

# Terms and Conditions of Delivery and Service of Apollo Gößnitz GmbH (as of 03/2025)

## I. Scope of application

- Our terms and conditions of delivery and performance shall apply exclusively; we do not recognise any conditions of the customer - even if our terms and conditions of delivery and performance do not contain any deviating provisions - unless we expressly agree to their validity in writing. Our terms and conditions of delivery and performance shall also apply if we accept the delivery of the customer without reservation in the knowledge of the supplier's terms and conditions.
- All agreements, in particular amendments to contracts, made between us and the Purchaser shall be set out in writing in a contract.
- Our terms and conditions of delivery and performance shall only apply to entrepreneurs within the meaning of § 14 BGB (German Civil Code).
- These existing terms and conditions of delivery and performance shall also be deemed to be agreed in advance in the case of constantly recurring orders and for all future business. No verbal individual agreements are accepted.

## II. Offer/Documents

- Our offer is subject to confirmation. If the order is to be qualified as an offer according to § 145 BGB, we can accept this within two weeks. Our written order confirmation is decisive for the scope of the delivery and/or service, in the case of an offer by us, provided that it is accepted and no further order confirmation is made by us. Changes require our written confirmation.
- Orders placed by telephone, electronically or in any other form shall be deemed to have been accepted when the order confirmation, the goods and/or the invoice are sent or handed over.
- In the case of customised products, we reserve the right to over-deliver if we can only manufacture a fixed number of workpieces in a production cycle due to specified process sequences. We shall inform the customer of this without delay and point out his obligation to pay additional remuneration. Should the additional delivery lead to a price increase of more than 5 % of the agreed price, the customer shall be entitled to withdraw from the contract.
- We reserve the property rights and copyrights to illustrations, drawings, calculations, cost estimates and other documents. These may not be reproduced or passed on or made accessible to third parties without our consent. The aforementioned documents must be returned to us without delay if an order does not materialise or is terminated. Employees and other third parties to whom the Buyer passes on information are obliged to maintain confidentiality. If the customer violates one of the above confidentiality obligations, he shall forfeit a contractual penalty of € 50,000.00 in the event of unauthorised disclosure to third parties, of € 2,500.00 in the event of failure to protect against unauthorised inspection/use and of € 5,000.00 in the event of failure to oblige employees to maintain confidentiality. The customer has the right to prove that we have not incurred any damage or that the damage is lower than the contractual penalty.

## III. Prices, payments, set-off, retention, assignment

- Unless otherwise stated in the order confirmation, our prices shall apply "ex works", excluding packaging, freight charges and any customs duties; these shall be invoiced separately. We reserve the right to adjust the price of the goods upwards or downwards in such a way as is necessary due to general price developments outside our control (such as exchange rate fluctuations, currency regulations, changes in customs duties, significant increases in material or manufacturing costs due to changes in suppliers) after timely notification of the purchaser and prior to delivery. We will provide evidence of price changes to the purchaser upon request.
- The statutory value added tax is not included in our prices; it is additionally owed by the purchaser at the statutory rate on the day of delivery/acceptance.
- The deduction of a discount requires a special written agreement.
- Unless otherwise stated in the order confirmation, the purchase price is due for payment without deduction within 14 days of the invoice date. We are entitled to demand advance payments as well as down payments to a reasonable extent. In addition, we reserve the right to credit payments of the purchaser first against his older debts. In this case, we will inform the customer of the type and scope of the offsetting that has taken place. If costs and interests have already been incurred, we shall be entitled to set off the payments of the customer first against the costs, then against the interest and finally against the principal debt.
- We are not bound by previous prices for new orders and/or follow-up orders.
- All payments are to be made in euros to the account details given on our letterhead. The crediting of the payment amount to our account is decisive for the fulfilment of the payment obligation. Cheques or bills of exchange will only be accepted by agreement and always on account of payment.
- If the customer is in default with a payment to us or if other facts become known which give rise to justified doubts about the customer's willingness or ability to pay, all our claims will become due immediately and without deduction. The same will apply to costs incurred, to services rendered and to goods in progress as well as to goods completed but not yet delivered. Delay starts as soon as the payment terms is reached. This is also valid without any payment reminder. Deferrals granted for other deliveries/invoices shall lapse in this case.
- The customer will only be entitled to rights of set-off/retention if his counterclaims originate from the same contractual relationship, have been legally established, are undisputed or have been acknowledged by us. Furthermore our service or goods will only be delivered, once the customer who is obliged to provide the required and agreed trade-off.
- The assignment of claims against us is only permitted to the customer with our prior written consent.

## IV. Delivery time - Partial deliveries - Delay in delivery and default of acceptance

- The delivery period will commence with the dispatch of the order confirmation, but not before complete technical clarification with the Purchaser and provision of the documents to be procured by the Purchaser, and not before fulfillment of the agreed down payment and/or other advance performance obligation.
- If the customer is in default of acceptance or culpably violates other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to assert further claims.
- If the prerequisites of Clause IV.2. are met, the risk of accidental loss or accidental deterioration of the delivery item will pass to the Purchaser at the point in time at which the Purchaser is in default of acceptance or debtor's delay.
- Our delivery obligation is subject to complete and correct self-delivery, unless the non-delivery or delay is due to our fault. With regard to the dimensions specified for our delivery items, we reserve the right to the deviations customary in the trade, unless we have assured compliance with the dimensions in writing.
- We are entitled to make reasonable partial deliveries.
- The delivery periods and dates are only binding if they have been expressly designated as binding by us in writing in accordance with § 126 of the German Civil Code (BGB).
- If collection or delivery is delayed by the Purchaser, storage charges amounting to 0.1% of the order value may be charged to the Purchaser for each commenced week, commencing one month after notification of readiness for dispatch. The storage fee is limited to 5% of the order value, unless higher costs are proven. Conversely, the customer is free to prove that we have incurred lower costs.
- If it is not possible for the client to dispatch or accept the services and/or goods, we will provide, a so-called transfer of risk, which will be created in written form. Only the wording of our standard letter is acceptable. Individual formulations by mutual agreement are possible.

## V. Shipping - Transfer of Risk and Force Majeure

- Unless otherwise stated in the order confirmation, "delivery ex works" EXW Incoterms 2020 is agreed. Shipment will be made to the Purchaser's registered office at the Purchaser's risk and expense. If "delivery free carrier" FCA Incoterms 2020 has been agreed, the risk shall pass when the goods are handed over to the first carrier on our factory premises.
- Transport- and/or other packaging in accordance with the packaging regulations will not be taken back, with the exception of pallets. The customer is obliged to dispose of the packaging at his own expense. The pallets are to be returned to us free of charge.
- If the purchaser so desires, we will cover the delivery by transport insurance; the costs incurred in this respect shall be borne by the purchaser.
- If shipment or pick-up is delayed for a reason for which the Purchaser is responsible, the goods will be stored at the Purchaser's expense and risk. In this case, the notification of readiness for shipment is equivalent to the shipment. The amount of storage fees will be calculated individual in relation to the size and weight of the equipment, which need to be stored. In the case of delivery with installation or assembly, the risk will pass on the day of the takeover at the Purchaser's premises. It is assumed, that the takeover immediately follows the ready-for-use assembly or installation. If the Purchaser does not accept the offer of takeover, the risk will pass to the Purchaser after the expiry of 14 days from that day.
- Force majeure (e.g. strikes, lockouts, operational disruptions or other restrictions in this sense) shall release the contractual partners from their performance obligations for the duration of the disruption and to the extent of its effect. The contracting parties shall be obliged to provide the necessary information without delay within the bounds of what is reasonable and to adjust their obligations to the changed circumstances. We shall be released from the obligation to deliver/service in whole or in part and insofar entitled to withdraw from the contract if the delivery/service is no longer feasible for us - taking into account economic aspects - due to the delay caused by force majeure. If the obstacles last for more than 2 months, each party to the contract is entitled to withdraw from the contract without setting a further deadline. After the end of an operational disruption, the contracting parties shall immediately inform each other as to when and in what order the mutual contractual obligations can be resumed.

## VI. Installation and assembly

- Our assembly personnel or the assembly personnel commissioned by us will be provided with a careful weekly certificate of the working time by the customer. The purchaser is obligated to immediately hand over to the assembly personnel a written certificate on the completion of the installation and assembly.
- We are not liable for the work of our assembly personnel or other vicarious agents insofar as this work is not directly connected with the delivery or installation or assembly. In all other respects clause VIII.
- If we have taken over the installation or assembly against individual invoicing, the customer shall remunerate us at the rates agreed upon when the order was placed for the working time and surcharges for overtime, night work, work on Sundays and public holidays, for work under difficult circumstances as well as for planning and supervision. Preparation time, travel time, running time and feedback shall be deemed to be working time.

## VII. Liability for defects

- The purchaser's rights in respect of defects shall be subject to the condition that the purchaser has duly complied with its obligations to inspect the goods and give notice of defects in accordance with § 377 of the German Commercial Code (HGB). Notices of defects must be made in writing. In the event of transport damage, the Purchaser shall ensure that a notation is made on the delivery bill of the transport person or the Purchaser shall refuse acceptance. In the interest of a speedy clarification of the facts, the Purchaser shall document all damage in a suitable manner (in particular by means of photographs).
- If there is a defect in the delivery, we shall be entitled, at our discretion, to subsequent performance in the form of rectification of the defect or subsequent delivery, unless subsequent performance is only possible at disproportionate effort. We are entitled to make at least two attempts to rectify the defect.

In the event of rectification of defects, we shall be obliged to bear all expenses necessary for the purpose of rectifying the defect, in particular transport and working material costs, insofar as these are not increased by the fact that the item was transported to a place other than the place of performance, unless the transport corresponds to the intended use. A time frame to coordinate activities and/or to rectify the defects and/or damages, will be agreed individual.

3. The warranty does not apply to delivery parts which are subject to premature consumption (wearing parts) due to their material properties and the way they are used, such as seals, and to used products.

Furthermore, the warranty does not cover natural wear and tear or damage caused by improper (third-party) installation or commissioning, inadequate maintenance or unsuitable operating conditions. Our liability shall also be excluded to the extent that the Purchaser carries out modifications or repair work on the delivery item itself or has such work carried out.

4. In the event that the Purchaser notifies us that the delivery item has a defect, we may request that the defective part/device be sent to us for investigation of the cause of the defect and, if necessary, subsequent repair and subsequent return, insofar as this is possible or economical. Alternatively/cumulatively, we can demand that the customer keeps the defective part ready and allows one of our technicians to inspect or repair it on site. In the event of unjustified notices of defects, the customer shall reimburse us for the costs of the defect investigation or repair.

5. The warranty period shall be 12 months. This shall not apply insofar as longer periods are compulsory by law in accordance with §§ 438 Para. 1 No. 2 (buildings and items for buildings); 478, 479 Para. 1 (right of recourse) and 634 Para. 1 No. 2 (construction defects) of the German Civil Code (BGB). The period begins with the transfer of risk respectively with the acceptance.

## VIII. Limitation of liability

We shall be liable for damages of the customer - irrespective of the legal grounds - in any case in the event of claims for damages due to culpable breach of contractual and non-contractual obligations in the event of damage to life, body or health and in the event of other damages only in the event of intent or gross negligence on the part of senior vicarious agents. We shall only be liable for damages that do not affect life, limb or health and that are due to gross or simple negligence on the part of non-executive vicarious agents if an essential contractual obligation has been breached. As far as there is no intentional or grossly negligent breach of contract, the liability for damages is limited to the foreseeable, typically occurring damages, if the customer has not pointed out to us the possibility of an atypically high damage. This provision shall not affect any claims for damages under the Product Liability Act.

## IX. Retention of title, property rights and advertising

We retain title to the delivery item until receipt of all payments under the delivery contract and fulfillment of all other claims arising from the business relationship with the customer. In the event of conduct in breach of contract on the part of the customer, particular in the event of default in payment, we are entitled, after setting a reasonable deadline, to withdraw from the contract and take back the item. After taking back the item, we are entitled to utilize it; the proceeds of the utilization are to be credited against the customer's liabilities - less reasonable utilization costs. Every treatment or processing of the delivery item as well as its combination with third party items by the customer or third parties will be carried out on our behalf. We shall have co-ownership of the newly created items in proportion to the value of the delivery item. If goods delivered by us are combined or inseparably mixed with other movable items to form a single item, and if the other item is to be regarded as the main item, it applies as agreed that the customer shall transfer co-ownership to us on a pro rata basis insofar as the main item belongs to him.

2. The purchaser is obliged to treat the item - irrespective of whether it is a conditional commodity or a newly created item - with care; in particular, he is obliged to store it at his own expense and to insure it adequately at replacement value against fire, water and theft. The Purchaser hereby assigns to us all rights under the security agreements and its claims against the insurer. We accept the assignment. If maintenance and inspection work is required, the purchaser must carry this out in sufficient time at his own expense.

3. In the event of distraint or other access by third parties - e.g. by way of execution - to our goods subject to retention of title, the customer shall immediately draw attention to our ownership and immediately notify us in writing so that we can take legal action against it. Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs incurred in this connection, the customer shall be liable for the loss incurred by us.

4. The customer is entitled to resell the item in the ordinary course of business, provided that the claim arising from the resale is assignable. However, he already now assigns to us all claims in the amount of the final invoice amount (incl. VAT) of our claim, which accrue to him from the resale against his customers or third parties, irrespective of whether the item has been resold without/after processing. We accept the assignment. The customer remains revocably authorized to collect this claim even after assignment. Our authority to collect the claim ourselves remains unaffected by this. Upon request, the customer has to provide us with the information required for collection, to hand over documents, to inform the debtors of the assignment and to issue to us, at his expense, publicly certified documents concerning the assignment of the claim. We are authorized to notify the third-party debtor of the assignment of the claim on behalf of the customer. We oblige ourselves not to collect the claim as long as the customer meets his payment obligations from the collected proceeds, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or there is no cessation of payments. If the purchaser resells goods subject to retention of title, he too shall reserve title if the third party purchaser does not pay immediately. In the event of resale of our goods with third-party goods, the purchaser's claim against his customer shall be deemed assigned in the amount of our final invoice amount. The installation of the reserved goods in real estate or buildings and the use for the fulfillment of other contracts for work and services or contracts for work and materials shall also be deemed to be a sale in the aforementioned sense. The right to resell and in the end to collect claims shall expire in the event of cessation of payments, in particular, however, in the event of the filing of an insolvency petition with respect to the assets of the Purchaser, even without express revocation on our part.

5. We undertake to release the securities to which we are entitled at the request of the customer to the extent that the realizable value of our securities exceeds the claim to be secured by more than 10%; the selection of the securities to be released shall be incumbent upon us.

6. If the law in whose area of application the delivery item is located does not permit the retention of title, but does permit the retention of similar rights to the delivery item, these equivalent rights shall be deemed to have been agreed between the customer and the entrepreneur.

7. The supplier warrants that no rights of third parties (e.g. copyrights) are infringed in connection with his delivery.

8. If claims are asserted against us by a third party for this reason, the supplier shall be obliged to indemnify us against all claims in this respect upon first written request; other statutory claims shall remain unaffected.

9. The supplier's obligation to indemnify shall apply to all expenses necessarily incurred by us from or in connection with the claim by a third party (e.g. legal costs).

10. We are entitled to use the delivery items supplied to us by the supplier for our external presentation, in particular for advertising purposes in any conceivable medium (catalogs, product descriptions, customer information, website, flyers, etc.). This shall also apply insofar as protected/unprotected logos, designs or other references are in relation to the delivery items supplied to us by the supplier, which make it possible to identify the supplier directly or indirectly. We shall not owe the supplier any additional remuneration for this. We are obliged to use the delivery items, logos, designs and other references to the supplier only in such a way that the legitimate purposes of the supplier are not unreasonably impaired."

## X. Insolvency of a contractual partner - Corruption - Data protection - Confidentiality

1. If a contracting party ceases to make payments or if insolvency proceedings are instituted against its assets or out-of-court composition proceedings are applied for, the other contracting party shall be entitled to withdraw from the part of the contract that has not been fulfilled.

2. We may withdraw from the contract if the customer promises, offers or grants economic or non-material benefits to one of our employees or agents involved in the preparation, conclusion or performance of the contract or to a third party in his interest.

3. Within the framework of the business relationship with the customer, we may store the required data of the customer and of the individual contracts with the customer in computerized form and process and use them for our operational purposes in accordance with the statutory provisions.

4. Unless otherwise agreed, the information conveyed to us by the Buyer are not considered to be confidential. We are entitled to make documents of the customer accessible to third parties, in particular in order to make inquiries with our suppliers in connection with the order of the customer and - if necessary - to order supplies.

## XI. Contractual Language - Applicable Law - Place of Jurisdiction - Place of Performance - Documentary Process - Waiver and Validity

1. Unless expressly agreed otherwise, the contractual language shall be German. Insofar as the contracting parties use other languages in addition, the German wording shall take precedence.

2. German law applies exclusively between the contracting parties to the exclusion of the UN Convention on Contracts for the International Sale of Goods and of such legal norms that refer to another legal system.

3. If the purchaser is a merchant, Gößnitz is our place of business and thus Altenburg or Gera is the place of jurisdiction; however, we are also entitled to sue the purchaser at his general place of jurisdiction. If the customer does not have a registered office in Germany, all disputes between the contracting parties will be finally settled in accordance with the Rules of Arbitration of the International Court of Arbitration (ICC), excluding the ordinary course of law. The arbitration court consists of 3 persons. The place of arbitration is Cologne. Language of arbitration is German. The applicable substantive law shall be German law within the meaning of Clause XI. 2. If there are legal obstacles to the enforcement of an arbitral award in the country in which the customer is domiciled, the above provision shall not apply; Clause XI.1 and Clause XI.2. will then apply.

4. Unless otherwise stated in the order confirmation, our registered office shall be the place of performance.

5. The assertion of claims arising from and in connection with this contract by the Purchaser in proceedings for documentary evidence is excluded.

6. Also recurring behaviors between us and the customer and a possible delay or omission on our part, in accordance with these terms and conditions of delivery and performance right granted to exercise, shall not be deemed to be a waiver of such rights.

7. Should individual parts of these terms and conditions be legally invalid, this will not affect the validity of the remaining provisions. The parties shall replace these with an agreement that comes as close as possible to the intended purpose in economic terms.