

**General Terms and Conditions**  
**Conditions of Sale**  
**Status October 2013**

**Section 1 - General Information/Scope of Application**

(1)  
The General Terms and Conditions of AWS Apparatebau Arnold GmbH (hereinafter referred to as "AWS") shall apply exclusively. This shall apply in all current and future business relations.

(2)  
Any differing, contradictory or supplementary General Terms and Conditions of the purchaser, even if AWS is aware of them, shall not form part of the agreement unless their validity has been expressly approved in writing.

(3)  
The General Terms and Conditions of AWS shall even apply if AWS carries out delivery to the purchaser unconditionally with knowledge of contradictory or differing General Terms and Conditions of the purchaser.

**Section 2 Offer – Offer documents**

(1)  
All offers of AWS are subject to alteration.

(2)  
AWS reserves the right to continue charging substantial increases of commodity prices, wages, taxes, public levies and/or mandatory legal provisos of other forms, which occur pending execution of the order and have a demonstrably significant influence on cost estimation by AWS, by means of a reasonable price increase (alterations of at least 10%).

(3)  
Technical alterations as well as changes of shape, colour and/or weight within reason shall be reserved.

Compliance with technical data or other information/details from catalogues, publications, parts lists and/or drawings/sketches et al. shall only be confirmed insofar as specific data, measurements or details are expressly listed in the technical description of the quotation. In the case of blanket references on documents or drawings only the function shall be deemed to be confirmed.

(4)  
If the order should qualify as an offer in accordance with Section 145 of the German Civil Code then AWS shall be permitted to accept this within four weeks.

Acceptance may be declared either in writing or by providing the services and notification of this to the purchaser, or by delivering the goods to the purchaser.

(5)  
In the event of clearly identifiable errors in the order or written order confirmation, AWS shall be entitled to withdraw from the agreement with all other rights reserved.

(6)  
Agreement closure shall be carried out subject to contractual and punctual deliveries by the purchaser from AWS. This shall only apply in the event that AWS is not responsible for the non-delivery, especially where congruent hedging transactions are concluded with the AWS supplier.

If the service by AWS is nevertheless not possible, the purchaser shall be immediately informed of the unavailability of the service. The purchaser shall be refunded immediately for the returns service.

(7)  
AWS shall retain ownership and copyright of all pictures, drawings, designs, models, samples, calculations, cost estimations and other documents; these shall not be made available to third parties. In particular this shall apply to written documents which are marked as "confidential". Any disclosures to third parties shall require the explicit and written consent of AWS. Information submitted to the purchaser shall be returned without request to AWS free of charge, as soon as they are no longer needed. The purchaser shall be liable for loss or damage. These items shall be returned at any time upon request. The purchaser has no retention right of these items. The items shall be stored safely and may not be reproduced without prior written consent from AWS.

The aforementioned items and their intellectual content shall be kept strictly confidential from the purchaser, insofar as they are not common knowledge or made public through no fault of the purchaser.

For items which are subject to AWS property rights and/or protected as business / trade secrets, only the usage expressly authorised by AWS shall be granted to the purchaser, insofar as certain uses are not also granted to all third parties.

**Section 3 - Scope of Delivery**

(1)  
As part of the order, the purchaser shall be required to provide the individual specifications of the respective delivery item in accordance with their intended individual type of use, taking relevant and technical factors into consideration.

Should such details of the purchaser be missing or incomplete, the AWS general product information shall apply where appropriate.

(2)  
The written order confirmation by AWS is the basis of the agreement and decisive for the scope of delivery. Should the agreement be concluded with the acceptance of a temporary offer made by AWS, the contents of the offer by AWS shall be decisive for the content of the agreement.

Ancillary agreements and amendments shall require written confirmation from AWS.

(3)  
All transport packaging and other packaging, in accordance with the Packaging Ordinance, shall not be taken back by AWS. This shall not include pallets.

(4)  
Construction and/or design changes, which are attributed to technical improvements and/or statutory requirements, shall remain reserved during the delivery period insofar as the delivery item or the agreed delivery is not substantially altered and the alterations can be reasonably accepted by the purchaser.

**Section 4 - Prices/Conditions of Payment**

(1)  
For all prices in the absence of a special agreement "ex works" shall apply, including loading at the works, but excluding packaging, transport and transport insurance, plus the applicable statutory VAT.

(2)  
The prices for all delivered goods are those valid list prices on the day of invoicing (invoice date) by AWS, unless otherwise agreed.

(3)  
The deduction of a discount shall require special written agreement.

(4)  
Unless stipulated otherwise on the order confirmation/offer, the net purchase price shall be due for payment within 30 days from the invoice date, without the deduction of any discount. Should the purchaser be in default of payment, AWS shall be entitled to charge interest at a rate of 8 percent per annum above the base rate of European Central Bank. Should proof of greater damage caused by

default be submitted, AWS shall be entitled to assert the same. The purchaser shall be entitled to furnish evidence that damages are less or do not exist.

(5)  
For partial deliveries AWS may issue partial invoices. For each partial invoice payment terms shall run separately.

(6)  
The purchaser shall only be entitled to offsetting rights and retention rights if its counterclaims are upheld by a court of law, undisputed or acknowledged by AWS. The purchaser shall only be permitted to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship. AWS shall be entitled to offset payments against the oldest due claims, even in the event of a conflict with the purchaser's repayment provisions.

(7)  
In the event of a significant deterioration in the purchaser's financial situation after the agreement is concluded, or should AWS become aware of an earlier such deterioration after this time which gives rise to serious doubts concerning the purchaser's creditworthiness, AWS shall be entitled to demand either advance payment or a payment bond at its own discretion.  
AWS shall be entitled to withdraw from the agreement in the event that the purchaser fails to comply with this demand.

(8)  
The prices shall apply exclusively to delivery and services within the Federal Republic of Germany.

#### **Section 5 - Call Orders**

Call orders shall be answered within the specified period of time and at the agreed times.

#### **Section 6 - Delivery Time/Delay in Delivery**

(1)  
The delivery time specified by AWS shall benign only with the clarification of all technical questions and the timely and proper fulfillment of the purchaser's obligations thereof.

This shall also notably include any documents to be provided or created by the purchaser, such as drawings, descriptions, approvals to be submitted by the purchaser, clearances, and credit notes for agreed down payments to the AWS account.

In the absence of one of these provisions or should the purchaser be responsible for ambiguities, the delivery period specified by AWS shall be suspended until the purchaser resolves such impediments.

(2)  
The delivery period shall be considered to have been observed when the ordered item has left the factory by the end of the agreed delivery date or the date stipulated by AWS, at the latest by the end of the calendar week following this date or, in the case of an obligation to collect, the purchaser shall be informed that the goods are ready for dispatch by the end of the calendar week stipulated within the order confirmation.

(3)  
Unforeseen events, for which AWS is not responsible, shall justify a reasonable extension of the delivery period, insofar as such hindrances verifiably affect the completion or delivery of the object of agreement. This shall also apply where such circumstances arise through the subcontractors of AWS.

This shall notably apply in the case of impediments which arise in the context of labour disputes, including strikes and lock-outs.

AWS shall not be responsible for delivery delays arising as a result of the aforementioned circumstances if these occur during a pre-existing delay. AWS shall notify the purchaser of the beginning and end of such impediments as soon as possible.

(4)

AWS shall only be considered to be delayed with a delivery once the purchaser has set a grace period of two weeks in writing and AWS has not made use of this extension.

(5)  
Should AWS experience delays in delivery, compensation claims arising as a result of delayed services shall be excluded, regardless of any other rights on the part of the purchaser regarding ordinary negligence.

#### **Section 7 - Cancellation Charges**

Should the purchaser withdraw without justification from an order placed, AWS shall be entitled (if the purchaser has been set an appropriate period for subsequent performance) to demand 10% of the price of the Agreement for processing costs and loss of profits, notwithstanding the possibility of claiming a higher actual loss.  
It shall be up to the purchaser to prove that damage did not occur or occurred to a lesser extent.

#### **Section 8 - Default in Acceptance/Delay in Acceptance**

(1)  
Should the purchaser be in default of acceptance or violate other obligations of cooperation, then AWS shall be entitled to claim for arising damages including additional expenses. In such circumstances, the risk of accidental loss or degradation of the ordered item shall be transferred to the purchaser from the point at which the purchaser falls into default of acceptance.

(2)  
Should the purchaser request that the delivery or dispatch of the ordered item be delayed, it shall be invoiced at least 0.5% of the invoice amount for each month or part thereof for the resulting storage costs from the beginning of the month following the notice of readiness for delivery or dispatch.  
It shall be up to the purchaser to prove that damage did not occur or occurred to a lesser extent. AWS reserves the right to prove that damage occurred to a greater extent

(3)  
Moreover, once a reasonable period of time, of which the purchaser has been notified, has lapsed, AWS shall also be entitled to withdraw from the agreement, or to make use of the ordered items in other ways after this period of time and to deliver to the purchaser in accordance with the agreement within an appropriately extended period.

#### **Section 9 - Place of Performance**

AWS shall explicitly state that for each delivery, which is agreed "ex works" and notwithstanding of which subsidiary/affiliated company of AWS carries out the delivery, **Waldzimmern** shall be valid as place of performance for the contractual relationship.

#### **Section 10 - Transfer of Risk**

(1)  
It shall be deemed that an "ex works" delivery has been agreed, unless stated otherwise in the contractual documents.

(2)

The transfer shall also be the same, if the purchaser is in default of acceptance.

(3)

The above clauses shall also apply to agreed partial deliveries.

(4)

Insofar as AWS has contractually agreed to assume the shipping costs, delivery or installation/assembly of the contractual item, the above clauses regarding transfer of risk shall remain unaffected.

(5)

Should the dispatch be delayed as a result of circumstances for which the purchaser is responsible, the risk shall be transferred to the purchaser when the goods are ready for dispatch; AWS is however required to effect the insurance which this requires at the request and cost of the purchaser.

(6)

The delivered items shall be received by the purchaser even if they have slight defects irrespective of the rights resulting from Section 11, Warranty.

(7)

Partial deliveries shall be permitted.

### Section 11 - Warranty

(1)

The warranty period shall amount to 1 year and shall begin with the transfer of risk. The one year warranty period shall not apply to claims for compensation resulting from attributable injury to life, body or health and for claims for compensation which are based on a grossly negligent or intentional breach of duty. The statutory limitation period applies herein.

(2)

Furthermore, the warranty of AWS shall be limited to supplementary performance, at the AWS' choice of rectification or replacement delivery. The supplementary performance shall not include manufacturing the defective goods or assembly, if AWS was not originally responsible for the assembly. AWS shall bear all necessary costs incurred in remedying such defects, insofar as these do not increase as a result of the contractual item being taken to a location other than the place of fulfilment. The costs of an additional legal and economically-necessary rectification of the end product by way of supplementary performance when connecting, commingling or processing or another elimination of defects are not compensated for by AWS in relation, in which a fee for the delivered product at the sales price of the end product is included. This shall also apply to the supplementary performance of end products where combining, connecting or processing with other products has not already taken place, or to products which have been subjected to further manipulation and processing.

The rectification shall be deemed failed at the second failed attempt, unless further attempts at rectification are appropriate with regards to the object to the agreement and are acceptable to the purchaser.

(3)

The purchaser's right to reductions shall be excluded.

(4)

The purchaser may only claim for damages resulting from non-compliance or withdraw from the agreement, if AWS neither rectifies nor carries out a replacement despite fixing an appropriate term, if a replacement or rectification is not acceptable to the purchaser or the supplementary performance has failed.

In the case of a minor breach of the agreement, especially in the case of slight defects, the purchaser shall have no withdrawal rights.

(5)

Should the purchaser choose to claim compensation after supplementary performance has failed, the goods shall remain with the purchaser if he deems this to be reasonable.

The compensation shall be limited to the difference between the sales price and value of the deficient contractual objects following

the provision of the unsuccessful service or, if the service was provided by a third party, to the price of this service, less any expenses not incurred. This shall not apply in the event that AWS has deliberately caused the breach of agreement. In the event that items which have been created by connecting, commingling or processing, or the further manipulation and processing of a defective product, should be defective, AWS shall not compensate the damage to the extent that remuneration for the delivered product amounts to the sales price which would have been expected for the final product following a defective delivery. Section 13 shall apply for all claims for compensation.

(6)

The AWS product descriptions shall only be classified as quality descriptions. Public statements, promotions or advertising shall not represent any contractual indication of the quality of the goods.

The product descriptions of a manufacturer employed by AWS shall also only be classified as quality descriptions. Public statements, promotions or advertising shall not represent any contractual indication of the quality of the goods.

(7)

Should the purchaser receive defective assembly instructions, AWS shall be merely required to supply defect-free assembly instructions and only then if the defect in the assembly instructions opposes proper assembly.

(8)

Warranty claims in accordance with Paragraphs 1-7 shall assume that the purchaser shall inform AWS of apparent defects in writing within a period of 2 weeks, calculated from the time of receipt of goods and concealed defects within a period of 2 weeks of the defect being established.

(9)

The purchaser shall bear the burden of proof for the immediate notification of a fault. The purchaser shall also bear the onus of proving that it has not attempted to rectify the fault.

(10)

The purchaser shall be required to document both the fault and any damages resulting therefrom notwithstanding the above provisions in accordance with generally accepted technical standards.

(11)

AWS shall not provide the purchaser with any guarantees in the legal sense.

Manufacturer guarantees from third parties shall remain unaffected.

(12)

Should an exchange/replacement of an individual component of a product take place within the warranty period, this does not lead to an extension/new beginning of the warranty period for the finished product. The extension/new beginning of the warranty period exclusively refers to the replaced individual part.

### Section 12 - Property Rights

Should the usage of the contractual item lead to breach of intellectual property rights or domestic copyright laws, AWS shall provide the purchaser with the rights to further use or make other arrangements for the elimination of copyright infringement. This obligation shall be final for intellectual property and copyright infringements subject to the regulations in Section 13. This shall assume that the purchaser will inform AWS immediately of alleged infringements and that it supports AWS in the defence of asserted claims and enables the implementation of modification measures. A further precondition is that AWS shall have all protective measures at its disposal, the defect of title shall not be based on an instruction issued by the purchaser and the infringement of rights shall not be caused by the fact that the purchaser modified or utilised the contractual item/services in a manner which does not comply with the agreement.

Section 11 I shall apply to the limitation based on infringement of property rights.

## Section 13 - Limitation of Liability

### (1)

The liability of AWS assumes that the purchaser has observed the operating instructions upon operation of the delivery item. The purchaser is obliged to furnish proof in this respect.

### (2)

In the event of negligent breaches of duty, the liability of AWS shall be limited to the average damage that is foreseeable, typical of this type of agreement and directly pursuant to the type of goods. This shall also apply to the negligent breaches of duty of AWS employees, representatives and agents.

Liability shall be excluded from slightly negligent violations of minor contractual obligations.

### (3)

Unless otherwise indicated below, additional claims made by the purchaser, irrespective of their legal basis, shall be excluded.

AWS shall therefore bear no liability for damages that have not arisen directly from the delivery item, and shall notably remain indemnified against lost profits or other damages incurred by the purchaser or a third party, even for those items which have been produced as a result of connecting, commingling, processing and/or further manipulation and processing.

### (4)

The warranty disclaimer and limitations of liability outlined in the above Lines (1) to (3) and in Section 11 shall not apply to damages arising from injury to life, body or health, loss of life or in cases of intent or gross negligence. The warranty disclaimer shall also not apply in the event that AWS should violate a commercially-essential obligation (material obligation) of the agreement; in this event, the liability shall be limited to the average foreseeable damage, typical of this type of contract and directly pursuant to the type of goods in accordance with Line (1). Commercially-essential obligations (material obligations) are those through which the attainment of the agreement purpose is guaranteed and their fulfilment enables the proper execution of the agreement in the first place and the purchaser may rely on their compliance.

The limitations of liability above shall not affect claims by the customer arising from warranties and product liability.

### (5)

Should AWS breach an essential contractual obligation, its obligation to provide compensation shall be limited, provided that gross negligence is not the basis of property damage to at least the insured sum of AWS public liability insurance. AWS shall grant access to the insurance policy upon request.

Should the liability of AWS be excluded or limited, this shall also apply to personal liability on the part of their employees, representatives and agents.

### (6)

Generally, AWS liability shall notably be excluded in the event that parts other than those which it has specified or manufactured are installed in the delivery item at the request of the purchaser. The purchaser shall bear the burden of proving that such a deviation is not the cause of any defects in the delivered item.

### (7)

Insofar as the purchaser carries out the installation work himself/herself, the liability of AWS in this respect shall be omitted, the purchaser shall carry the burden of proof for the defect-free installation.

## Section 14 - Reservation of title

### (1)

Contractual items shall remain the property of AWS until all claims resulting from the current business relationship are settled in full.

Should the purchaser act in violation of the agreement, notably in the case of default of payment, AWS shall be entitled to recover the contractual item. The recovery of the contractual item shall not constitute withdrawal from the agreement, unless explicitly indicated in writing by AWS.

Where AWS files for attachment of the contractual item, this shall always constitute withdrawal from the agreement. AWS shall reserve the right to exploit the contractual item following its withdrawal. The income from the sale - minus appropriate utilisation costs - shall be offset against the purchaser's liabilities.

### (2)

The purchaser shall be required to handle the objects of sale with care, and shall in particular be required, at his/her own cost, to insure these objects to their replacement value against fire, water and theft. Should maintenance and inspection work be necessary, the purchaser shall carry out such work at his/her own expense in a timely and regular manner.

### (3)

In the event of attachments or other intervention by a third party, AWS shall be immediately notified thereof in writing by the purchaser. If the third party is not in a position to reimburse AWS for the court and out of court costs of a suit incurred in accordance with Section 771 of the German Code of Civil Procedure, the purchaser shall be liable for any AWS loss resulting from this.

Furthermore, the purchaser shall be required to immediately inform AWS of any damage or destruction of the goods. The purchaser shall immediately inform AWS of any change in ownership of the goods and relocation of the company's headquarters.

### (4)

The purchaser shall be entitled to resell the goods in the proper course of business. He/she shall hereby assign all claims for the total sum of the final invoice (including VAT) to AWS, which arise from the resale to his/her customers or third parties, regardless of whether the goods have been resold without or after processing. AWS hereby accepts this assignment.

The purchaser shall remain entitled to collect the claim even after the assignment. The authority of AWS to collect claims itself shall hereby remain unaffected. However, AWS shall refrain from collecting the claim as long as the purchaser meets his/her payment obligations from the revenues collected, is not in default of payment, and in particular insolvency proceedings have not been applied for or payments have ceased. Should this, however, be the case, AWS may demand that the purchaser immediately inform AWS of the assigned claims and their debtors, provide all information necessary for collection, hand over the applicable documents and inform the debtors (third party) of the assignment.

### (5)

The processing or restructuring of the goods by the purchaser shall always take place in the name and on behalf of AWS. Should goods be processed with other items that do not belong to AWS, then AWS shall acquire joint ownership of the new items in proportion to the value of the goods compared to the value of the other processed items at the time of the processing.

Items arising as a result of processing are subject to the same conditions as goods delivered under provision.

### (6)

Should goods be mixed with other items that do not belong to AWS, then AWS shall acquire joint ownership of the new items in proportion to the value of the goods compared to the value of the other mixed items at the time of the mixing.

If the mixing is done in such a way that the purchaser's item is considered the main item, it is understood that the purchaser shall assign proportional joint ownership to AWS. The purchaser shall hold the resulting sole or joint ownership for AWS.

**(7)**

The purchaser shall also assign AWS claims which support the protection of claims of AWS against it, which arise through the mixing of goods with a real property against a third party, to the total amount of the final invoice.

**(8)**

AWS undertakes to release the securities due to AWS at the request of the purchaser insofar as the value of our security exceeds the claims to be secured by more than 20%; AWS shall be responsible for selecting which securities to release.

**Section 15 - Exceptional Right of Termination/Embargo Regulations/EU Anti-Terror Regulations**

**(1)**

Insofar as contracts concluded between AWS and the purchaser respectively mean that for AWS resulting delivery obligations and payment obligations of the purchaser are in violation of binding national and international regulations (e.g. foreign trade regulations of the Federal Republic of Germany, export and embargo regulations of the European Union or other states, in particular the USA, including EU anti-terror regulations), AWS shall be entitled to exercise extraordinary termination of the contractual relationship and/or withdraw from the agreement.

**(2)**

Claims for damages on the part of the purchaser shall not be available in these circumstances.

**(3)**

The purchaser shall be required to make itself aware of any relevant statutory regulations that may make it impossible to fulfil the terms of the agreement with AWS.

**Section 16 - Final provisions**

**(1)**

Agreements shall be concluded in writing. Ancillary agreements shall only come into effect if they have been confirmed in writing by AWS.

**(2)**

The law of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

**(3)**

For all legal disputes between AWS and the purchaser, the place of business of AWS in Waldzimmern shall be decisive for the exclusive place of jurisdiction. AWS shall also be entitled to file a suit at the business headquarters of the purchaser.

**(4)**

In the event that individual provisions of the agreement with the purchaser, including these General Terms and Conditions, are or become invalid either fully or in part, this shall not affect the validity of the other provisions.

The provision that is partially or completely null and void shall be replaced by one that most closely reflects the financial purpose of the provision that is null and void.