

As of April 2020

**General Terms and Conditions for the Delivery  
of Products and Services  
of APROVIS Energy Systems GmbH with Registered Office in Weidenbach  
("General Terms and Conditions")**

**I. Scope of application**

1. Our General Terms and Conditions only apply to entrepreneurs, legal persons governed by public law and special funds under public law.
2. Our General Terms and Conditions apply exclusively. Buyer's deviating terms and conditions are not recognised unless we have expressly agreed thereto in writing. Our General Terms and Conditions also apply where we, having knowledge of Buyer's terms and conditions in contrast to or in deviation from our General Terms and Conditions, execute delivery to Buyer without expressing any reservations.
3. Our General Terms and Conditions also apply to all future transactions with Buyer even if not expressly referred thereto.

**II. Quotations, quotation documents, order confirmation**

1. We are bound to our quotations and cost estimates for fourteen (14) days unless expressly agreed otherwise.
2. We reserve all ownership rights, copyrights and property rights to all documents and information of either a tangible or intangible nature (e.g. cost estimates, drafts, sketches, drawings, plans, samples, models, calculations) prepared by us, also in electronic form. Such documents or information may not be used, reproduced or made available to third parties without our consent and must be returned to us upon request.
3. An order is a binding offer. We may accept this offer within two (2) weeks either expressly or by delivering the goods to Buyer and, if agreed, assembling the goods at Buyer's site.
4. Regarding the scope of our delivery and services, only our order confirmation is decisive unless expressly agreed otherwise.

**III. Export licence, transfer licence**

1. Should an export licence be required for the delivery to a third country or a transfer licence for the delivery to a member state of the European Union, then a quotation and confirmation of order are only provided and a contract is only entered into on the condition that the required licence is issued by the competent authority.
2. Supplier undertakes to apply for an export or transfer licence from the competent authority. The costs for this are borne by Buyer.
3. If the export or transfer licence is not issued for any legal reason whatsoever, then a contract will not be formed. Supplier has no further obligations, in particular, no liability for damages.
4. The aforementioned Sections III. 1. to III. 3. also apply to trafficking and brokering transactions requiring a licence and technical assistance services, such as repair, maintenance and commissioning activities, requiring a licence.
5. The goods manufactured and distributed by Supplier are only destined for customers in those countries and for persons, organisations and associations that comply with the applicable export control regulations, in particular, also with regard to the intended use, and are not listed on EU or UN sanction lists, i.e. no embargo is in place against them.
6. Every export to third countries or transfer to member states of the EU without an export or transfer licence issued by the Federal Office of Economics ("*Bundesamtes für Wirtschaft*") or to receivers listed on EU or UN sanction lists or any use of the goods supplied by Supplier not approved by the Federal Office of Economics is, unless expressly agreed otherwise, not permissible and obliges Buyer to pay damages to Supplier.

#### **IV. Prices and payments**

1. The prices stated by us are net prices ex works, including loading in our factory, but excluding packaging, transport, transport insurance, unloading, installation, assembly, plus statutory value added tax. The applicable statutory value added tax will be calculated separately in each case.
2. Changes of the VAT rate entitle us to adjust the prices in accordance with the change of the VAT rate occurred.
3. In the case of contracts with an agreed delivery time from the formation of the contract of more than four (4) months, Supplier reserves the right to increase the prices in accordance with the increases in wage costs or material prices. In the event that such increase exceeds five percent (5%) of the price agreed, Buyer is entitled to a right of termination.
4. Unless expressly agreed otherwise, Buyer will make payments to Supplier's account without any reduction as follows: thirty percent (30%) of the total price become due upon receipt of the confirmation of order by Buyer, and the remaining seventy percent (70%) of the total price are payable within one (1) month after the passing of risk.
5. Set-off with Buyer's counter-claims of any kind whatsoever is excluded unless Buyer's counter-claim is undisputed, has been acknowledged by us, has been legally established as final and absolute, or is ready for judgement in a legal procedure without the taking of further evidence.
6. Buyer only has a right of retention in the case of counter-claims which are based on the same contract and which are undisputed, have been acknowledged by us, have been legally established as final and absolute, or are ready for judgement in a legal procedure without the taking of further evidence.
7. Supplier is entitled to invoice its services by electronic means (e.g. as an e-mail with and without a PDF or text attachment).

#### **V. Delivery time**

1. The dates and time periods stated by Supplier are only binding when expressly confirmed by us.
2. The start of the delivery time requires in any case that all commercial and technical questions between the parties are clarified, that all required approvals and permits have been obtained, and that Buyer has fulfilled all its obligations, such as obtaining the required certificates or approvals from the competent authorities or effecting an advance payment. If this is not the case, the delivery time is reasonably extended. This does not apply if Supplier is responsible for the delay.
3. The delivery period is complied with if the delivery item has left Supplier's factory before its expiry or Buyer has been informed of the readiness for delivery. Where an acceptance has to take place, the date of acceptance or, alternatively, the notification of the readiness for acceptance will be decisive, except in the case of justified refusal to accept delivery.
4. If the delivery or the acceptance of the delivery item is delayed for reasons for which Buyer is responsible, Buyer will - commencing fourteen (14) days after the notification of the readiness for delivery or acceptance - be charged with the costs incurred by the delay.
5. Buyer may withdraw from the contract without setting a time limit if complete performance becomes finally impossible for Supplier before the passing of risk. In addition, Buyer may withdraw from the contract if, in the case of an order, the execution of a portion of the delivery becomes finally impossible and Buyer has a legitimate interest in the rejection of the partial delivery. If this is not the case, then Buyer must pay the contract price attributable to the partial delivery. The same applies in the case of Supplier's inability. In addition, Section XI. applies. If the impossibility or inability occurs during the delay in acceptance, or if Buyer is solely or predominantly responsible for these circumstances, then Buyer remains obliged to effect payment.
6. Occurrence of Supplier's default requires in any case a reminder on Buyer's part with an appropriate extension of time. Damages on account of default are limited to the reimbursement of the foreseeable, typically occurring damage and only come into existence if we are responsible for the failure to observe the time limit. In the case of minor negligence, the amount of the claim for reimbursement of the damage caused by delay is limited to five percent (5%) of the agreed order price. The restriction of our liability does not apply in the cases of Sections XI. 2. and XI. 4.

## **VI. Force majeure**

Even in the case of bindingly agreed time periods and dates, Supplier is not responsible for delays due to force majeure or due to events which render Supplier's performance substantially more difficult or impossible, even if they occur at Supplier's supplier or sub-contractors or their sub-suppliers, unless Supplier is responsible for the disruption or has already been in default with its performance for another reason.

Force majeure is all unforeseeable and unpreventable events beyond Supplier's control, which - under the given circumstances - could not be prevented with appropriate and reasonable means. Such events include, in particular, unfavourable weather conditions and natural disasters (e.g. earthquakes, fire, floods, storms), political unrest (e.g. wars, civil wars, revolutions), acts of terrorism, administrative measures, interruptions to work caused by political or economic circumstances, embargoes, breakdowns, strike, lockout, staff shortage, quarantine measures, diseases (e.g. epidemics or epidemic risks, pandemics), acts of piracy, shortage of necessary raw and operating materials, shortage of transport means, transport delays due to traffic disruptions.

Such delays entitle Supplier to postpone the performance by the duration of such disruption plus a reasonable start-up period, however, no longer than four (4) months if Supplier has notified Buyer of the delay and its anticipated duration immediately after the occurrence of the disruption.

Supplier is obliged to eliminate delays occurred if this is possible and reasonable for Supplier at reasonable economic expense.

In the event that the delay lasts longer than four (4) months, Buyer is entitled to set Supplier a reasonable grace period following the expiry of this time limit and withdraw from the contract after the expiry of the grace period. Also, in this case, Buyer cannot assert any claims for damages against Supplier unless Supplier is responsible for the disruption or has already been in default with its performance for another reason. However, the performance level achieved at the time of withdrawal must be settled based on the order prices and paid by Buyer. Beyond that, Buyer cannot request compensation for any further damage or lost profit.

## **VII. Passing of risk, acceptance**

1. The risk passes to Buyer when the delivery item has left the factory, even if partial deliveries are made or Supplier has taken over other services, e.g. shipment costs or delivery and installation. Where acceptance has to take place, such acceptance is decisive for the passing of risk. Acceptance must be carried out promptly on the date of acceptance, or, alternatively, after Supplier's notification of its readiness for acceptance. Buyer may not refuse acceptance in the case of minor defects.

2. If delivery or acceptance is delayed or cancelled due to circumstances beyond Supplier's control, the risk will pass to Buyer on the date of notification of the readiness for delivery or acceptance.

## **VIII. Transport insurance, transport damage**

1. Supplier is entitled, but not obliged to take out transport insurance at Buyer's expense. The sum insured is based on the value of the particular goods.

2. If goods with obvious transport damage are delivered, Buyer is obliged to report such damage to deliverer (e.g. railway company, post office or carrier) preferably instantly and contact us immediately, so that we can assert claims against the carrier or under any transport insurance. Buyer's statutory rights and obligations are not restricted thereby.

## **IX. Retention of title**

1. Delivered items remain our property until they are fully paid. We retain title to delivered items until all - also future - claims which we have against Buyer from the business relationship are fulfilled. The retention of title also extends to the recognised balance due where we post receivables from Buyer to current account (current account reservation).

2. Buyer is obliged to handle the delivered goods with care; in particular, Buyer is obliged to insure them sufficiently at its own expense at the original value against the risk of fire, water damage and theft. If maintenance and inspection activities are required, Buyer must perform these at its own expense in time.

3. Buyer is obliged to immediately inform us of seizures of the items under reservation of title or of other third-party interventions in text form and advise the pledgees of our retention of title so that we can file a suit pursuant to Section 771 ZPO (German Code of Civil Procedure). If the third party is not able to reimburse us for the judicial and extra-judicial costs of a suit pursuant to Section 771 ZPO, Buyer will be liable for the loss incurred to us.
4. Buyer may re-sell or process the delivered items in the ordinary course of business unless Buyer has already effectively assigned the claim against its contractual partner to a third party in advance or agreed a non-assignment clause. In order to secure the fulfilment of all our claims, Buyer hereby assigns to us with priority all claims, even future claims, in the amount of the final invoice amount including VAT from a re-sale of the delivered items together with all ancillary rights in the amount of the value of the items delivered by us. We hereby accept Buyer's declarations of assignment.
5. If items under reservation of title are built, as essential components, into Buyer's plot of land, then Buyer hereby assigns the claims resulting from the sale of such a plot of land or from the rights to such a plot of land in the amount of the invoice value of the items under reservation of title to Supplier, together with all ancillary rights.
6. If the items under reservation of title are built, as essential components, into a third party's plot of land by Buyer or on Buyer's behalf, then Buyer hereby assigns any claims for compensation against the third party or the party concerned in the amount of the invoice value of the items under reservation of title to Supplier, together with all ancillary rights.
7. When Buyer processes, blends or mixes the items under reservation of title with other items, we are entitled to the co-ownership in the new item in the ratio of the invoice value of the items under reservation of title to the value of the remaining items. If the blending or mixing occurs in such a manner that Buyer's item is deemed to be the main item, it is agreed that Buyer will transfer pro-rata co-ownership to us. Buyer is obliged to take custody of our sole or co-owned property on our behalf free of charge.
8. We are obliged to release the securities to which we are entitled at Buyer's request insofar as the value of the securities exceeds the accounts receivable to be secured by more than ten percent (10%); the selection of the securities to be released is at Supplier's discretion.

#### **X. Warranty**

1. Section 377 HGB applies to trade purchases with merchants ("*Kaufleute*") as defined in the German Commercial Code ("*HGB*").
2. The limitation period for defect claims is twelve (12) months unless another limitation period is defined in Section 438(1) No. 2 BGB or Section 634a(1) No. 2 BGB (German Civil Code).

#### **Material defects:**

3. All those components which prove to be defective as a result of circumstances that occurred prior to the passing of risk, must, in accordance with the provisions below, be remedied free of charge at Supplier's option either by repair or replacement. The discovery of such defects must be promptly reported to Supplier in text form. Components replaced become Supplier's property.
4. To carry out all rectifications of defects and replacement deliveries appearing necessary to Buyer, Buyer must always set Supplier an appropriate grace period for subsequent performance; otherwise, Supplier is exempt from the liability for consequences resulting therefrom. In urgent cases of danger to operational safety or to prevent disproportionately large damage, Buyer must promptly notify Supplier thereof and coordinate with Supplier whether Supplier will remedy the defect itself or whether or to what extent Buyer will remedy the defect itself or have the defect remedied by third parties by way of substitute performance and may demand reimbursement from Supplier of the necessary expenses in such case. If Buyer fails to promptly notify and coordinate with Supplier in the cases of the aforementioned sentence, then Supplier is not obliged to reimburse expenses paid for the substitute performance unless Supplier is responsible that notification of and coordination with Supplier was not possible.
5. In the case of rectification of defects or replacement delivery, we are obliged to bear or compensate for all expenses required for the purpose of subsequent performance pursuant to Section 439(2),(3) BGB or Section 635(2) BGB to the extent where such expenses are not increased due to the fact that the delivery item has been transferred to a place other than the agreed place of performance.
6. Within the scope of statutory provisions, Buyer is entitled to withdraw from the contract if Supplier, taking into account statutory exceptional cases, allows a reasonable deadline set for the rectification of defects or the replacement delivery

due to a material defect to elapse fruitlessly. In the case of an insignificant defect only, Buyer is only entitled to a reduction of the contract price.

7. In the following cases, in particular, no guarantee is assumed: Inappropriate or improper use, incorrect installation or commissioning by Buyer or a third party, natural wear, faulty or negligent handling, improper maintenance, unsuited equipment, defective construction work, unsuited ground, chemical, electrochemical or electric impacts unless Supplier is responsible for them.

8. If the defect is not rectified properly by Buyer or a third party, Supplier will not assume any liability for the consequences resulting therefrom. The same applies to modifications carried out on the delivery item without Supplier's prior consent.

9. Supplier, without any express written agreement, does not guarantee that the items delivered will comply with foreign regulations.

#### **Defects of title:**

10. If the use of the delivery item leads to the infringement of industrial property rights or copyrights within Germany, Supplier will, at its expense, provide Buyer with the right to basically make further use of the delivery item, or modify the delivery item in a manner reasonable for Buyer such that the violation of the property right no longer exists.

If this is not possible at economically reasonable conditions or within a reasonable time limit, Buyer is entitled to withdraw from the contract. Under the aforementioned prerequisites, Supplier also has a right to withdraw from the contract.

In addition, Supplier will indemnify Buyer from undisputed or legally enforceable claims of the particular holders of the property rights.

11. Buyer's obligations set forth in Section X.10. only exist if

- Buyer immediately notifies Supplier of asserted claims for
  - property right or copyright violations;
- Buyer assists Supplier in an appropriate manner with the defence against the asserted claims or permits Supplier the performance of modification measures pursuant to Section X. 10;
- all defence measures including out-of-court settlements remain reserved to Supplier;
- the defect of title is not due to an instruction given by Buyer; and
- the infringement of rights has not been caused by Buyer modifying the delivery item without authorisation and using it in a way not intended under the contract.

#### **XI. Liability**

1. Our liability for damages is excluded unless otherwise agreed in Sections XI. 2. to XI. 4. below. This, in particular, applies to claims for damages from *culpa in contrahendo*, on account of other breaches of obligation, on the grounds of tortious claims for compensation for material damage pursuant to Section 823 BGB and on account of indirect or consequential damages, including lost profit.

2. We are liable for damage to the extent to which such damage is covered by the liability insurance taken out by us. Buyer may enquire the insured sum of our liability insurance from us.

3. We will be held liable in accordance with the statutory provisions if a culpable violation of a material contractual duty whose fulfilment is essential for the due and proper performance of the contract, and whose fulfilment Buyer may reasonably rely on (so-called cardinal obligation [*"Kardinalpflicht"*]), is committed by us.

In the event of a slightly negligent breach of a cardinal obligation, our liability for damage, where not covered by the liability insurance taken out by us, is only limited to the replacement of foreseeable, typically occurring damage.

4. We are liable, in accordance with the statutory provisions, in the case of intent or gross negligence on our part or on the part of a legal representative or vicarious agent.

5. Our liability, in accordance with the provisions of the product liability law, remains unaffected by this Section XI. In addition, the liability exclusions or liability restrictions according to this Section XI. do not apply in the case of culpable injury to life, limb or health, as well as in the case of a breach of guarantee on our part or on the part of a legal representative or vicarious agent.

## **XII. Place of performance, applicable law and jurisdiction**

1. Place of performance is Supplier's registered office unless expressly agreed otherwise. This also applies if Supplier ships the product at its expense to a delivery address advised by Buyer.
2. These General Terms and Conditions are governed by the substantive law of the Federal Republic of Germany, excluding the UN Convention on the International Sale of Goods (CISG) and international private law.
3. If Buyer acts as a merchant ("*Kaufmann*") as defined in the German Commercial Code ("*HGB*"), then the place of jurisdiction is Supplier's registered office. However, Supplier is also entitled to file an action against Buyer at Buyer's place of general jurisdiction.