

General Conditions of Sale of API Foils Deutschland GmbH

1. General, Scope of Application

- 1.1 These General Terms and Conditions (hereinafter also "**Delivery Terms**") shall apply to all of the business relationships between API Foils Deutschland GmbH, Ziegelstraße 22, 91126 Rednitzhembach (hereinafter also "**we**" or "**us**") and our customers (hereinafter also "**Buyers**"). The Delivery Terms apply in particular to contracts regarding the sale and/or delivery of movable objects (hereinafter also "**Goods**") irrespective of whether we produce the Goods ourselves or purchase them from suppliers (Secs. 433, 651 German Civil Code (*BGB*)). The Delivery Terms, in their respectively applicable version, shall apply as a framework agreement also to future contracts regarding the sale and/or delivery of movable objects with the same Buyer, without us having to refer to these again in each individual case; in such event, we will immediately inform the Buyer of any changes to our Delivery Terms.
- 1.2 The Delivery Terms shall only apply if the Buyer is an entrepreneur or business entity (Sec. 14 *BGB*), a legal person under public law or a special fund under public law.
- 1.3 These Delivery Terms shall apply exclusively. Any diverging, contrary or complementary general terms and conditions of the Buyer shall only become a part of the contract if and to the extent we have expressly consented to their validity. This consent requirement shall apply in any case, e.g. also where we make a delivery without reservation to the Buyer even though we are aware of the Buyer's general terms and conditions.
- 1.4 Individual agreements made with the Buyer in the individual case (including side agreements, supplements and changes) shall always take precedence over these Delivery Terms. A written contract and/or our written confirmation shall be decisive for the contents of such agreements. Such agreements must be signed by an authorised signatory of each party.
- 1.5 All statements and notifications of legal relevance required to be made by the Buyer vis-à-vis us after conclusion of the contract (e.g. setting deadlines, notification of defects, declarations of withdrawal or reductions) must be made in writing to be effective.
- 1.6 Any references to the applicability of statutory provisions are made for clarification purposes only. The statutory provisions thus also apply without such clarification insofar as they are not directly changed or expressly excluded in these Delivery Terms.

2. Conclusion of Contract and Services

- 2.1 A offer in our catalogue and/or price list is valid for a period of 30 days only from its date, provided we have not previously withdrawn it. After 30 days from its date, an offer will be non-binding and subject to change. This shall also apply if we have provided the Buyer with technical documentation (e.g. drawings, plans, calculations, estimates, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve rights of ownership and/or ownership of copyright.
- 2.2 The Buyer's order for Goods shall be considered a binding offer of contract. We may accept such offer of contract within 1 week from the date on which we receive it.
- 2.3 A contract shall only be concluded upon our written order confirmation or implicitly through the delivery of the Goods and shall be governed exclusively by the contents of the order confirmation and by these Delivery Terms. Each order confirmation will contain a purchase order number which shall be quoted in all correspondence with us.
- 2.4 Services (e.g. maintenance, support of the Goods) in relation to the Goods are, unless agreed otherwise, solely provided on basis of a separate agreement and the conditions agreed herein. Section 6 shall remain unaffected.

3. Delivery Deadlines and Default in Delivery

- 3.1 Deadlines and dates of delivery and performance shall only be binding if confirmed by us in writing and if the Buyer provided us with the necessary information and documents for the delivery's execution in good time and made any potential down payments as agreed, as well as any necessary export or import approvals required by law. Stipulated deadlines shall commence on the date of the order confirmation. These deadlines shall be extended accordingly if additional or supplementary orders are placed at a later date.
- 3.2 Should we be unable to meet binding delivery deadlines for reasons beyond our control (non-availability of performance), we will inform the Buyer accordingly without undue delay indicating the expected delivery deadline. Should performance remain unavailable within the new delivery deadline, we are entitled to withdraw from the contract in whole or in part; we will refund any consideration already rendered by the Buyer without undue delay. In particular, a delayed delivery from one of our suppliers shall be deemed a non-availability of the performance in this sense if we have concluded an equivalent covering transaction, neither we nor our supplier are responsible for the delay or if we are not obliged to procure the items in the individual case.
- 3.3 If the parties agree that the delivery items shall be delivered on the Buyer's call in installments, the delivery items shall be called in accordance with the dates set out in our written order confirmation, unless otherwise agreed.
- 3.4 We are only entitled to make partial deliveries if (i) the Buyer can use the partial delivery for the contractually agreed purpose, (ii) delivery of the remaining ordered Goods is ensured and (iii) this does not cause the Buyer considerable additional work and/or expenses (unless the vendor agrees to bear such costs).
- 3.5 We reserve the right to increase or reduce delivery for customised products based on drawings or samples by 10%.
- 3.6 The occurrence of our default in delivery shall be subject to the statutory provisions. In any case, however, a reminder by the Buyer shall be required.
- 3.7 The Buyer's rights pursuant to section 7 of these Delivery Terms and our statutory rights, in particular in the case of an exclusion of the duty to perform (e.g. due to impossibility or unreasonableness of the performance and/or subsequent performance), remain unaffected.

4. Delivery, Passing of the Risk, Acceptance, Delay in Taking Delivery

- 4.1 Delivery is ex-works, which is also the place of performance. If requested by the Buyer, the Goods will be shipped to a different destination at the Buyer's expense (sale by delivery, *Versendungskauf*). Unless agreed otherwise, we are entitled to choose the means of shipment (in particular the forwarding company, dispatch route, packaging) at our own discretion. The Buyer will provide, at its expense, adequate and appropriate precautions for off-loading the Goods at the destination.

- 4.2 The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer at the latest at the hand-over of the Goods. In case of a sale by delivery, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delays shall already pass when the Goods are handed over to the forwarding agent, the carrier or another person or entity commissioned with carrying out the shipment. Insofar as an acceptance has been agreed upon, this shall be decisive for the passing of the risk. Also in all other aspects, the statutory provisions governing the provision of works and services (sec. 631 et seq. BGB) shall apply mutatis mutandis to an agreed acceptance. The Goods shall be considered consigned and/or accepted also when the Buyer is in delay with taking delivery.
- 4.3 If the Buyer is in default with taking delivery or fails to carry out a co-operative action or if our delivery is delayed for other reasons within the Buyer's responsibility, we are entitled to claim compensation for any resulting damage including additional expenses (e.g. storage costs). We shall charge a lump-sum compensation in the amount of 0.5% of the net price (delivery value) for each complete calendar week, however no more than 5% of the delivery value in case of a final non-acceptance, commencing with the delivery deadline and/or - if no delivery deadline was agreed - with the notice of readiness for dispatch of the Goods. The right to prove a higher damage and our statutory rights (in particular reimbursement of additional expenses, appropriate compensation, termination) shall remain unaffected; the lump sum, however, shall be credited against any further payment claims. The Buyer may provide proof that we have suffered no damage at all, or that the damage we suffered was significantly lower than the lump sum indicated above.
- 5. Prices, Conditions of Payment**
- 5.1 Unless agreed otherwise in the individual case, our prices are valid at the time of the conclusion of the contract. Unless otherwise agreed in writing, the price is inclusive of any costs of packaging and delivery of the goods. Our prices are quoted exclusive of any value added tax or other applicable sales tax which shall be payable by the Buyer in addition. In the case of duty, Incoterms 2010 (as may be amended from time to time) shall be deemed to apply to a contract.
- 5.2 We are entitled to issue partial invoices for partial deliveries within the meaning of section 3.6. In the case of customised products based on drawings or samples, the agreed prices shall apply for the production and delivery in one batch in each case.
- 5.3 The Buyer shall bear the cost of transport insurance if the Buyer requests such insurance. Any customs, duties, fees, taxes and other public charges shall be borne by the Buyer. We shall not take back any transport packaging or other packaging according to the German Regulation on Packaging (*Verpackungsverordnung*); this shall become the property of the Buyer.
- 5.4 Unless agreed otherwise in writing, the purchase price shall be due and payable within 30 days from invoicing and delivery and/or acceptance of the Goods.
- 5.5 The Buyer shall be in default upon expiry of the aforesaid payment period. During the default, interest shall be payable on the purchase price at the respectively applicable statutory default interest rate. We reserve the right to assert further default damage. Vis-à-vis merchants, our right to commercial default interest (Sec. 353 German Commercial Code (*HGB*)) shall remain unaffected.
- 5.6 The Buyer shall only have off-setting or retention rights insofar as its claim has been established with final legal effect or is uncontested. In the case of a defective delivery, the Buyer's counterclaims in particular pursuant to section 6.6 sent. 2 of these Delivery Terms shall remain unaffected.
- 5.7 If it becomes apparent after the conclusion of the contract that our claim for payment of the purchase price is jeopardised by a lack of capacity to perform on the part of the Buyer (e.g. due to an application for the opening of insolvency proceedings) we are entitled, pursuant to the statutory provisions, to refuse performance and - after granting a period for performance where applicable - to withdraw from the contract (Sec. 321 BGB) and/or, if there are further deliveries to be effected, to demand an advance payment or the provision of a security. In case of contracts regarding the production of nonfungible goods (customised products), we are entitled to immediately declare a withdrawal; the statutory provisions regarding the dispensability of setting a deadline shall remain unaffected.
- 6. Buyer's Rights in the Event of Defects, Duty to Examine**
- 6.1 The Buyer's rights in the event of material or legal defects (including wrong or short deliveries as well as incorrect assembly or defective assembly instructions) shall be subject to the statutory provisions, unless agreed otherwise hereinbelow. The specific statutory provisions regarding the final delivery of the Goods to a consumer (recourse against the supplier pursuant to Secs. 478, 479 BGB) shall remain unaffected in any case.
- 6.2 Our liability for defects shall primarily be based upon the agreement made regarding the quality of the Goods. The product descriptions designated as such (also of the manufacturer) provided to the Buyer prior to its order or made a part of the contract in the same way as these Delivery Terms shall be considered an agreement regarding the quality of the Goods.
- 6.3 If no agreement has been made regarding the quality, whether or not a defect exists shall be determined pursuant to the statutory provisions (Sec. 434 para. 1 sent. 2 and 3 BGB). However, we do not assume any liability for public statements of the manufacturer or other third parties (e.g. advertisements).
- 6.4 The Buyer's claims for defects shall be subject to the Buyer's compliance with its statutory duties to inspect and to report defects (Secs. 377, 381 HGB). If a defect becomes apparent during examination or afterwards, we must be notified accordingly in writing without undue delay. The notification shall be deemed without undue delay if made within two weeks; the timely dispatch of the notification shall be sufficient to observe the notification period. Irrespective of this duty to examine and to report defects, the Buyer must report any obvious defects (including wrong and short deliveries) in writing within two weeks from delivery; again, the timely dispatch of the notification shall be sufficient to observe the notification period. Should the Buyer fail to duly examine the delivery and/or to duly report defects, our liability for the defect which was not reported shall be excluded.
- 6.5 If the delivered item is defective, we are entitled at the first stage to choose whether to effect subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance pursuant to the statutory provisions shall remain unaffected.
- 6.6 We are entitled to make the owed subsequent performance subject to payment of the due purchase price by the Buyer. The Buyer is, however, entitled to retain part of the purchase price in an amount reasonably proportionate to the defect.

- 6.7 The Buyer must grant us the time and opportunity required for the owed subsequent performance, in particular to provide us with the Goods subject to complaint for inspection. In the case of a replacement delivery, the Buyer shall return the defective item to us pursuant to the statutory provisions. The subsequent performance includes neither the disassembly nor the reassembly of the defective item if we were not initially obliged to carry out the assembly.
- 6.8 The expenses required for the purposes of inspection and subsequent performance, in particular costs of transport, travel, work and material (not: cost of assembly and disassembly) will be borne by us if a defect actually exists. However, should a demand by the Buyer to remedy a defect prove unwarranted, we are entitled to claim compensation for the expenses incurred in this context from the Buyer.
- 6.9 In urgent cases, e.g. if the operational safety is at stake or in order to avoid disproportionate damage, the customer has the right to remedy the defect himself and to demand compensation for expenses objectively necessary in this context. If the Buyer intends to remedy the defect himself, we must be notified without undue delay, if possible before the work commences. The right of the Buyer to carry out repairs himself shall not apply if we would be entitled to refuse the respective subsequent performance pursuant to the statutory provisions.
- 6.10 If subsequent performance has failed or if a period to be set by the Buyer for the subsequent performance has expired fruitlessly or was not required pursuant to statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. However, there shall be no right to withdraw in case of an insignificant defect.
- 6.11 Claims of the Buyer for damages and/or reimbursement of futile expenses shall only exist pursuant to section 7 and shall be excluded in all other cases.
- 6.12 Any representations and guarantees shall only be effectively made if granted by us expressly and in writing. In particular, any information provided in catalogues, price lists or other information materials provided by us to the Buyer as well as information given to describe products shall not be understood in any case as a guarantee of a particular quality of the Goods.
- 6.13 None of the aforesaid provisions intend to change the allocation of the burden of proof as determined by statute or court.
- 7. Other Liability**
- 7.1 Unless stipulated otherwise in these Delivery Terms including the following provisions, we shall be liable for breaches of contractual and non-contractual duties pursuant to the applicable statutory provisions.
- 7.2 We can be held liable for damages - irrespective of their legal grounds - in cases of intent and gross negligence. In cases of slight negligence, we shall only be liable
- a) for damage resulting from injuries to life, body or health,
 - b) for damage resulting from an infringement of an essential contractual obligation (an obligation which must be fulfilled to enable a due performance of the contract and on whose fulfilment the contractual partner generally relies and may rely); however, in this case our liability shall be limited to compensation for the foreseeable, typically occurring damage.
- 7.3 The limitations of liability pursuant to section 7.2 shall not apply where we fraudulently concealed a defect or guaranteed the quality of the Goods. The same applies to claims of the Buyer pursuant to the German Product Liability Act (*ProdHaftG*).
- 7.4 The Buyer is only entitled to a withdrawal or termination based on a breach of a duty which is not based on a defect if we are responsible for the breach of duty. A right of the Buyer to terminate the contract for convenience (in particular pursuant to Secs. 651, 649 BGB) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.
- 7.5 An exclusion or restriction of our liability also applies with respect to our statutory representatives and vicarious agents.
- 7.6 None of the aforesaid provisions intend to change the allocation of the burden of proof as determined by statute or court.
- 8. Limitation of Claims**
- 8.1 In deviation from Sec. 438 para. 1 no. 3 BGB, the general limitation period for claims resulting from material and legal defects shall be one year from delivery. If an acceptance is agreed, the limitation period shall commence upon the acceptance.
- 8.2 If, however, the Good is a building or an item which was used in accordance with its usual purpose for a building and which caused its defectiveness (building material), the limitation period pursuant to the statutory provision shall be 5 years from delivery (Sec. 438 para. 1 no. 2 BGB). The specific statutory provisions for real rights of third parties for surrender (Sec. 438 para. 1 no. 1 BGB), in case of fraudulent intent of the vendor (Sec. 438 para. 3 BGB) and for claims in the context of recourse against the supplier in case of final delivery to a consumer (Sec. 479 BGB) shall also remain unaffected.
- 8.3 The aforesaid limitation periods under purchase law also apply to contractual and non-contractual claims of the Buyer for damages which are based on a defect of the Good, unless the application of the regular statutory limitation rules (Secs. 195, 199 BGB) would lead to a shorter limitation period in the individual case. The limitation periods of the German Product Liability Act shall remain unaffected in any event. In all other respects, exclusively the statutory limitation periods shall apply to claims for damages of the Buyer pursuant to section 7.
- 9. Retention of Title**
- 9.1 We retain title to the Goods sold until all of our present and future claims resulting from the purchase contract and an ongoing business relationship (secured claims) are paid in full. In the case of running accounts, the reservation of title serves to secure our outstanding balance claim.
- 9.2 The Buyer is not entitled to pledge, to transfer by way of security or to otherwise dispose of the delivery items subject to retention of title ("Retained Products") in a way which jeopardises our ownership. The Buyer must immediately inform us in writing if and insofar as third parties access the Goods we own.
- 9.3 In case of a breach of contract by the Buyer, in particular in the case of failure to pay the due purchase price, we are entitled to withdraw from the contract pursuant to the statutory provisions and/or to demand surrender of the Goods based upon the retention of title. The demand for surrender does not at the same time include a declaration of a withdrawal; in fact, we are entitled to just demand surrender of the Goods and to reserve the right to withdraw from the contract. If the Buyer fails to pay the due purchase price, we are only entitled to assert these rights if we have

- previously set the Buyer an appropriate payment deadline which has expired fruitlessly or if it is unnecessary pursuant to the statutory provisions to set such a deadline.
- 9.4 The Buyer is entitled to resell and/or to process the Goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply additionally:
- (a) The retention of title extends to the full value of the products created by way of processing, mixing or combining our Goods, in which case we shall be considered the manufacturer. If in case of processing, mixing or combination with goods of third parties their property rights remain in place, we shall obtain joint ownership in the proportion of the invoices values of the processed, mixed or combined Goods. In all other respects, the resulting product shall be subject to the same provisions that are applicable to the Goods delivered subject to retention of title.
- (b) The Buyer assigns to us the claims against third parties resulting from the resale of the Goods or of the product already now completely and/or in the amount of our potential joint ownership share pursuant to preceding subparagraph as a security. We accept such assignment. The duties of the Buyer listed in section 9. 2 shall also apply with respect to the assigned claims.
- (c) The Buyer shall remain be authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer meets its payment obligations vis-à-vis us, does not default in payment, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in his ability to perform. However, if this is the case, we are entitled to request that the customer advises us of the assigned claims and the respective debtors, provides all of the information required for the collection, hands over the corresponding documents and informs the debtors (third parties) of the assignment.
- (d) If the realisable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the Buyer's request.
- 9.5 The Buyer must treat the Retained Products with care for the duration of the retention of title. We are entitled, after prior notification to the Buyer and within the regular business times of the Buyer, to inspect at our own expense the premises of the Buyer where the Retained Products are located in order to determine whether the Retained Products have been treated with care.
- 9.6 If delivery is made to other legal systems where the preceding provision for the retention of title does not have the same security effect as in Germany, the Buyer will do anything possible to provide us with equivalent security rights without undue delay. The Buyer will cooperate in all measures such as registration, publication etc. which are necessary and expedient for the effectiveness and enforceability of such security rights.
- 9.7 The Buyer is obliged at our request to appropriately insure the Retained Products, to provide us with the respective proof of insurance and to assign the claims resulting from the insurance contract to us.
- 10. Manufacturer's Liability**
- If the Buyer sells the delivery items, he must indemnify us in the internal relationship from any product liability claims of third parties insofar as the cause originated in its sphere of control and organisation and if it is liable itself vis-à-vis third parties.
- 11. Third-Party Rights**
- If the Buyer prescribes to us by way of specific instructions, information, documents, drafts or drawings how we are to produce the products for delivery, the Buyer shall warrant that we do not infringe any third-party rights such as patents, utility models and other industrial property rights and copyrights. The Buyer indemnifies us from any third-party claims asserted against us due to such an infringement.
- 12. Intellectual Property and Confidentiality**
- 12.1 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights (including, but not limited to trademarks, copyrights, patents, designs, utility models and other rights, which are protected by intellectual property rights or related rights, together "Intellectual Property Rights") of us, except the right to use, or re-sell the Goods or use the services in the Buyer's ordinary course of business.
- 12.2 Where any Intellectual Property Rights arise from or are generated through the provision of the Goods or performance of the Services by the Seller, such Intellectual Property Rights will vest in the Seller.
- 12.3 Each Party will keep confidential any and all Confidential Information that it may acquire from the other Party. Confidential Information, irrespectively of its form and medium in which it is contained, within the meaning of this agreement shall be regarded in particular: manufacturing processes, know-how, business secrets, business relationships, business strategies, business plans, financial planning, personnel matters ("Confidential Information").
- 12.4 Each Party will not use the Confidential Information of the other Party for any purpose other than (in the case of the Seller) to perform its obligations under the Contract or (in the case of the Buyer) to receive and use the Goods and the Services. Each Party will ensure that its officers and employees comply with the provisions of this section 12.
- 12.5 The obligations on each Party set out in section 12.3 and 12.4 will not apply to any information which is publicly available or if that Party is required to disclose by order of a court of competent jurisdiction or due to any law or regulation (but then only to the extent of such required disclosure).
- 13. Choice of Law and Place of Jurisdiction**
- 13.1 These Delivery Terms and all legal relationships between us and the Buyer shall be governed by the laws of the Federal Republic of Germany, under exclusion of unified international law, in particular of the UN Convention on Contracts for the International Sale of Goods. The preconditions and effects of the retention of title pursuant to section 9 are subject to the law applicable at the respective location of the object if under that law the agreed choice of German law is inadmissible or ineffective.
- 13.2 If the Buyer is a merchant within the meaning of the HGB, a legal person under public law or a special fund under public law, exclusive - and also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Nuremberg, Germany. We shall nevertheless have the right to file an action at the general place of jurisdiction of the Buyer.