

## **General Terms and Conditions of Purchase of apt Extrusions B.V.**

### **1. Scope**

- 1.1 These General Terms and Conditions of Purchase ("**GTCP**") apply to all business relationships between apt Extrusions B.V., registered under number 12053181 at the Dutch Chamber of Commerce, ("**apt**") on the one hand and their business partners and suppliers ("**Supplier**") on the other. These GTCP apply only if the Supplier is an entrepreneur, a legal entity under public law or a special fund under public law.
- 1.2 apt will place orders exclusively on the basis of these GTCP. Any terms and conditions of the Supplier contrary to or deviating from these will not apply unless apt has expressly acknowledged them in writing. Ordering and accepting deliveries or services does not imply acceptance or acknowledgement of the Supplier's terms and conditions.
- 1.3 These GTCP apply to all future transactions with the Supplier even if they have not yet been expressly agreed upon.

### **2. Enquiries, offers, order, conclusion of contract**

- 2.1 Enquiries by apt are non-binding.
- 2.2 Offers from the Supplier must always be made in writing or in text form (email, fax, etc.) and are understood to be without payment obligation in the sense that they are free of service.
- 2.3 apt reserves ownership, usage and exploitation rights and all intellectual property rights to the drawings, plans, illustrations, calculations, models, samples and other documents provided to the Supplier for the purpose of submitting an offer. The Supplier may not hand these over or make them accessible to third parties without apt's express written consent.
- 2.4 If drawings, plans, illustrations, calculations, models, samples and other documents are provided to the Supplier in connection with an offer submission or order, the Supplier may use them exclusively for the purpose of submitting the offer or processing the order. They must be returned to apt without this being requested if no order is placed or on request if an order placed has been processed.
- 2.5 Orders are legally binding only if apt places them in writing or in text form (email, fax, etc.). Orders placed orally or by telephone require subsequent confirmation by apt in writing or text form (email, fax, etc.). If deliveries are not made on the basis of a proper order in accordance with the above provisions, apt may refuse acceptance and payment. In the event of ambiguities in the order, these must be clarified by making enquiries to the Supplier in writing or text form (email, fax, etc.).
- 2.6 The Supplier is required to confirm apt's order in writing or text form (email, fax, etc.) within a period of five working days or, alternatively, to execute it without reservation by shipping the goods (acceptance). If the offer is accepted late, it is deemed to be a new offer and must be accepted by apt.
- 2.7 If order acceptances or confirmation letters of the Supplier deviate from the order, the Supplier is required to expressly point this out. The same applies in the event of obvious errors (e.g. spelling and calculation errors) and incompleteness of the order including the order documents. In this case, a contract will only be concluded with apt's consent in writing or text form (email, fax, etc.).
- 2.8 An order acceptance that deviates from the order constitutes a new offer and requires acceptance by apt in writing or text form (email, fax, etc.).
- 2.9 The engagement of a subcontractor requires apt's prior written consent. If a subcontractor is engaged, the Supplier's obligations towards apt are retained without restriction and it will be liable for any errors of its subcontractor in the same way as for its own errors.

### **3. Prices**

- 3.1 The prices stated in the order are fixed and binding. They are deemed to include value added tax if this is not stated separately.
- 3.2 Unless otherwise agreed in an individual case, the price stated in the order includes all services and ancillary services of the Supplier as well as all ancillary costs (e.g. proper packaging, shipping costs including any shipping and third-party liability insurance in accordance with the agreed Incoterms).
- 3.3 Changes due to subsequent cost increases are precluded, regardless of the reason, unless expressly agreed otherwise.
- 3.4 If the prices are not listed in apt's order, the Supplier must state them in its order confirmation. In this case, a contract will only be concluded with apt's further confirmation in writing or text form (email, fax, etc.).

- 3.5 If, by way of exception, prices are agreed ex works, ex warehouse of the Supplier or a third party, all costs incurred until handover to the transport company, including loading and freight charge, will be borne by the Supplier.

#### **4. Delivery, packaging**

- 4.1 The Incoterms 2020 DDP (Delivered Duty Paid) will be deemed agreed for all deliveries unless the parties have expressly agreed otherwise.
- 4.2 The Supplier should use environmentally friendly and, where possible, recyclable packaging materials. At apt's request, the Supplier must take back packaging material at the place of performance at its own expense.
- 4.3 The risk of accidental loss and accidental deterioration of the item will pass to apt upon handover at the place of performance in accordance with the respective Incoterms 2020 DDP, unless the parties have expressly agreed otherwise. If acceptance is prescribed, the risk will pass to the apt when acceptance has been effected by apt. In all other respects, the statutory provisions of the law on contracts for work and services apply accordingly in the event of acceptance.

#### **5. Deadlines, periods, default**

- 5.1 Agreed delivery deadlines and periods are binding and are calculated from the date of the order. The arrival of the delivery at the place of receipt specified in the order or the successful acceptance, if such is contractually agreed or provided for by law, will be decisive for compliance therewith.
- 5.2 The Supplier is required to notify apt without undue delay in writing if circumstances occur or become known to it which mean that the agreed time of delivery cannot be complied with.
- 5.3 Before the delivery deadline lapses, apt will not be required to accept delivery. Early deliveries or partial deliveries will be accepted by apt only in individual cases or if this has been expressly agreed. Otherwise, apt will have the right to return the delivery at the Supplier's expense. Even if apt accepts delivery, apt will not be required to make early payments.
- 5.4 If the Supplier is in default of delivery, apt will be entitled to the statutory claims. In particular, apt will be entitled to demand compensation instead of performance and to withdraw from the contract after a reasonable grace period has lapsed fruitlessly.
- 5.5 If the Supplier is in default, apt may – without prejudice to further statutory and contractual claims – demand fixed compensation for the loss incurred as a result of the default in the amount of 1 % of the net price of the goods delivered late per completed calendar week, but in total no more than 5 % of the net price of the goods delivered late. apt reserves the right to prove that a higher loss has been incurred. apt does not need to prove a minimum loss. The Supplier reserves the right to prove that apt did not suffer any loss at all or that any loss suffered was substantially less.

#### **6. Force majeure**

- 6.1 In cases of force majeure or other unavoidable events for which apt is not to blame (including but not limited to war, threat of war, civil war, riot, terrorism, acts of war, fire, natural disasters, weather events, water damage, floods, epidemic, pandemic, organised and unorganised strikes and industrial action, operational disruptions of all kinds, lockouts, confiscations, import and export restrictions, government measures, defects and disturbances in energy and water supply, shortage of materials, raw materials and supplies, machines, means of transport, transport obstacles, delays in the granting of required official permits), apt will be released from its obligation to accept delivery for the duration of the hindrance. Claims of the Supplier for consideration or compensation are precluded in such cases.
- 6.2 Furthermore, apt is entitled – without prejudice to other rights – to withdraw from the contract in whole or in part if these events are of considerable duration or result in a significant reduction in our demands.
- 6.3 If apt has to change the delivery schedule due to force majeure and the delivery is postponed, the Supplier will retain the goods concerned in accordance with our instructions and will deliver them after the force majeure has been remedied.

#### **7. Invoicing, payment**

- 7.1 Invoices must be issued promptly after the goods are shipped, and the order and item numbers must be stated on them. Value added tax must be itemised separately.
- 7.2 Payment will be made subject to proper delivery and correct pricing and calculation. If a defect subject to warranty is identified, we will be entitled to withhold payment until the warranty obligation has been fulfilled.

- 7.3 The agreed price is due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If apt pays within 14 calendar days, apt is entitled to a 3 % discount on the net invoice amount. In the case of bank transfer, payment is deemed to have been made on time if apt's transfer order is received by apt's bank before expiry of the payment deadline; apt is not responsible for any delays caused by banks involved in the payment process.
- 7.4 apt will not owe interest on due payments until it has been given a notice of default in which apt is given a reasonable period to pay without interest. The statutory provisions apply to default with payment.
- 7.5 The Supplier only has a right of set-off or retention in respect of counterclaims that have been declared final and absolute by the (highest) competent court or that are undisputed by apt.

## **8. Condition of the goods, notification of defects, liability for material defects**

- 8.1 The Supplier warrants that its deliveries and services comply with the objective and subjective requirements as well as any installation requirements. This includes in particular that the deliveries and services comply with the contractual agreements on quality and use and are made of a material that is best suited and durable for the relevant contractual or operational purpose and for the stresses that occur. They must also comply with the VDE provisions, the law on technical work equipment, the relevant accident prevention, occupational safety and environmental provisions, the relevant technical standards and the generally recognised rules of technology. Knowledge that goes beyond the state of the art must be communicated to us without us having to request this.
- 8.2 The properties or characteristics stated in the specification according to the order or in quality assurance agreements must be fulfilled by the purchased item as agreed quality characteristics.
- 8.3 If the Supplier receives drawings, samples or other specifications from apt, these alone will be decisive for the type, quality and design of the goods to be delivered.
- 8.4 The inspection of the delivered goods will be carried out in accordance with apt's quality guidelines and will be limited to defects that become apparent during apt's incoming goods inspection, including an external examination which includes the delivery documents (e.g. transport damage, delivery of the wrong items and delivery of less quantity than requested), or which become apparent during apt's random quality checks. In other respects, it will depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. A notification of defect is timely if it is sent within a period of five working days from receipt of the goods in the case of visible defects and within a period of five working days from their discovery in the case of hidden defects. Where acceptance has been agreed, there will be no inspection duty.
- 8.5 Payment for the goods does not imply their approval as being in conformity with the contract and free from defects.
- 8.6 If the goods delivered have material defects, apt will be entitled without restriction to the statutory claims for defects arising therefrom, subject to the following proviso. apt may, at its own discretion, demand subsequent performance by remedying the defect (rectification) or delivery of defect-free goods (replacement). apt will also be entitled to remedy the defect itself or have it remedied by third parties at the Supplier's expense if the Supplier fails to comply with its obligation to provide subsequent performance within a reasonable period set by apt. This will also apply if it is not possible to wait for the Supplier to remedy the defect due to a danger in delay or particular urgency.
- 8.7 If the goods have been installed in or attached to another item in line with their nature and intended use, subsequent performance will also include the removal of the defective goods and their re-installation or reattachment as well as the reimbursement of associated expenses. This will also apply if apt remained unaware of the defect during installation or attachment due to gross negligence.
- 8.8 A fixed processing fee of EUR 60 will be charged per complaint.

## **9. Limitation periods**

- 9.1 The mutual claims of the contractual parties will become statute-barred in accordance with the statutory provisions unless otherwise stated below.
- 9.2 The general limitation period for claims based on defects is two years from transfer of risk. If goods have to be accepted, the limitation period begins on acceptance. Claims arising from defects of title will not become statute-barred in any case as long as the third party can still assert the right against apt – in particular because the matter is not statute-barred.
- 9.3 In any case, the statutory provisions apply where they lead to a longer limitation period in individual cases.

## **10. Recourse against suppliers**

- 10.1 The statutory rights of recourse against the Supplier within a supply chain will accrue to apt without restriction in addition to the claims for defects. apt will in particular be entitled, without this restricting its right of choice, to demand from the Supplier precisely the type of subsequent performance (rectification or replacement) that apt owes its customers in individual cases.
- 10.2 Before apt acknowledges or settles a claim for defects asserted by one of its customers (including reimbursement of expenses pursuant to sections 478 (1), 439 (2) and (3) German Civil Code (*BGB*)), apt will inform the Supplier and briefly describe the facts and ask it for its written statement. If it does not comment in a substantiated manner within a reasonable period and no amicable solution is found, the claim for defects actually granted by apt will be deemed owed to the customer by the Supplier. In this case, the Supplier will be responsible for providing counter-evidence.
- 10.3 apt's rights of recourse will also apply if the defective goods have been further processed by apt or another company, for example by being installed in another product.

## **11. Tools, drawings, confidentiality**

- 11.1 apt reserves title in and copyright to any tools, samples, models, drawings or other documents provided. They may not be made accessible to third parties without apt's consent and must be returned promptly on request.
- 11.2 The Supplier is required to use the tools exclusively for manufacturing the goods ordered by apt. It is also required to insure the tools belonging to apt at its own cost against damage due to fire, water and theft at reinstatement value. At the same time, it hereby assigns to apt all compensation claims under this insurance policy; apt hereby accepts such assignment. Furthermore, the Supplier is required to carry out any necessary maintenance, inspection, service and repair work on apt's tools at its own cost in good time. The Supplier must notify apt immediately of any faults.
- 11.3 The Supplier is required to keep any illustrations, drawings, calculations and other documents and information which it receives strictly confidential. Such documents may only be disclosed to third parties with express prior consent. The confidentiality obligation will continue to apply after this contract has been executed; it lapses if and to the extent that the manufacturing know-how contained in the illustrations, drawings, calculations and other documents provided becomes generally known.
- 11.4 If the Supplier, its governing bodies, employees or vicarious agents violate any of the above obligations, the Supplier will be liable for compensation unless it is not responsible for the breach of duty.

## **12. Intellectual property rights**

- 12.1 The Supplier warrants that the delivery and use of the goods ordered by apt in Germany and abroad do not violate any industrial property rights or other rights of third parties.
- 12.2 If claims are filed against apt by a third party, the Supplier will be required to indemnify apt against such claims on first written request. This also applies with regard to all necessary expenses incurred by apt from or in connection with this claim.
- 12.3 The limitation period for the claim for indemnification is three years, calculated from the time apt obtains knowledge of the claim filed by the third party.

## **13. Provision, reservation of title**

- 13.1 apt reserves title in the items provided by apt (reserved goods). These must be stored clearly and separately from other items and must be identified as the property of apt. They must also be sufficiently insured against fire, water and theft.
- 13.2 Processing or re-working by the Supplier will be carried out on behalf of apt. If apt's reserved goods are processed together with other items which do not belong to apt, apt will acquire title in the new item insofar apt's reserved goods become the main object. If apt's reserved goods are processed together with other items which do not belong to apt and in the event none of the items are to be regarded as the main object, apt will acquire joint title in the new item, each in the proportion to the value of them. In the event of loss of title by apt, Supplier will compensate the damage apt as a result incurs of such loss of title.
- 13.3 The above provision under 13.2 will apply accordingly if the item we provide is inseparably intermixed with other items that do not belong to apt. If, however, one of these processes gives rise to sole title on the part of the Supplier, because an item belonging to the Supplier constitutes the main item, it will be deemed to be agreed that the Supplier will transfer joint title of this item to apt in proportion to the value of the reserved goods (purchase price plus VAT) in relation to the entire item and will hold the joint title thus created in custody on apt's behalf free of charge. Without prejudice to the foregoing, apt shall also be entitled, in lieu of joint ownership, to claim compensation from the Supplier for the damage apt suffers as a result of such loss of ownership.

- 13.4 Title to the goods must be transferred to apt unconditionally and regardless of whether or not the purchase price has been paid. If, however, in an individual case, apt accepts an offer by the Supplier to transfer title conditional on payment of the purchase price, the Supplier's reservation of title will expire at the latest on payment of the purchase price for the goods delivered. apt will remain authorised in the ordinary course of business to resell the goods even before payment of the purchase price, assigning the resulting receivable in advance (alternatively, the simple reservation of title extended to the resale will apply). All other forms of reservation of title, especially extended and forwarded reservation of title and reservation of title extended to further processing, are precluded.

#### **14. Product liability**

- 14.1 If that the Supplier is responsible for product damage, it is required to release apt on first request from compensation claims of third parties, including the necessary costs of defence against these claims, if the cause of this product damage lies within its sphere of control and organisation and it is liable itself to third parties.
- 14.2 If apt has to carry out a recall on the basis of a claim within the meaning of 14.1 , the Supplier will be required to reimburse apt for all expenses arising from or in connection with the recall carried out by apt. This will not affect any further-reaching statutory claims of apt.
- 14.3 apt will inform the Supplier – as far as possible and reasonable – of the content and scope of the recall and give it the opportunity to comment.
- 14.4 The Supplier undertakes to take out and maintain a product liability insurance policy with an appropriate sum insured for personal injury and property damage to cover the risks resulting from the performance of the contract. This insurance must provide coverage of at least EUR 5 million per loss event and at least EUR 10 million per calendar year. The Supplier is required to provide apt with proof of such insurance and the cover amounts on request. If apt is entitled to claims that exceed the coverage agreed by the Supplier, these will remain unaffected.

#### **15. Set-off, retention**

The Supplier will only have the right to set off claims against apt that are undisputed or have been declared final and absolute.

#### **16. Withdrawal from contract, compensation**

- 16.1 If the Supplier does not fulfil the obligations assumed with the order confirmation or does not fulfil them in accordance with the contract, apt may withdraw from the contract and demand compensation instead of performance after a reasonable deadline for performance has lapsed without success.
- 16.2 apt will also have the right to withdraw from the contract if the Supplier suspends deliveries or applies for the opening of insolvency proceedings.
- 16.3 This will not affect the right to terminate the contract for good cause in the event of continuing obligations.

#### **17. Prohibition on assignment**

- 17.1 apt will be entitled to assign all claims arising from the contract with the Supplier without the Supplier's consent.
- 17.2 The Supplier's rights and duties under the contract are not assignable or transferable without apt's written consent. This provision shall have effect under the law of obligations as well as under property law as meant in article 3:83 (2) of the Dutch Civil Code.

#### **18. Place of performance and place of jurisdiction**

- 18.1 The place of performance for all claims arising from the supply contract and the place of jurisdiction for all disputes arising from the supply contract will be the registered office of the apt company concerned in each case. apt will, however, also be entitled to take legal action against the Supplier in its general place of jurisdiction. This provision has no effect on overriding statutory provisions, in particular on places of sole jurisdiction.
- 18.2 In all other respects, Dutch law will be deemed to be agreed exclusively – including for import agreements. The provisions on the international purchase of movable goods, in particular the UN Convention on the International Sale of Goods (CISG), are expressly precluded. This also applies if the Supplier has its registered office abroad.

**19. Severability clause**

If individual provisions of these GTC should be or become invalid or void, this will not affect the validity of the other terms and conditions.

**20. Differing agreements**

Any individual agreements made in an individual case will always take precedence over these GTC. Subject to proof to the contrary, a written contract or written confirmation by apt will be decisive for the content of such agreements.