

General terms and conditions (GTC) of the Antriebs-, Prüf- und Steuertechnik GmbH (APS)

§ 1 General, area of application

- (1) The present general terms and conditions shall apply to all business relationships of APS with our client (in the following: "Client"). The GTC shall only be valid if the client is a company (§ 14 German Civil Code), a legal entity of Public Law or a public asset.
- (2) The GTC shall particularly apply to contracts of sale and/or delivery of movable property (in the following also "Goods"), not taking into account whether APS manufactures the goods themselves or procures them from suppliers (§§ 433, 651 German Civil Code). As framework agreement, the GTC shall also apply, in their respective version, to future contracts of sale and/or delivery of movable objects with the same client without APS having to refer to them in every individual case.
- (3) The GTC shall apply exclusively. Different, conflicting, or additional general terms and conditions of the Client shall only become part of the contract if and insofar as APS explicitly agrees to their validity. This approval requirement shall be definitely valid, particularly also if APS is in knowledge of the GTC of the Client and unreservedly conducts delivery.
- (4) Individual agreements made with the Client in individual cases (including subarrangements, additions, and changes) shall always precede these GTC. The content of such agreements shall require a written contract or the written confirmation by APS.
- (5) Any and all agreements and complaints which must be delivered by the Client to APS after the conclusion of the contract (e.g. deadlines, notices of defect, statement of withdrawal or mitigation) shall require written text form to be effective.
- (6) References to the validity of government regulations shall only serve for clarification. Even without such clarification, the government regulations shall apply insofar as they are not directly modified in these GTC or explicitly excluded from them.

§ 2 Offers, orders, and deliveries





- (1) All offers by APS shall be non-binding and non-committal until conclusion of contract, insofar as they are not explicitly marked as committal or if they contain a specific acceptance period.
- (2) Orders shall require written form in order to be legally valid. An order shall only be binding with a valid order confirmation.
- (3) The Client shall be obligated to diligently check the order confirmation from APS. Possible deviations from their order shall be reprimanded immediately. Failing this, the content of the contract shall be based on the content of the declaration of acceptance/order confirmation by APS.
- (4) Insofar as the Goods were ordered electronically, the contract text shall be saved by APS and sent to the Client via email beside the legally effective GTC after the contract is concluded.
- (5) Oral agreements shall not be valid.
- (6) On a case-by-case basis for special equipment manufacturing and/or a customer-specific production and in cases of specific change requests the conditions of the order confirmation shall be confirmed. In these cases, an appropriate discount amounting to 30% of the net Goods value can be demanded.

§ 3 Prices



- (1) The price lists currently valid at the time of order shall become part of the contract insofar as no other agreement was made.
- (2) Insofar as not otherwise deductible from the order confirmation, the prices are ex works plus the respectively valid VAT. Packaging, transport, and insurance expenses, as well as all other ancillary costs shall be invoiced separately.
- (3) All named prices are in Euro. If delivered to states outside the European currency union, APS shall set the official exchange rate by the ECB on the day of delivery. The basis shall be the equivalent value of the Goods in Euro.

§ 4 Payments

- (1) The invoices from APS shall be paid, in principle, without deduction and within 30 days of invoice date. Deviating agreements regarding due date and deductions require written form.
- (2) If the term of payment is exceeded, APS has the right to charge late fees for their administration efforts and commercial due date interest amounting to 5% over the base rate of the ECB p.a.
- (3) Unpaid Goods may not be passed on to third parties without consent from APS.
- (4) A payment shall only be deemed paid when APS possesses the amount. With receiving checks or exchanging, the payment shall only be deemed paid after they have been redeemed.
- (5) Counter-claims from APS can only be balanced by the Client or a withholding right asserted if their counter-claims are undisputed or legally determined.

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- (6) Invoice regulation via check or exchange are only accepted due to special agreements; discount, exchange costs, and costs shall be assumed by the Client.
- (7) If there is reason to doubt the creditworthiness of the buyer, due to facts which only become known to APS after the conclusion of the contract, the selling party has the right to require advance payment or corresponding sureties. If the buyer does not provide advance payment nor sureties despite the due date and the threat or finally refuses them, APS may withdraw from the contract.
- (8) Payments may only be made to employees of APS if they provide a valid collection authorisation.

§ 5 Delivery

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- (1) Information regarding delivery periods shall be approximate. Correct and timely delivery of the selected suppliers is always reserved.
- (2) The written order confirmation from APS shall be decisive for the scope of delivery.
- (3) Delivery periods or deadlines are only binding if they were designated as such in the order confirmation.
- (4) The delivery period begins with sending the order confirmation or the contracting by the Client and is only valid with the prerequisite of timely clarification of all details of the order.
- (5) Force majeure, operational disturbances, strikes, or other obstacles at APS not attributable to APS or the suppliers release APS, for the period of the disturbance and its consequences, from the obligation of delivery.
- (6) In cases of default in delivery, the Client may assert the following rights:
- APS is liable according to the legal provisions, insofar as the default in delivery is based on an intentional or grossly negligent contractual infringement attributable to APS. Insofar as the default in delivery is not based on an intentional or grossly negligent contractual infringement attributable to APS, the accountability for compensation is limited to the predictable, typically occurring damage.
 - APS is also liable according to legal provisions, insofar as the default in delivery attributable to APS is based on a culpable breach of a major contractual obligation; in this case, the accountability for compensation is limited to the predictable, typically occurring damage. Major contractual obligations are such obligations that make the proper execution of the contract possible in the first place and the adherence to which the Client may regularly trust in.
 - Insofar as the default in delivery is based on a culpable breach of a not major contractual obligation, the Client has the right to charge 3% of the delivery value per completed week of default, but a maximum of 10% of the delivery value. Furthermore, in this case, no compensation shall be made.
- (7) APS also has the right to meet an order in partial deliveries.
- (8) Delivery contracts without fixed delivery date ("on demand") can be agreed upon separately. APS reserves the right to accept the call order if it contains a fixed call-off period. If the agreed upon delivery Goods are not demanded within the call-off period, APS has the right to demand the (remaining) purchase price concurrently in exchange for delivery of the remaining Goods.

§ 6 Dispatch and passage of risk

- (1) Route and method of dispatch are, due to lacking agreement, left to be decided by APS. The dispatch of the ordered Goods shall always be carried out at the expense and risk of the Client. The Goods are only insured upon explicit request from the Client.
- (2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Client latest with handing over the Goods to the Client. With drop shipments, the risk of accidental loss and accidental deterioration of the Goods and the risk of default shall pass to the Client with the delivery of the Goods to the carrier, the freight carrier, or other persons designated for the delivery of the Goods. Insofar as an acceptance is agreed upon, this shall be decisive for the passage of risk.
- (3) In case of default of acceptance or culpable breach of the duties to cooperate by the Client, APS shall have the right to demand compensation for the resulting damage, including possible additional expenses. Further claims are reserved.
- (4) Delivered objects, even if they have insignificant defects, shall be accepted by the Client without affecting their existing rights by contract and law. In the case of transport damages, the Client shall obtain a confirmation of the improper condition of the Goods from the transport company and shall claim compensation from them.

§ 7 Reservation of ownership

- (1) The delivered Goods shall remain property of APS (reserved goods) until full payment of the invoice including any and all other claims from the business relationship.
- (2) The reserved goods may neither be pledged to third parties nor be transferred for safety before the full payment of the guaranteed credit. The Client must immediately inform APS in writing when and insofar as third parties access the Goods belonging to APS.
- (3) The Client shall have the right to resell the reserved Goods in common commerce. In this case, however, the Client cedes all claims to APS from such a resale, whether these occurred before or after a possible processing of the reserved Goods; APS accepts this cession by the Client. Regardless of APS's entitlement to themselves recover the debt, the Client shall keep their rights to recover the debt even after the cession. In this context, APS undertakes not to recover the debt as long and insofar as the Client meet their commitments, no application for insolvency or similar proceedings have been made, and there is no suspension of payments.
- (4) The processing, connection, or other alteration of the Goods by the Client shall always be conducted for APS. If the Goods are processed with other objects not belonging to APS, then APS shall have joint ownership of the new object in relation of the value of the Goods (invoice total, including VAT) to the other objects processed into the object at the time of processing. The object created from processing shall be subject to the same contractual content that applies to the reserved Goods.
- (5) If the Goods are inextricably combined with other objects not belonging to APS, then APS shall have joint ownership of the new object in relation of the value of the Goods (invoice total, including VAT) to the other objects combined with the object at the time of combination. If the combination occurs in a way that the object of the Client must be deemed the main object, it shall be deemed agreed that the Client transfers joint ownership to APS. The Client keeps the thus created sole ownership or joint ownership safe for APS.
- (6) The Client shall undertake to treat the Goods with care during the existence of a reservation of ownership rights. The Client undertakes to inform APS in writing in all cases of access to the Goods by third parties, particularly in cases of levies of execution as well as possible damages or the destruction of the Goods. The Client undertakes to immediately inform APS in cases of change of ownership as well as a change of address. The Client undertakes to compensate all damages and expenses which occur due to the breach of these obligations and required intervention measures against access of third parties to the Goods.
- (7) In cases of breach of contract by the Client, APS shall have the right, particularly in cases of default in payment, to withdraw from the contract and to demand the return of the Goods. This also applies to breaches of duty by the Client according to Paragraph (6) when it cannot be reasonably expected to continue the contract.
- (8) If the value of the delivered reserved Goods exceeds the value of the claim to be secured from the running business relationship with the Client by twenty percent, APS undertakes to release the delivered Goods or securities upon the Client's request.

§ 8 Intervention rights

- (1) The supplier and the purchaser herewith agree that with the conclusion of the contract of a delivery all claims of the purchaser from future resale or renting of the delivery to third parties or any and all other legal bases (insurance, tort, etc.), for the security of all claims of the supplier from the business connection with the purchaser, are transferred to the supplier.
- (2) The purchaser herewith cede all claims they have from resale or rent of the delivery including subsidiary rights and in full. The supplier herewith accepts this cession. However, the purchaser shall have the right to collect these transferred claims until the supplier demands the disclosure of the cession. The purchaser is forbidden from re-assigning the claims already ceded to the supplier.
- (3) The purchaser undertakes to transfer the property or any and all such rights from the objects accepted in lieu of payment in the context of resale, machine components, and used machines, no matter in which way, the moment the purchaser obtains the ownership or other rights thereof. The purchaser shall undertake to store the aforementioned objects for the supplier free of charge, to treat them with care and to insure them appropriately.

§ 9 Guarantee

- (1) The statutory Rectification Act shall apply to the Goods provided by APS. In the case of a defect or fault of an assured property, APS is therefore liable according to the statutory provisions, insofar as no limitations apply from the following.
- (2) APS guarantees, at the point of passage of risk, that the Goods are free from physical and legal damage according to §§ 434, 435 German Civil Code.
- (3) The Client undertakes to immediately inspect the received and transferred Goods for obvious deficiencies (e.g. quantity, condition, assured properties) and to inform APS in writing thereof within 10 days after receipt. Not obvious – hidden – deficiencies which only become apparent over time (e.g. after commissioning) shall be reported to the APS



immediately after discovery within 10 days and in writing. Insofar as these deficiencies are not reprimanded within the aforementioned deadline, any and all claims by the Client in regard to this are excluded. Possible commercial inspection and reprimand obligations are unaffected by the previous provisions. The aforementioned does not apply if APS has fraudulently concealed the deficiency or assumed a guarantee for the condition of the Goods.

(4) In cases of warranty issues, APS shall remove these according to the Client's wish in the frame of their fulfilment claim (rectification) or supply new Goods (replacement). APS has the right to refuse the removal of deficiency or replacement delivery if it is only possible with disproportionate costs and another way of removing the deficiency without significant disadvantages for the Client exists.

(5) APS shall be granted appropriate time and occasion for the removal of the deficiency. The Client shall particularly ensure that deficient/faulty Goods are provided for APS or their delegated persons for inspection and repair. If the Client refuses this, APS is released from the liability for defects.

(6) The original guarantee periods are neither subject to suspension nor interruption in cases of repair of the delivered goods. They are extended for those parts which could not be operated appropriately, and for the period of disruption caused by the repair, replacement delivery, or compensation.

(7) There shall be no guarantee claim with deficiencies caused by improper handling or overuse, where legal operation or installation provisions or those stipulated by APS are not followed; with faulty assembly or commissioning by the Client or third parties, with natural wear, transport damages, improper storage, with functionally disturbing operating conditions (e.g. insufficient power supply), with chemical, electrochemical, or electrical influences, and when maintenance or servicing was not conducted. The same applies to improper modifications or other service works by the Client or third parties.

(8) Should APS not be able to remove the deficiency of the delivered Goods within an appropriate period, the Client shall have their legal rights. With only insignificant deficiencies, however, the Client does not have the right to withdraw. Insofar as the Client demands compensation, APS is liable according to the regulations of limitation of liability in § 9.

(9) The limitation period for deficiency claims with delivery of new Goods shall be two years starting from passage of risk. With used Goods the warranty obligation shall be one year for all, starting from passage of risk. This does not apply to compensation claims due to deficiencies. For compensation claims due to a deficiency the regulations in § 9 of these GTC shall apply.

(10) In the first six months after passing the Client must prove the existence of a deficiency at the time of passing, the time of detection, and the timeliness of the notice of defect. If the deficiency only becomes apparent after six months after passing, the Client shall provide proof that the Goods were already deficient at passing of risk. By way of contrast, APS shall be free to produce proof that the Goods were free of material defects.

(11) In the case of an unjustified complaint of deficiency claims, the Client shall assume the costs APS expended for this mobilisation.

(12) APS shall assume the guarantee for those parts of the delivery which are not manufactured by APS only insofar as these were also provided by the suppliers.

(13) The Client shall not receive guarantees in the legal sense from APS. Insofar as the manufacturer of specific items provide a guarantee, this will be valid independent of the warranty rights the Client is entitled to. The details of a possible manufacturer's warranty, particularly its scope of coverage as well as name and address of the guarantor, can be deducted from the item's corresponding warranty provisions. The assertion of claims from a guarantee granted shall be directed at the guarantor according to their warranty provisions.

§ 10 Liability

(1) Insofar as the general terms and conditions do not state otherwise, in cases of breach of contractual and non-contractual obligations, APS shall be liable according to the relevant statutory provisions.

(2) APS is liable for compensation – regardless of the legal basis – in case of intent and gross negligence. The culpability of APS must be proven by the Client.

(3) In cases of simple negligence, APS shall only be liable

a) For damages due to loss of life, body, or health,

b) For damages due to breach of a major contractual obligation (i.e. an obligation that makes the proper execution of the contract possible in the first place and the adherence to which the contractual partner regularly trusts and may trust in); in this case, however, APS' liability is limited to the predictable, typically occurring damage.

(4) The aforementioned exclusions of liability and limitations of liability apply in the same scope in favour of those organs, legal representatives, employees, and other vicarious agents of APS.

(5) The limitations of liability according to Paragraph (2) do not apply insofar as APS has fraudulently concealed the deficiency or assumed a guarantee for the condition of the Goods. The same applies to claims of the Client according to the Product Liability Act.

(6) APS' liability for personal and material damages including the immediately resulting consequential damages is in substance insured in appropriate amounts according to APS' public and product liability insurance which is limited to EUR 3,000,000.00 per damage event.

§ 11 Confidentiality

- (1) The contractual parties undertake mutually to treat all information with regard to the business relationship with APS strictly confidential and not to disclose it or make it accessible to third parties without written permission by APS.
- (2) The Client will only pass on confidential information to employees if and insofar as required for the execution of their tasks in the frame of the business relationship with APS.
- (3) The obligation for confidentiality shall continue to apply after the termination of the business relationship.
- (4) Further agreements for confidentiality, if required, shall be regulated in separate agreements.

§12 Industrial property rights

- (1) APS reserves all property rights and copyrights to all images, drawings, calculations, and other documentations provided by APS to the Client or made otherwise available to the Client in connection with the contractual delivery by APS. All aforementioned documentations may not be used for other purposes, duplicated, or made accessible to third parties without explicit approval by APS.
- (2) With the production of the Goods depending on drawings or other information of the Client, solely the Client is responsible for preventing infringement of third party rights.
- (3) The Client shall release APS from all claims from third parties due to infringement of industrial property rights (including legal costs) and to support APS in a possible litigation.

§ 13 Export Control Law

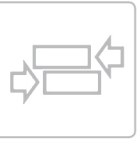
- (1) The Client shall not export the delivered Goods or re-export them, neither directly nor indirectly, without the approval required according to the laws or provisions for export control of the country in which the contractual parties are judicially subject to.
- (2) The Client shall not export or re-export the delivered Goods, neither directly nor indirectly, to a country which the United Nations have imposed a sanction upon, as long as the decision is in force and insofar as the Goods delivered by APS continue to be subject to an export ban to that country.
- (3) In the case of breach by the Client of one of the stipulations of the paragraphs (1) and (2), the Client shall be liable for any and all direct and indirect damages this breach causes APS. In this case, APS shall have the right to immediately terminate the contract without any liability whatsoever to the Client.
- (4) In cases of established breach of export limitations and such breaches the Client is responsible for, the Client shall explicitly release APS from any liability and responsibility in external relations, regardless of the legal basis, and the Client shall assume all damages an infringement thereof costs APS.

§ 14 Data Protection

- (1) APS observes the relevant data protection provisions, particularly the European General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG). APS has taken technical and organisational measures which ensure that the provisions for data protection are observed by APS and external service providers.
- (2) APS points out that personal data (Client data) is saved and processed in the frame of the intended purpose of the contract.
- (3) APS shall have the right to pass Client data on to market information providers for checking and monitoring credit-worthiness, if necessary. In case of data processing and disclosure, the Client's interests worthy of protection shall be respected according to the legal regulations.
- (4) For detailed information regarding data protection please see the Privacy Statement. It is accessible at <https://www.wille-geotechnik.com/en/privacy-policy.html>.

§15 Place of performance, place of jurisdiction, applicable law

- (1) The laws of the Federal Republic of Germany shall apply to these terms and conditions between the Client and APS and with the exclusion of the UN Purchasing Law.
- (2) Place of performance shall be D-37124 Rosdorf.
- (3) All disputes from or in connection with contracts shall have Göttingen (in Germany) as exclusive place of jurisdiction.
- (4) If the English version of these terms and conditions should differ from the German version then the text of the German version shall be decisive.
- (5) Additional or auxiliary agreements require written form.
- (6) Changes in the general terms and conditions shall be reported to the Client as soon as possible. The Client has the right of objection to these changes. If no objection is made by the Client within one month of the change of the GTC changes, the changes shall be deemed accepted.



§ 16 Final provisions

(1) If a provision of these terms and conditions becomes fully or partially invalid or infeasible or the effectiveness of the feasibility is later lost or if a gap is found, the validity of the remaining provisions shall not be touched by this. In place of the invalid or infeasible provision or for filling the gap the appropriate regulation, insofar as legally permissible, which comes closest to what the parties intended or the purpose of the contract would intend if they had observed this point, shall be deemed agreed.

(2) The parties agree that the invalid provision shall be replaced by a valid regulation which is reasonable for both contractual partners and which comes closest to the economical purpose of the invalid regulation.

APS Antriebs-, Prüf- und Steuertechnik GmbH
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