

General Buying Terms APAG Group

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1. General

The following general buying terms (AEB) are applicable for the legal relationship between the vendor and APAG Elektronik AG („APAG“). These become a component of the contract with the vendors when they are explained about the applicability and even when APAG refers to the AEB, whether it is as supplement to or print/copy of enquiries (confer additionally point 2 below) or orders (acceptance status: accepted) or should it be through notification (of supplements or orders etc.) of the link on the APAG website, where the text of AEB can be entered.

Contrary general terms of the vendors (e.g. their general delivery terms), particularly also those which explain their applicability with their offer, are fundamentally not recognized by APAG. They are applicable only when accepted by APAG explicitly and in writing. Neither silence on the part of APAG nor assumptions by the vendor or their payment are valid as recognition.

The existing AEB are valid subject to an otherwise contractual regulation.

All verbal and telephonic arrangements must be confirmed in writing in order to be binding. If the clarification is covered in an e-mail, this is also treated as a condition of being 'in writing'.

2. Offers from vendors / Contract termination

On request it is beseeched of a vendor to present an offer without any costs attached to it. He needs to make his offer in accordance with APAG guidelines and in case of any discrepancies, these need to be explicitly indicated. He is obliged to clarify all factors to APAG that could be of interest in regards to the offer or the offered services.

When the vendor does not set any timelines in his offer, the offer is binding for 30days. The contract materializes when APAG accepts the offer of the vendor within a 30 day duration in writing. Silence at the APAG end about the offer of the vendor is under no circumstances valid as a declaration of acceptance. APAG is under all circumstances free to choose if they want to accept the offer from the vendor or not. If a contract does not get realized, the vendor can under no circumstances claim compensation for expenses or loss of profit/gains.

APAG reserves the right to annul an order without any costs and penalties latest up to 6 weeks prior to the delivery date (contract termination). Deviating agreements are to be agreed upon in writing.

3. Scope of delivery / Amendments in the scope of delivery.

The vendor is obliged to ensure that he is timely aware of all information necessary for correct execution of his contractual obligations, especially for deliveries intended to be used by APAG for his deliveries.

He vouches for it that (i) his deliveries cover all services (including consultation, documentation etc.) that are necessary for prescribed, safe and commercial use of the delivered products and that (ii) that the products to be delivered are suitable for the intended use and conform to the science and technique as on date. The vendor needs to follow all current standard regulations (laws, technical regulations and norms, standards etc.) for the delivery of services, especially also the relevant regulations for environmental protection, hazard and accident protection at the destination. The vendor needs to educate APAG on the required regulatory approvals and reporting requirements for the import and operation at the destination of the products to be delivered.

The vendor is obliged to specifically deliver the ordered products and to specifically use the components identified by APAG in case of so called assembling products. Alternative products (second sources) require a prior written approval from APAG. Should the vendor deliver alternative products without a prior written approval from APAG, the vendor is fully liable to incur all consequential damages/losses and in fact irrespective if the alternative products were noticeable or not for APAG during inspections at the time of stock receipt or at the time of processing (refer point 9.1)

APAG can within reason ask the vendor for amendments in the construction and execution of the products to be delivered. The vendor would need to implement these within a reasonable time frame. Mutually just arrangements are to be struck for the implications, especially for the overruns and minimum costs as well as the delivery deadlines.

The vendor makes sure that he is able to supply products that are yet to be delivered or have been delivered for a time period of 15 years after the last order at reasonable terms or parts of it as spare parts.

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4. Price / Payment terms

The prices agreed upon are considered final and cannot be increased without agreement from APAG even in case the circumstances change, even if these are unforeseen. Subject to an explicitly different arrangement, the prices cover costs especially associated with the transport and provisions attached to the products to be delivered (like packing, transport costs, insurance, entry or exit taxation, costs attached to quality assessment, conformity assessment, enrollment, approval and certification procedures etc.)

In case nothing else is agreed upon, the payment follows within 2 weeks with a 3% pre-payment discount, within 1 month with a 2% pre-payment discount or within 3 months without any deductions. The time frame begins with the receipt of delivery in accordance with the contract and correct verifiable invoice. In case of an early delivery the time frame starts however earliest with the delivery date agreed upon.

Invoices are to be submitted in a simple copy specifying the unloading point, vendor number, vendor article number, factory/manufacturer, factory/manufacturer article number, date-code, RoHS/Non-RoHS confirmation, tax tariff number, origin, preference eligibility, delivery quantity and unit price.

For delivery errors, APAG is entitled to stop payment till correct delivery. Also, as per point 9 hereafter, payment is not a confirmation of correct delivery or guarantee waiver.

APAG reserves the right to choose the mode of payment (transfer, cheque etc.).

The vendor is not authorized to transfer or collect through a third party claims that are due towards APAG.

5. Delivery deadline and term / delay

Delivery dates agreed upon or delivery periods (terms) are binding. Entry of the delivery at the destination is considered as the standard compliance of the delivery date or delivery time period. With non compliance of the delivery date or delivery duration, the vendor automatically and without prior notice is delayed.

Should the vendor know that the delivery date or delivery time period cannot be maintained, he is expected to notify APAG immediately in writing, stating the reasons and the anticipated duration of delay.

Should the vendor be delayed without fixing a renewed deadline in advance, APAG is authorized to refuse to accept delivery. Instead, APAG could also allow the delivery. The presumption of Art. 190 paragraph 1 OR is not applicable. Irrespective whether APAG allows or refuses the (subsequent) delivery, the vendor is liable to compensate for any losses due to the delay even if the vendor is not responsible for the delay. APAG reserves the same rights when the vendor is not already delayed but anticipates with almost certainly that the delivery date or delivery duration will not be maintained.

Should the vendor not comply with the delivery date, the delivery duration or the delivery point, he owes APAG a contractual penalty of 0.5% per week of delay, but not more than 5% of the total value of the delivery in question. The contractual penalty can also be claimed when APAG allows delivery or does not refuse delivery despite the delay. Apart from that, APAG does not give up their right to claim damages due to contractual penalty. Should the contractual penalty nevertheless be paid, the claim for compensation is reduced by the contractual penalty amount already paid.

Partial delivery and prior delivery are permissible only with written consent from APAG.

6. Further delivery terms

As long as nothing contrary exists in the AEB and as long as the parties have not agreed upon anything contrary, the delivery follows under DDP terms (as per valid current incoterms) to the destination designated by APAG or agreed upon by the parties.

A simple delivery note needs to accompany each delivery. The delivery note needs to mention the delivery, article and vendor numbers for APAG as well as the delivery quantity, vendor article number, brand/manufacturer article number, date-code and RoHS/Non-RoHS confirmation.

The products to be delivered are to be packed in accordance with safety specifications appropriately as per trade standards of the destination. APAG reserves the right to stipulate the packing method to the vendor.

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7. Confidentiality obligations / Trademark rights of APAG

The vendor is obliged to maintain confidentiality of privileged i.e. not apparent information from APAG (especially manufacturing and trade secrets etc.) during and also after fulfillment of the contract and not to share it with a third party. The vendor is further obliged to take care that even his personell as well as subcontractors handle this information confidentially. The confidentiality obligations are applicable irrespective whether privileged information was obtained accidentally or entrusted knowingly.

The vendor acknowledges that the entire immaterial good rights relinquished subject matters (models, templates, samples and similar subject matters) as well as discoveries, techniques/practices, know-how, descriptions, report, drawings/plans, patents, other commercial trade mark rights etc. stay exclusively with APAG. The vendor is obliged to desist all actions that could violate the commercial trade mark rights of APAG. The vendor is to safely preserve the documents and materials provided to him for APAG within the scope of the contract execution and return them or destroy them immediately upon request by APAG, latest albeit at the end of the contract. He is not entitled to withhold it due to any reason. The complete return or destruction respectively is to be confirmed in writing.

Any breach of obligations in the aforesaid paragraphs immediately attracts a contractual penalty for violation for each case in the amount of CHF 30,000.00. The vendor reserves the right get the appropriateness of the amount of the contractual penalty legally appraised. Paid up contractual penalties are to be calculated (credited) into the claim for damages.

8. Third party intellectual property rights.

The vendor needs to vouch for it that use of the delivered products do not damage the trade mark rights or miscellaneous rights or business or trade secrets of a third party. He releases APAG and their customers from all third party claims.

9. Guarantee (liability for defects / faulty goods) / Quality

9.1. The contract compliant condition

The vendor guarantees and ensures, (i) that the products that are to be delivered or the delivered products do not exhibit any flaws that impair their value or usability, (ii) that they encompass all features agreed upon, (iii) that they comply with the specifications and documents (data sheets etc.) that were submitted to the vendor, (iv) the date-code of the delivered products are no older than 6 months and (v) the material, execution and construction comply with the science and technique as well as all applicable regulations (laws, technical regulations and norms, quality safety norms, standards etc.) as on date (compare besides aforementioned point 3 paragraph 2).

The vendor is obliged to deliver exclusively products indicated by APAG and to use exclusively components indicated by APAG in case of product assembly. Alternative products (second sources) require a prior written approval from APAG. Should the vendor deliver alternate products without written approval of APAG, the vendor is liable for all consequential damages, absolute accountability and in fact irrespective of whether or not this was identifiable for APAG within the scope of incoming goods inspection or during processing.

Should the vendor be able to assess that the product ordered by APAG would be commercially non-viable or impractical for the use intended by APAG, he needs to point this out to APAG immediately in writing, failing which the products also count as flawed even in such a case even if they comply with standards set by APAG and in the aforementioned other paragraphs.

The vendor is liable also if he did not have knowledge about the flaw. He is liable for his subcontractors just as he is for his own services and is responsible that the delivery and use of the delivered products do not violate third party safety proprietary or other rights.

9.2. Guarantee period

For each delivery a guarantee period of three (3) years is applicable. The period starts with the entry of the delivery at the destination.

During the guarantee period, APAG is authorized to contest flaws of all types. The vendor is to avoid any objection to delayed examination of the delivered products as well as objection to delayed claims to defects.

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9.3. Rights arising from product defects.

Should the delivered products be flawed, APAG is authorized at free will and without any further conditions to either (i) reduce the price corresponding to the shortage (ii) to step out of the contract or (iii) to demand subsequent delivery of flawless products or correction of the flawed products. In the last scenario (iii) APAG sets a reasonable duration for subsequent delivery or product correction respectively for the vendor. Should the vendor allow this duration to elapse unutilized, or should he stipulate already that setting a time line is of no use, or should there be danger in delay, APAG is authorized to undertake correction on their own or through a third party or arrange for replacement of the flawed products at the vendor's account

Notwithstanding the aforementioned rights (paragraph 1), APAG is authorized to demand compensation that APAG suffered from the delivery (direct or indirect) of the flawed products and in fact irrespective of whether or not the vendor is at fault for the flaw in the delivered product. Compensation liability also entails those actual losses that emerge due to the fact that APAG becomes liable for a sellers warrantee towards his customers as long as the accountability for defective products is attributable to the vendor.

10. Product liability

Should APAG be prosecuted by a third party due to regulations of product liability because the delivered products do not comply with these regulations, the vendor relinquishes APAG from these claims. Thereby it is irrelevant whether this relates to applicable inland (Swiss) or foreign rights product liability.

APAG is liable to inform the vendor as soon as he comes to know about such claims, in order to enable him to fend off any unjustified claims. APAG can cede the process execution to the vendor once it is established that the source of the damage can only be the products delivered by the vendor.

Should a call back be imposed due to faulty product (of the vendor) after assessment by APAG, APAG guides the vendor on it immediately, as long as the danger is not in default. The vendor bears the costs for the call back action as long as the call back has become necessary due to faults in the product delivered by him. Should the call back be due to multiple reasons, the costs are shared in proportion.

The liability of APAG towards the vendor in this context lapses same as the liabilities of the injured third party towards APAG, this means as per the rules of the applicable product liability law.

11. Supplies

Materials, fabric, parts, containers, special packing, tools, measurement material or similar ('supplies') remain a proprietary of APAG. The processing, combination, mixing of the supplies, APAG retains joint ownership in the new product in proportionate to the value of the supplies compared to the value of the total credentials

Supplies may be used only in compliance and are to be returned to APAG if not used for the order. The vendor does not reserve the right to retain supplies for any reason.

Supplies as well as duplication of the same cannot be made available to third parties (also subcontractors) and cannot be used for purposes other than agreed upon. Duplication of supplies may be done only after prior written approval from APAG. Upon duplication, copies shall become a property APAG

12. Manufacturing equipment manufactured by the vendor (tools etc.)

Should the manufacturing of the products to be delivered require special manufacturing equipment (matrixes, models, templates, samples, tools, testing material amongst others), APAG retains co-ownership or full ownership in the scope within which APAG contributed in the declared costs (of the manufacturing equipment).

The payment of the cost of the manufacturing equipment runs through APAG unmediated in the (co) ownership, even if it stays in the premises of the vendor. The manufacturing equipment is to be marked by the vendor as (co) ownership of APAG (in fact on the product as well as in the accounts books).

Manufacturing equipment (co) owned by APAG is to be used exclusively for production of products to be delivered. The vendor is further authorized to make use of manufacturing equipment physically or legally, store at their own site or make it functional temporarily only with written consent from APAG. Maintenance, repairs and replacement of the manufacturing equipment is to be borne by the vendor.

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APAG reserves a pre-emptive right for manufacturing equipment co-owned by APAG. After delivery, the vendor needs to hand over the production equipment immediately to APAG. For manufacturing equipment that are co-owned, APAG needs to compensate the co-ownership share to the vendor at the current value of the equipment after receipt of the same. The vendor does not reserve the right to retain it under any circumstance. The vendor is obliged to return the equipment also in case he goes insolvent or in case of a long term break in delivery.

13. Long term inability to deliver / impending insolvency of the vendor

In case of a long term inability to deliver or in case of an impending initiation of insolvency or a comparable situation for the vendor, APAG is authorized to step out of the part of the contract pertaining to the not yet fulfilled section.

Should the vendor be afflicted by one of the aforementioned occurrences, he is obliged to assist APAG or a third party with storage of the production yet to be delivered, inclusive of the transfer of trade requirements necessary for (safety) rights of production.

14. Salvatorious clause

Should one of the aforementioned provisions or individual provisions of the contract be unworkable, the balance provisions (of this AEB or contract) are hereby not to be affected (changed). The parties are obliged in such cases to agree upon regulations that correspond to the best workable in sense and purpose.

15. Applicable law and jurisdiction

All legal relationships between the parties are subject to the Swiss law excluding the United Nations Convention on Contracts for the International Sale of Goods dated 11th April 1980 (Article 6 UNKR).

The legal domicile for all disputes from and in relation to the contract relationship is Pfäffikon (CH-8808), Switzerland. APAG is however entitled to bring the vendor to justice at any other competent court.

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