

API'S STANDARD T&CS FOR THE SALE OF GOODS AND SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 In these standard terms and conditions the following definitions apply:

"API" means API Foils SAS, a French "Société par Actions simplifiée" company, whose capital is 38.112,25 Euros, registered in Evry with registered number B 393 095 716, having its head office at 14, boulevard Arago, Wissous (91320), France, and represented for the purpose of these T&Cs by its President;
"Affiliate" means any company or other business entity controlled by, controlling or under common control of API within the meaning of Article L.233-3 of the French Commercial Code;
"Business Day" means a day other than a Saturday or Sunday or a day which is a public or bank holiday in France;
"Buyer" means the person whose order for the Goods and/or the Services is accepted by API in accordance with Condition 2.2;
"Confidential Information" means all information in respect of the business of a Party including know-how and other matters connected with the Goods and/or the Services, information concerning that Party's relationships with actual or potential clients, customers or suppliers and the needs and requirements of that Party and of such persons and any other information which, if disclosed, will be liable to cause harm to that Party;
"Contract" means the contract between API and the Buyer for the sale and purchase of the Goods and/or the supply of the Services formed in accordance with Condition 2;
"Delivery Point" means the place where delivery of the Goods is to take place under Condition 6.1;
"Goods" means the goods (or any part of them) set out in an Order Confirmation;
"Force Majeure Event" means any unforeseeable, unavoidable event or circumstance beyond the reasonable control of API, its suppliers or its subcontractors, which prevent them from complying with all or part of any of their obligations under the Contract. Force Majeure Events shall include but not limited to : an act of God, lightning, earthquake, fire, flood, storm, or extreme weather condition; or war, insurrection, riot, civil commotion, act or threat of terrorism or strike, lockout, industrial action or dispute (whether affecting the workforce of API, its suppliers or its subcontractors and/or any other person) or a reduction in or unavailability of raw materials from normal sources of supply, interruption or delays in transport ; or more generally any event or circumstance usually recognised as such by the French case law;
"Intellectual Property Rights" means any intellectual property rights of API or its Affiliates, and shall include but not limited to patents, patent applications, copyright and related rights, trade marks, business names and domain names, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"Order Confirmation" means a written acknowledgement of an order from the Buyer issued by API pursuant to Condition 2.2;
"Party" means a party to the Contract;
"Services" means any services which API provides to the Buyer including the Support Services and any services to be provided by API set out in an Order Confirmation;
"Specification" means each of the following, as set out in the Order Confirmation: in relation to the Goods and/or the Services, the technical specifications of those Goods and/or documents detailing the requirements of the Services; all preparatory, design and development materials which relate to the Goods and/or the Services; all information of any description which explains the structure, design, operation, functionality of the Goods or how the Services will be performed; and all information of any description which relates to the maintenance and/or support of the Goods and/or the Services;
"Support Services" means any support services which API provides in relation to the provision of the Goods; and
"T&Cs" means these standard T&Cs of sale together with any terms in the Order Confirmation issued by API.

1.2 All headings are for reference only and shall not affect the interpretation of these T&Cs.

1.3 Unless the context otherwise requires references to the singular include the plural and vice versa and references to any gender include every gender; and references to a "person" include any individual, body corporate, partnership, firm, trust, organisation, joint venture, government or government agency, local or municipal authority or any other entity.

1.4 References to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

2. FORMATION AND INCORPORATION

2.1 Subject to any variation under Condition 2.6, the Contract will be upon these T&Cs to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract or which are implied by trade, custom, practice or course of dealing. These T&Cs, in their applicable version at the relevant time, shall apply to each future order in the course of the Parties' business relationship without API having to issue a copy for each order. API will notify the Buyer about any changes to these T&Cs.

2.2 Each order or approval of a quotation for Goods and/or the Services will be deemed to be an offer by the Buyer to purchase Goods and/or the Services upon these T&Cs. The Contract is formed when the Buyer's order or approval of quotation is confirmed by API, by way of an Order Confirmation. Each Order Confirmation will contain a purchase order number which shall be quoted in all correspondence and will be sent to the Buyer within five (5) Business Days of receipt of an order.

2.3 Any quotation provided by API is valid for a period of thirty (30) days only from its date of issue, provided API has not previously withdrawn it.

2.4 The Buyer must ensure that the terms of its order or approval of quotation and any applicable Specification are complete and accurate and are reflected within the Order Confirmation.

2.5 Subject to Condition 7.4, the Buyer may not cancel the Contract unless it has the written consent of API.

2.6 No variation to the T&Cs shall be effective unless it is in writing and signed by a duly authorised representative on behalf of API.

3. THE GOODS AND THE SERVICES

3.1 The quantity and description of the Goods and/or the Services will be as set out in the Order Confirmation.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by API (or the manufacturer of the Goods) and any descriptions or illustrations contained in API's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or the Services represented by or described in them. They will not form part of the Contract or have any contractual force and this is not a sale by sample.

3.3 API may make any changes to the Specification, design, materials or finishes of the Goods and/or provision of the Services which are required to conform with any applicable legislation or do not materially affect their quality or performance.

3.4 Where the Goods will be used with or incorporated into any other goods, the Buyer shall satisfy itself that the Goods will not adversely affect, or be adversely affected by those goods. The Buyer shall satisfy itself that the Goods ordered are suitable for any manufacturing or packaging process which they may undergo.

3.5 Should the Buyer send its own material to API for processing, the Buyer shall ensure such materials are suitable for such processing. API accepts no liability for any loss incurred by the Buyer should its materials be found unsuitable for the processing specified.

3.6 API may, at its option, provide Support Services, the nature, extent, duration and cost of which shall be agreed with the Buyer on an order by order basis.

3.7 Subject to Condition **Error! Reference source not found.**, where and to the extent that any Support Services are provided (whether set out in an Order Confirmation or not), they are performed at the Buyer's risk and no liability shall fall on API as a consequence of performing the Support Services.

4. PRICE

4.1 The price for the Goods and/or the Services will be the price set out in the Order Confirmation, or if not set out in the Order Confirmation, in API's published price list current at the date of the Order. Unless otherwise agreed, the price is inclusive of any costs of packaging and delivery of the goods and exclusive of any value added tax or other applicable sales tax. In the case of duty, Incoterms 2010 (as may be amended from time to time) shall be deemed to apply to a Contract.

4.2 API will be entitled to increase the price of the Goods following any changes in the Specification made at the request of the Buyer and agreed by API, or to cover any extra expense as a result of the Buyer's instructions (or lack of instructions), or to comply with the requirements of Condition 3.3. In these cases, API will provide the Buyer with a prior notification.

5. **PAYMENT**

- 5.1 Subject to Condition 5.3, payment is due in Euros by bank transfer payable to API thirty (30) days after the date of each invoice.
- 5.2 Time shall be of the essence in respect of the payment dates set out in Condition 5.1 and any dates which may be substituted for them by the agreement in writing of the Parties.
- 5.3 All sums payable to API under the Contract will become due immediately upon termination of the Contract. All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding of any nature.
- 5.4 Pursuant to Article L.4411-6 of the French Commercial Code and without prejudice to API's other rights under the Contract, any late payment will accrue automatically: (i) interest at three (3) times the French applicable legal rate; and (ii) a fixed indemnity of forty (40) Euros for recovery costs, unless API can document it has incurred additional costs to collect the overdue invoices. API will also be entitled to: (i) require the immediate payment of all invoices not yet falling due; (ii) require the payment before the delivery of any Order which has already been accepted by API; and (iii) suspend deliveries of the Products and/or performance of the Services until the outstanding amount has been received in cleared funds by API from the Buyer.

6. **DELIVERY**

- 6.1 Delivery of the Goods and provision of the Services will be made by API to the Delivery Point or as otherwise subsequently agreed by the Parties in writing.
- 6.2 The Buyer shall, except as otherwise agreed, be responsible for obtaining all export and import licences and authorisations relating to the Goods, and for the payment of all customs and excise duties, taxes and charges, including clearing and brokerage charges, paid or payable for or in respect of the exportation and importation of the Goods. The Buyer shall be liable for, and shall indemnify API from and against, all claims, liabilities, costs and expenses of any nature suffered or incurred by API as a result of or by reason of any such importation or exportation.
- 6.3 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for off-loading the Goods.
- 6.4 API will use reasonable endeavours to deliver or perform each of the Buyer's orders for the Goods and/or the Services on the delivery date specified in the Order Confirmation and, if no time is agreed, then within a reasonable time, but, in any event, the time of delivery or performance is approximate and indicative and will not be of the essence.
- 6.5 If the Buyer fails to accept delivery of any of the Goods or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered and/or the Services to be performed on time (except solely on account of API's default), the Goods and/or the Services will be deemed to have been delivered or performed on the due date and (without prejudice to its other rights) API may store or arrange for storage of the Goods until actual delivery or sale in accordance with this Condition 6.5 and charge the Buyer for all related costs and expenses (including storage and insurance). In any case, the Buyer shall pay to API the price set out in the related Order Confirmation.

7. **RISK / OWNERSHIP**

- 7.1 Risk of damage to or loss of the Goods will pass to the Buyer in accordance with whichever of the Incoterms 2010 which have been agreed by the Parties or in the absence of Incoterms 2010 the Delivery Point.
- 7.2 Ownership of the Goods will not pass to the Buyer until API has received in full all sums due to it in respect of the Goods, and all other sums which are or become due to API from the Buyer with regard to any invoices, including but not limited to the amount of VAT applicable, and any interests such as late payment interests.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must hold and store the Goods (at no cost to API) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as API's property, not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and maintain the Goods in satisfactory condition insured on API's behalf for their full price against all risks to the reasonable satisfaction of API, and will whenever requested by API produce a copy of the policy of insurance.
- 7.4 The Buyer's right to possession of the Goods and to use them in the ordinary course of its business will terminate immediately in the event of a bankruptcy or insolvency proceedings against the Buyer, or if the Contract is terminated by API.
- 7.5 The Buyer grants to API, its sub-contractors, agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 7.6 Where API is unable to determine whether any goods are the Goods in respect of which the Buyer's right to possession and right to use has terminated, the Buyer will be deemed to have used or incorporated all Goods with other products, or sold all Goods of the kind sold by API to the Buyer, in the order in which they were invoiced to the Buyer.
- 7.7 In the event that the Buyer resells the Goods in the ordinary course of its business before full payment, the resale price will be deemed to be assigned to API until full payment is received.

8. **WARRANTY, EXCLUSION OF LIABILITY AND INDEMNITY**

- 8.1 Where the Goods are found to be defective or not to comply with the Specifications, API will replace or, at its option, refund the price of such Goods, provided that the Buyer notifies API by registered letter with acknowledgement of receipt of any defect or suspected defect within fourteen (14) days of the delivery where the defect is apparent on reasonable inspection or within fourteen (14) days of the same coming to the knowledge of the Buyer where the defect is not, and in any event no later than three (3) months from the date of delivery of the Goods. This obligation will not apply (i) where the Goods have been improperly used or altered in any way by the Buyer or (ii); any instructions as to storage or use of the Goods have not been complied with by the Buyer.
- 8.2 API will, free of charge, in relation to Goods which are proved to the reasonable satisfaction of API to be delivered to the Buyer in a damaged condition, replace, or at its option, refund the price of such Goods. This obligation will only apply where the Buyer has notified API of any purported damage to Goods within twenty four (24) hours of delivery specifying the nature of the defect in detail, in order for API to make any necessary counter-claim against any carrier of the Goods, where Incoterms 2010 Ex Works do not apply to the Contract.
- 8.3 API will refund to the Buyer the cost of carriage on the return of any Goods where API is reasonably satisfied that such Goods are defective and/or damaged, and will deliver any replacement Goods to the Buyer at API's own expense. Any Goods which have been replaced will belong to and be returned to API.
- 8.4 API will, free of charge, within a period of three (3) months from the date of the performance of the Services which are considered not to comply with the Specifications, re-perform or, at its option, refund the price for such Services. This obligation will not apply to the Support Services and will not apply where the defects in the provision of the Services arise out of the reliance of API on any inaccurate or incomplete information provided by the Buyer; or the failure or delay of the Buyer to perform any of its obligations under this Contract or to do any act or omission necessary for the proper provision of the Services; or any intended use or purpose of the Goods and/or the Services made known to API by the Buyer in relation to the Services is changed by the Buyer.
- 8.5 In any case, API's liability will be limited to direct loss and damage only. API will have no liability whatsoever to the Buyer for any indirect or consequential loss (both of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with any of the Goods and/or the Services, or the manufacture of the Goods or the sale or supply, or failure or delay in supply, of the Goods and/or the Services by API; or any breach by API of any of the express or implied terms of the Contract; or any use or resale by the Buyer of any of the Goods, or of any product using or incorporating any of the Goods; or any statement made or not made, or advice given or not given, by or on behalf of API.
- 8.6 To the extent permitted by law, API's total liability to the Buyer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price payable for the Goods and/or the Services which are the subject of the alleged loss.
- 8.7 The Buyer agrees to indemnify, and keep indemnified, API from and against all costs (including legal costs on a full indemnity basis), expenses, liabilities, indirect and consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, and proceedings and judgments which API incurs or suffers in respect of any actual or threatened claim by a third party as a result of any act or omission of the Buyer or as a consequence of any breach or wilful default or negligent performance or failure in performance by the Buyer of the terms of the Contract.
- 8.8 Condition 8 shall survive termination of the Contract.

9. **FORCE MAJEURE**

- 9.1 API shall not be in breach of the Contract or otherwise liable to the Buyer for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.
- 9.2 In case of a Force Majeure Event, the Parties will be temporarily released, entirely or partly, for the duration of such event, from the performance of their obligations under the Contract. The Party being prevented from fulfilling its obligation as a result of a Force Majeure Event, shall inform immediately the other Party of the existence or discontinuance of the Force Majeure Event, and shall minimise the effects of the suspension of its obligations for the other Party.

- 9.3 If a Force Majeure Event exceeds sixty (60) days, either Party shall be entitled to terminate the Contract with at least thirty (30) days' prior written notice, with no further liability on the part of either Party as a result of such termination.
10. **TERMINATION**
- 10.1 If the Buyer commits a breach of the Contract which cannot be remedied within thirty (30) days of a written notice by registered letter with acknowledgement of receipt setting out the breach and requiring it to be remedied being given by API, API may terminate the Contract by giving not less than seven (7) days' written notice by registered letter with acknowledgement of receipt to that effect to the Buyer.
- 10.2 API may terminate the Contract immediately by giving written notice to that effect to the Buyer if the Buyer becomes Insolvent or in case of bankruptcy or winding up of the Buyer..
- 10.3 Notwithstanding Condition 10.1, API may terminate the Contract immediately by giving written notice to that effect to the Buyer if the Buyer fails to make any payment due to API under the Contract or any other contract between the Parties on or before the due date.
- 10.4 Except for Conditions which expressly or by implication have effect after termination of the Contract, following expiry or termination of the Contract all rights and obligations shall immediately cease but without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
11. **INTELLECTUAL PROPERTY RIGHTS**
- 11.1 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights of API or its Affiliates, except the right to use, or re-sell the Goods or use the Services in the Buyer's ordinary course of business.
- 11.2 Where any Intellectual Property Rights arise from or are generated through the provision of the Goods or performance of the Services by API, such Intellectual Property Rights will vest absolutely in API.
- 11.3 The Buyer shall inform API without delay of any claim related to an alleged infringement of Intellectual Property Rights.
12. **CONFIDENTIALITY**
- 12.1 Each Party will keep strictly confidential any and all Confidential Information that it may acquire from the other Party.
- 12.2 Each Party will not use the Confidential Information of the other Party for any purpose other than (in the case of API) 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 Condition 12.
- 12.3 The obligations on each Party set out in Condition 12.1 and 12.2 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. **GENERAL**
- 13.1 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term shall be deemed to be severed from the Contract and this shall not affect the remainder of the Contract which shall continue in full force and effect.
- 13.2 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy.
- 13.3 API shall be entitled to assign, sub-contract, transfer any of its rights under the Contract.
- 13.4 The Contract constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter. Neither Party has entered into the Contract in reliance upon, and it shall have no remedy in respect of, any assurance, representation, statement or warranty which is not expressly set out in the Contract.
14. **NOTICE**
- 14.1 Any notice or other communication given under or in connection with the Contract shall be in writing, in the French language and delivered by hand; or sent by pre-paid first class post or airmail, to API at the address stated at Condition 1.1 or to the Buyer at the address detailed in any order or other document received by API from the Buyer (or such other address as may be notified by the relevant Party to the other Party from time to time in accordance with this Condition 14):
- 14.2 Any notice or communication given in accordance with Condition 14.1 shall be deemed to have been served if delivered by hand, at the time of delivery; and if sent by pre-paid first class post at 9.00a.m. on the second Business Day after the date of posting; or if sent by airmail at 9.00a.m. on the fifth Business Day after the date of posting; provided that if a notice or communication is deemed to be served on a day which is not a Business Day or after 5.00p.m. on a Business Day it shall be deemed to be served at 9.00a.m. on the immediately following Business Day. Notice may not given by email.
15. **GOVERNING LAW AND JURISDICTION**
- 15.1 The Contract shall be governed and construed in accordance with the laws of France, excluding the application of the United Nations Convention for the sales of Goods executed in Vienna on April 11, 1980. The Parties irrevocably submit to the exclusive jurisdiction of the courts of Paris, France for the determination of any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).