warehouse without sales tax, packing and packaging, loading, disassembly, take-back and proper recycling and disposal of waste electrical and electronic equipment for commercial purposes as defined by the Ordinance Regulating the Handling of Waste Electrical Equipment. Buyer shall be liable for any and all charges, taxes or other duties levied in respect of delivery. If the terms of delivery include transport to a destination designated by Buyer, transport costs as well as the cost of any transport insurance desired by Buyer shall be borne by the latter. Delivery does not, however, include unloading and subsequent handling. Packaging materials will be taken back only by express agreement.

4.2 Seller reserves the right to modify prices if the order placed is not in accordance with the offer submitted.

4.3 Prices are based on costs obtaining at the time of the first quotation. In the event that the costs have increased by the time of delivery, Seller shall have the right to adjust prices accordingly.

4.4 In carrying out repair orders, Seller shall provide all services deemed expedient and shall charge Buyer for the same on the basis of the work input and/or expenditures required. The same holds for any services or additional services the expediency of which becomes apparent only as the repair order is executed. In such an event special notification of Buyer shall not be required.

4.5 Expenses for estimates of costs of repair and maintenance or for expert valuations shall be invoiced to Buyer.

## 5. Delivery

5.1 The period allowed for delivery shall commence at the latest of the following dates:

a) the date of order confirmation by Seller;

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 Seller of a deposit or security due before delivery of the goods in question.

5.2 Buyer shall obtain whatever licences or approvals may be required from authorities or third parties for the construction of plant and equipment. If the granting of such licences or approvals is delayed for any reason the delivery period shall be extended accordingly.

5.3 Seller 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.

5.4 In case of unforeseeable circumstances or circumstances beyond the parties control, such as all cases of force majeure, which impede compliance with the agreed period of delivery, the latter shall be extended in any case for the duration of such circumstances; these include in particular armed conflicts, official interventions and prohibitions, delays in transport or customs clearance, damages in transit, energy shortage and raw materials scarcity, labor disputes, and default on performance by a major component supplier who is difficult to replace. The aforesaid circumstances shall be deemed to prevail irrespective of whether they affect Seller or his subcontractor(s).

5.5 If a contractual penalty for default of delivery was agreed upon by contracting parties when the contract was concluded, it shall be executed as follows, and any deviations concerning individual items shall not affect the remaining provisions: Where delay in performance can be shown to have occurred solely through the fault of Seller, Buyer may claim for each completed week of delay an indemnity of at most one half of one per cent, a total of no more than 5 %, however, of the value of that part of the goods to be delivered which cannot be used on account of Seller's failure to deliver an essential part thereof, provided the Buyer has suffered a damage to the aforesaid extent.

Assertion of rights of damages exceeding this extent is precluded.

## 6. Passage of risk and Place of performance

6.1 Unless otherwise agreed, enjoyment and risk shall pass to the Buyer at the time of departure of the goods ex works or ex warehouse. This provision also includes the case of shipment being effected, organised and supervised by Seller and the case of delivery being made in connection with assembly work to be undertaken by Seller.

6.2 For services the place of performance shall be the place at which the service is rendered; the risk in respect of such services or any part thereof that may have been agreed upon shall pass to Buyer at the time the services have been rendered.

## 7. Payment

7.1 Unless otherwise agreed, one third of the purchase price shall fall due at the time of receipt by Buyer of the order confirmation of Seller, one third after half the delivery period has elapsed and the balance at the time of delivery. Irrespective thereof the turnover tax comprised in the amount of the invoice shall be paid within 30 days of the invoice date.

7.2 In the case of part settlements the individual part payments shall fall due upon receipt of the respective invoices. The same shall apply to amounts invoiced for additional deliveries or resulting from additional agreements beyond the scope of the original contract, irrespective of the terms of payment agreed upon for the principal delivery.



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7.3 Payment shall be made without any discount free Seller's domicile in the agreed currency. Drafts and checks shall be accepted on account of payment only, with all interest, fees and charges in connection therewith (such as collection and discounting charges) to be borne by Buyer.

7.4 Buyer shall not be entitled to withhold or offset payment on the grounds of any warranty claims or other counterclaims.

7.5 Payment shall be deemed to have been effected on the date at which the amount in question is at Seller's disposal.

7.6 If Buyer fails to meet the terms of payment or any other obligation arising from this or other transactions, Seller may without prejudice to his other rights

a) suspend performance of his own obligations until payments have been made or other obligations fulfilled, and exercise his right to extend the period of delivery to a reasonable extent,

b) call in debts arisen from this or any other transactions and charge default interest amounting to 12% A.P.R. plus sales tax for these amounts beginning 30 days after due dates; unless Seller proves costs exceeding this.

In any case Seller has the right to invoice all expenses arising prior to a lawsuit, especially reminder charges and lawyer's fees.

7.7 Discounts or bonuses are subject to complete payment in due time.

7.8 The Seller retains title to all goods delivered by the Seller (conditional commodities) until each and every claim of the Seller against the Buyer on account of the business connection, including interests and charges, has been fulfilled. Buyer herewith assigns his claim out of a resale of conditional commodities, even if they are processed, transformed or combined with other commodities, to Seller to secure the latter's purchase money claim, and he undertakes to make a corresponding entry in his books or on his invoices. Upon request Buyer has to notify the assigned claim and the debtor thereof to Seller, and to make all information and material required for his debt collection available and to notify the assignment to the third-party debtor. If the goods are attached or otherwise levied upon, Buyer shall draw attention to Seller's title and immediately inform Seller of the attachment or levy.

### **8. Warranty and acceptance of obligation to repair defects**

8.1 Once the agreed terms of payment have been complied with, Seller shall, subject to the conditions hereunder, remedy any defect existing at the time of acceptance of the article in question whether due to faulty design, material or manufacture, that impairs the functioning of said article. From particulars appearing in catalogues, folders, promotional literature as well as written or oral statements which have not been included in the agreement no warranty obligations may be deduced.

8.2 Unless special warranty periods operate for individual items the warranty period shall be 12 months. These conditions shall also apply to any goods supplied, or services rendered in respect of goods supplied, that are firmly attached to buildings or the ground. The warranty period begins at the point of passage of risk acc. to paragraph 6.

8.3 The foregoing warranty obligations are conditional upon the Buyer giving immediate notice in writing of any defects that have occurred. Buyer shall prove immediately the presence of a defect, in particular he shall make available immediately to Seller all material and data in his possession. Upon receipt of such notice Seller shall, in the case of a defect covered by the warranty under 8.1 above, have the option to replace the defective goods or defective parts thereof or else to repair them on Buyer's premises or have them returned for repair, or to grant a fair and reasonable price reduction.

8.4 Any expenses incurred in connection with rectifying defects (e.g. expenses for assembly and disassembly, transport, waste disposal, travel and site-to-quarters time) shall be borne by Buyer. For warranty work on Buyer's premises 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 Seller.

8.5 If an article is manufactured by Seller on the basis of design data, design drawings, models or other specifications supplied by Buyer, Seller's warranty shall be restricted to non-compliance with Buyer's specifications.

8.6 Seller's warranty obligation shall not extend to any defects due to assembly and installation work not undertaken by Seller, inadequate equipment, or due to non-compliance with installation requirements and operating conditions, overloading of parts in excess of the design values stipulated by Seller, negligent or faulty handling or the use of inappropriate materials, nor for defects attributable to material supplied by Buyer. Nor shall Seller be liable for damage due to acts of third parties, atmospheric discharges. Excess voltage and chemical influences. The warranty does not cover the replacement of parts subject to natural wear and tear. Seller accepts no warranty for the sale of used goods.

8.7 The warranty shall lapse immediately if, without written consent of Seller, Buyer himself or a third party not expressly authorised undertakes modifications or repairs on any items delivered.

8.8 The Buyer's claims of redress against the Seller on grounds of the Buyer's own warranty obligations from resale are struck by the statute of limitation with lapse of the period mentioned under point 8.2.

8.9 The provisions of sub-paragraphs 8.1 to 8.7 shall apply, mutatis mutandis, to all cases where the obligation to repair defects has to be accepted for other reasons laid down by law.

### **9. Withdrawal from contract**

9.1 Buyer may withdraw from the contract only in the event of delays caused by gross negligence on the part of Seller and only after a reasonable period of grace has elapsed. Withdrawal from contract shall be notified in writing by registered mail.

9.2 Irrespective of his other rights Seller shall be entitled to withdraw from the contract

a) if the execution of delivery or the inception or continuation of services to be rendered under the contract is made impossible for reasons within the responsibility of Buyer and if the delay is extended beyond a reasonable period of grace allowed;

b) if doubts have arisen as to Buyer's creditworthiness and if same fails, on Seller's request, to make an advance payment or to provide adequate security prior to delivery, or

c) if, for reasons mentioned in 5.4, the period allowed for delivery is extended by more than half of the period originally agreed or by at least 6 months.

9.3 For the reasons given above withdrawal from the contract shall also be possible in respect of any outstanding part of the delivery or service contracted for.

9.4 If bankruptcy proceedings are instituted against any contracting party or an application for bankruptcy proceedings against that party is not granted for insufficiency of assets, the other party may withdraw from the contract without allowing a period of grace.

9.5 Without prejudice to Seller's claim for damages including expenses arising prior to a lawsuit, upon withdrawal from contract any open accounts in respect of deliveries made or services rendered in whole or in part shall be settled according to contract. This provision also covers deliveries or services not yet accepted by Buyer as well as any preparatory acts performed by Seller.



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Seller shall, however, have the option alternatively to require the restitution of articles already delivered.

9.6 Withdrawal from contract shall have no consequences other than those stipulated above.

### **10. Seller's liability**

10.1 Outside the scope of the Product Liability Act, Seller 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. Seller shall not be liable for damage due to acts of ordinary negligence nor for consequential damages or damages for economic losses, loss of savings or interest or damage resulting from third-party claims against buyer.

10.2 Seller shall not be liable for damages in case of non-compliance with instructions for assembly, commissioning and operation (such as are contained in instructions for use) or non-compliance with licensing requirements.

10.3 Claims that exceed the contractual penalties that were agreed on are excluded from the respective title.

### **11. Assertion of Claims**

All claims to which Buyer is entitled must be asserted in court within three years from passage of risk as specified under paragraph 6, unless shorter limits of time are prescribed by law, otherwise claims shall become forfeited.

### **12. Industrial property rights and copyrights**

12.1 Buyer shall indemnify Seller and hold him harmless against any claims for any infringement of industrial property rights raised against him if Seller manufactures an article pursuant to any design data, design drawings, models or other specifications made available to him by Buyer.

12.2 Design documents such as plans and drawings and other technical specifications as well as samples, catalogues, prospectuses, pictures and the like shall remain the intellectual property of Seller and are subject to the relevant statutory provisions governing reproduction, imitation, competition etc. The provisions of 2.2 above shall also cover design documents.

### **13. General**

Should individual provisions of the contract or of these provisions be invalid the validity of the other provisions shall not be affected. The invalid provision shall be replaced by a valid one, which comes as close to the target goal as possible.

### **14. Jurisdiction and applicable law**

14.1 All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules.

14.2 The place of arbitration shall be Washington, D.C. Unless the Seller and the Buyer explicitly agree otherwise, the arbitration shall be conducted in the English language.

14.3 The contract is subject to the law of the United States of America excluding the referral rules. Application of the UN Convention on Contracts for the International Sale of Goods is renounced.