

# General Terms and Conditions of Delivery of ANNAX GmbH

## 1. Scope of Application

- 1.1 These General Terms and Conditions of Delivery are applicable to business transactions between ANNAX GmbH (“**Contractor**”) and enterprises, legal entities under public law and special funds under public law (collectively “**Customer**”) as respective ordering party.
- 1.2 These General Terms and Conditions of Delivery shall be part of the contract between the Contractor and the Customer, unless otherwise agreed upon in individual cases. They shall replace all previous written or verbal agreements. Furthermore, they shall apply to all offers, supplies and services (hereinafter “Supplies”) and to all future business relations, even if not expressly agreed upon again. These Terms and Conditions of Delivery shall be deemed accepted by the ordering party when the Supplies are taken receipt of at the latest.
- 1.3 General terms and conditions of business or purchase of the Customer that conflict herewith shall not apply, even if not expressly objected to by the Contractor.
- 1.4 All contractual or other legally relevant declarations, including the termination of contracts, require the written form to be effective and binding. This also applies to modifications and amendments of contracts and agreements.

## 2. Offer/Purchase Order/Order Confirmation

- 2.1 Offers of the Contractor shall be non-binding, unless otherwise stipulated therein. Regardless of whether the Contractor has submitted an offer, a contract between the Contractor and the Customer shall be binding upon the Contractor's confirmation of the Customer's purchase order. Acknowledgement of receipt of the Customer's purchase order by the Contractor shall not constitute confirmation of the order.
- 2.2 Deviations in the Customer's purchase order not being in line with the Contractor's offer shall be clearly marked in the purchase order. Deviations in the Contractor's order confirmation from the Customer's purchase order shall likewise be clearly marked. Deviations shall be promptly agreed upon between the Contractor and the Customer in writing. In the event of a dispute, the Contractor's order confirmation shall be decisive.

## 3. Drawings, Technical Documents, Guarantees

- 3.1 Drawings, illustrations, dimensions, weights or other performance data shall be binding insofar as these have been laid down in the order confirmation or have been separately agreed upon. The Contractor reserves the right to carry out technical changes, or changes required for technical reasons, insofar as these changes are necessary and reasonable for the Customer.
- 3.2 Intellectual property or existing property rights in calculations, cost estimates, drafts, drawings and other technical documents made available shall remain with the Contractor. In all other respects, the provisions and limitations under Section 11 shall apply.

- 3.3 If the Contractor is required to deliver strictly in accordance with drawings, information or specifications provided by the Customer, the Customer shall bear the whole responsibility. The Contractor shall not be obliged to check that such drawings, information or specifications are complete and correct or to check for any conflicting third-party property rights.
- 3.4 A guarantee or the assumption of any procurement risk exists only when an explicit statement regarding quality or other characteristics is agreed upon in writing and identified as such.
- 3.5 Insofar as not explicitly agreed upon otherwise in writing, the Customer shall be solely responsible for the compliance with all provisions and standards relevant to the installation or resale of the goods. Furthermore, the Customer shall be responsible for compliance with the adherence to all legal and administrative provisions, especially including export provisions of any kind.

#### **4. Prices and Payments**

- 4.1 Unless otherwise expressly agreed upon, the Contractor's prices shall apply FCA Incoterms 2020, including packaging charges plus value-added tax at the statutory rate.
- 4.2 If, at the Customer's request, the Contractor is to provide the Supplies later than agreed upon, this shall be subject to the reimbursement of the cost of any intermediate storage. In this respect, however, the payments for the Supplies shall be made at the time originally agreed upon.
- 4.3 Invoices from the Contractor for Supplies shall be paid net cash within 30 days of the invoice date.

- 4.4 Payment by bill of exchange or cheque shall require prior agreement. Bill of exchange and discount charges shall be borne by the Customer. If the payment period is exceeded, the Contractor shall be entitled to charge default interest at the rate of 9 % above the base interest rate of the Deutsche Bundesbank (§ 288 BGB). In case of delay of the Customer, the Contractor shall be entitled to withhold deliveries/services.
- 4.5 Except in the case of defect-related complaints and claims resulting therefrom, the Customer shall only be entitled to set off payment, withhold payment or reduce the price if its counterclaims are undisputed or have been established in law. However, the Customer shall only be entitled to withhold payment when the counterclaims are derived from the same contract.

#### **5. Packaging; Passage of Risk**

- 5.1 The Contractor shall ensure that the Supplies are properly packaged.
- 5.2 The transfer of risk takes place at the time of delivery. If delivery is to take place at a later date at the Customer's request, the risk shall pass on the originally agreed delivery date.

#### **6. Delivery Period and Compensation for Delay**

- 6.1 Delivery dates and target dates shall be binding only if expressly identified as binding in the order confirmation. Delivery dates/target dates that have not been indicated as binding may be exceeded by the Contractor by up to three weeks. Any delay of the Contractor shall require a written reminder of the Customer.

- 6.2 Observation of the delivery dates and deadlines shall be subject to the clarification of all outstanding commercial and technical points between the Contractor and the Customer and to the fulfilment of all of its obligations under the contract by the Customer. The Contractor may request a postponement of delivery dates for such time in which the Customer itself does not comply with his contractual obligations. Claims of the Contractor due to delay default by the Customer shall remain unaffected.
- 6.3 The Contractor shall not be at fault for any delays in delivery or performance that have resulted from force majeure or events that make it considerably more difficult or impossible, not just temporarily, for the Contractor to deliver. Such events shall entitle the Contractor to defer delivery or performance by the duration of the hindrance plus a reasonable start-up period. Furthermore, either the Contractor or the Customer may, insofar as the cause of the hindrance persists for longer than three months, and a reasonable set time limit has expired, wholly or partly terminate the contract in respect of the part not yet performed.
- Other events that delay performance, e.g. strike, lockout and official directives, including such events occurring at the Contractor's suppliers or their sub-suppliers, shall, provided that they exceed a period of three months, and a reasonable grace period has expired to no avail, entitle both the Contractor and the Customer to terminate the contract. If the delivery period is extended, or the Contractor is released from its obligation, for aforementioned reasons, the Customer shall not be entitled to derive any damage claims therefrom. The Contractor may invoke the aforementioned circumstances only if it has promptly notified the Customer and proven these circumstances to the Customer within a reasonable period.
- 6.4 The Contractor shall be entitled to partial deliveries at any time, insofar this is reasonable to the Customer.
- 6.5 In case of delay of the Contractor, the Customer shall be entitled to demand at the flat rate of 0.5 % for every full week of delay, but in total up to no more than 5 % of the invoiced value of the Services affected by delay. There shall be no claims beyond this unless default is due to wrongful intent or gross negligence on the part of the Contractor.
- 6.6 In the event of delay, the Customer shall be entitled to terminate the contract after it has twice set the Contractor a reasonable grace period, and the Contractor has failed to meet these grace periods.
- 6.7 Should the Customer be in default or not accept the delivery, for whatever reason, the Contractor shall be entitled to demand compensation for any loss incurred as a result, including additional expenses. Specifically, the Contractor may demand storage costs for the unaccepted delivery of 0,5 % of the agreed price per month.
- ## 7. Retention of Title
- 7.1 All delivered goods remain property of the Contractor ("Conditional Goods") until full payment of the purchase price has been effected. Conditional Goods are stored for the Contractor free of charge. The Customer shall insure them against loss and damage at his own expense. The Contractor is entitled to demand return of the Conditional Goods even before withdrawing from the contract.
- 7.2 Insofar as further liabilities, including future liabilities, are or will be due in the course of the ongoing business relationship between Customer and Contractor, the Conditional Goods shall remain the property of the Contractor until all liabilities have been settled.

- 7.3 The Customer shall be entitled to sell Conditional Goods in the ordinary course of business. In case of the above, the Customer hereby assigns in advance all claims to the Contractor, along with all ancillary rights, that accrue to it against purchasers or third parties from such on-selling. The Contractor accepts this assignment. The Contractor hereby undertakes to refrain from collecting the claims as long as the Customer properly meets its payment obligations. In the event of default in payment, the Contractor may demand that the Customer informs it of the claims assigned and the debtors concerned, provide all information necessary for collecting the claims and hand over the documents relating hereto. In such case, the Contractor shall give the debtor notification of this assignment.
- 7.4 If substantial contractual obligations have been breached, in particular if the Customer defaults on payment, the Contractor shall be entitled to repossess the Conditional Goods. Repossession or attachment of the Conditional Goods by the Contractor shall constitute termination only if the Contractor has expressly declared so in writing. In case the Conditional Goods are repossessed without rescission being declared, the Customer hereby permits the Contractor to enter its business premises during the customary business hours and repossess the Conditional Goods. In the event of attachment or any other third-party encroachment, the Customer shall give the Contractor immediate written notification, sending a record of attachment and an affirmation in lieu of an oath concerning the identity of the item attached.
- 7.5 If the retention of title lapses as a result of combining or processing, the Contractor shall acquire co-ownership in the ratio of the invoiced value of the transaction between the Contractor and the Customer to the value of the finished product. If the finished product is on-sold, the Customer shall assign to the Contractor, up to the value of the provided Supplies by the Contractor, all claims that accrue to the Customer against the purchaser or third parties from such on-selling. The Contractor hereby accepts this assignment.
- 7.6 Until all claims, including outstanding open account balances, that have accrued or accrue in future to the Contractor against the Customer on any legal basis have been satisfied, the Contractor shall be granted security, which is yet to be agreed upon. On request, the Contractor shall release security of its choosing to the extent that the value of the security exceeds the claims by more than 20 % on a sustained basis.
- 7.7 The Contractor expressly reserves the right to assert further claims, in particular claims based on default in payment.
- 7.8 If the Contractor becomes liable under a bill of exchange in connection with payment of the purchase price by the Customer, the retention of title and the trade claim upon which this is based shall not lapse before the bill of exchange has been honored by the Customer as the drawee.
- 7.9 Insofar as the retention of title is void pursuant to the law of the country in which the Conditional Goods are located, the Customer shall, upon demand of the Contractor, provide another equivalent security. The non-fulfilment of this obligation constitutes a material breach of the contract.

## 8. Warranty

- 8.1 The time of delivery shall be decisive for determining whether the state of the Supplies conforms with the contract. The Supplies delivered shall be inspected immediately upon receipt. Defect-related complaints shall be raised immediately and shall be received by the Contractor in writing no later than within two weeks upon delivery. In particular, this shall apply to visible defects and in respect of the completeness of the delivery. Upon receipt of the delivery, the Customer shall immediately report any transportation damage to the freighter carrier and, secure that respective damage claims are attested on the consignment note.
- 8.2 Other defects not immediately discovered even upon diligent examination shall be reported in writing without undue delay, upon discovery of the defect.
- 8.3 The Customer's right to assert claims arising from defects shall not be assignable.
- 8.4 The warranty period shall begin at the time of delivery. Rectification or replacement shall not suspend the warranty period.
- 8.5 The warranty period shall be 2 (two) years starting from delivery.
- 8.6 If the item delivered is defective, the Contractor shall render supplementary performance. However, the Contractor may, at its own option, either rectify the defective item delivered or replace it with a new defect-free delivery. The Customer shall make the defective item available to the Contractor for examination and supplementary performance. The Contractor shall render supplementary performance within a reasonable period. The Contractor shall also inform the Customer of the result of the examination of the defective item. If the Contractor reaches the conclusion that the defect reported is not covered by the warranty, the Customer shall reimburse the Contractor for the costs for rectification or replacement.
- 8.7 A prerequisite for the Contractor's obligation to honor the warranty is that the Supplies delivered have been used in strict compliance with the directives/instructions issued by the Contractor (technical documentation etc.). The warranty period shall lapse, if the defect arisen was caused by improper alteration, improper processing or any other improper treatment. The Contractor shall not be liable for damage resulting from usage-related depreciation, normal wear and tear, excessive use, defective servicing, damage caused by force, non-adherence to the Contractor's technical documentation, incorrect use or operation as well as unsuitable operating materials.
- 8.8 If the Contractor defaults on the removal of a defect reported, the Customer upon written notice to the Contractor shall have the right to eliminate the defect itself, or have the defect eliminated by third parties, at cost prices. The necessary respective costs shall be reimbursed by the Contractor.
- 8.9 If the defect has not been remedied despite two rectification attempts or two replacement deliveries, the Customer may, after a reasonable grace period set by the Customer has expired, assert its right to reduce the price or terminate the contract.
- 8.10 The Contractor shall not be liable for consequential damages, provided that the Contractor has not acted with intent or gross negligence and provided that no mortal injury, physical harm or health damage has occurred. The liability under the product liability law (Produkthaftungsgesetz) remains unaffected.

## **9. Other Claims**

- 9.1 Damage claims of the Customer on any legal basis resulting from any breach of contractual obligations or from tort shall be limited as specified below. This shall not apply insofar as, for example, liability is mandatory under the product liability law or in cases of wrongful intent or gross negligence, in cases of mortal injury, physical harm or health damage or in cases of breach of material contractual duties. However, damages for breach of material contractual duties shall be limited to the foreseeable damage typical of this type of contract, except in cases of liability owing to wrongful intent or gross negligence or cases of mortal injury, physical harm or health damage.
- 9.2 Insofar as the Contractor's liability is excluded or limited under Section 9, this shall also apply to the personal liability of its employees, workers, personnel and other authorized agents.
- 9.3 Insofar as the Customer is entitled to damage claims under Section 9, these shall become time-barred after 12 months. The statutory limitation periods shall apply in cases of wrongful intent and in cases of damage claims under the Product liability law.

## **10. Confidentiality**

All commercial information regarding customers, prices, calculations, business activities, etc. or technical information, such as specifications, designs, plans, drawings, models, etc., originating from the Contractor shall, insofar as this information is not provably public knowledge, or the Contractor has not earmarked this information for on-selling by the Customer, be kept secret to third parties. The Customer shall make this information only available to persons within its organization who need to use this information and who are also bound to secrecy; this information shall remain exclusively the Contractor's property. Such information shall not be copied or used commercially without the Contractor's prior written

consent. At the Contractor's request, all information originating from the Contractor (including any copies or records made) and items made available on loan shall be promptly and completely returned to the Contractor or be destroyed.

## **11. Industrial Property Rights and Copyrights**

- 11.1 The Customer shall not acquire any rights to usage of property rights of the Contractor beyond such rights necessary to use the goods for their intended and contractually agreed use. Insofar as the Contractor's performance consists of engineering, development, or other intellectual work/services, any property rights resulting from such work results (especially patents, utility models, copyrights, trade secrets) are exclusively owned by the Contractor. A transfer or sublicensing of the property rights is only permissible by explicit written agreement. The Customer shall notify the Contractor without delay as to the creation of property rights. Insofar as a property right requires application, the decision as to such rests with the Contractor.
- 11.2 The Customer shall, without delay, inform the Contractor, insofar as he obtains knowledge of claims made regarding the infringement of property rights relating to the commercial relationship between the Contractor and the Customer. On the Contractor's request, the Customer shall leave it to the Contractor – insofar as possible – to conduct legal disputes (also out of court).

11.3 The Contractor shall, at its own option, be entitled to acquire a right of use for the item delivered infringing a Property Right or modify this delivered item in such a way no more infringing the respective Property Right, or replace it with a similar item that no longer infringes the Property Right. If it is not possible for the Contractor to do so on reasonable terms or within a reasonable period, the Customer shall – insofar as it has enabled the Contractor to carry out a modification – be entitled to the statutory rights of rescission. The Customer's rescission claims in relation to the Contractor shall exist only insofar as the Customer has not made any agreements with its customers beyond the statutory claims, e.g. goodwill agreements.

11.4 The Customer shall not be entitled to any claims insofar as it is responsible for the property right infringement, or the Customer has failed to reasonably assist the Contractor in the defense against third-party claims.

11.5 Furthermore, the Customer shall not be entitled to any claims in cases where the items delivered are manufactured in accordance with the Customer's specifications or instructions, or the (alleged) property right infringement results from use in combination with another item not originating from the Contractor, or the items delivered are used in a manner that the Contractor was unable to foresee (see also subsection 3.3).

11.6 Further claims are hereby excluded.

## **12. Data Protection**

The Contractor shall be entitled to process or store the data concerning the Customer that it receives in connection with the business relationship insofar as the Contractor complies with the statutory provisions, such processing or storage is necessary for the purpose of the contract or for protecting the Contractor's justified interests, and there is no reason to assume that the Customer has a legitimate interest to prevent such processing or storing.

## **13. Compliance**

The Customer shall comply with all applicable laws, provisions and regulations. The Customer shall ensure to hold all licences, permissions, authorisations and permits necessary for the performance of the contract.

## **14. Transfer of rights**

The Customer shall not assign any of its contractual rights or obligations without Contractor's prior written consent. No assignment shall relieve the Customer of its contractual obligations.

## **15. Place of Jurisdiction, Applicable Law, Severability Clause**

15.1 Munich, Germany shall be the exclusive place of jurisdiction for all disputes between the Contractor and the Customer.

This shall apply even if the Customer does not have a place of general jurisdiction in the Federal Republic of Germany.

15.2 The laws of the Federal Republic of Germany shall apply. The United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods shall not apply.

15.3 If any of the above provisions are or become ineffective, this shall not affect the validity of the remaining provisions. Rather, the Contractor and the Customer shall, instead, agree upon a legally permissible provision.

15.4 The provisions regarding Warranty (clause 8), Other Claims (clause 9), Confidentiality (clause 10), Industrial Property Rights and Copyrights (clause 11), Data Protection (clause 12), Place of Jurisdiction (clause 15.1) and Applicable Law (clause 15.2) shall survive the termination of the contract and continue to be applicable.