

**Purchase Terms of**  
**- AKW Apparate + Verfahren GmbH**  
**- AKW A+V Protec Rail GmbH**  
**- AKW A+V Protec Industry GmbH**  
**- AKW A+V Protec Greentech GmbH**  
**As of 6<sup>th</sup> of March 2017**

**§ 1 General**

- (1) The Purchaser shall only place orders subject to the underlying order terms; any acceptance of contradictory terms of the Purchaser or such as deviating from the order terms of the Seller, is subject to the latter's explicit written permission. Tacit acceptance of deliveries or services of the Seller as well as payment by the Purchaser do not signify agreement with Seller's contradictory terms.
- (2) These order terms only apply to companies in according with § 310 sub-par. 1 BGB<sup>1</sup> sub-par. 1
- (3) Statutory provisions apply in addition to these order terms.

**§ 2 Order, conclusion and implementation of contract, assignment prohibition**

- (1) The Supplier commits himself to accept our order within 7 days, insofar as no other binding individual terms apply, failing which we shall no longer be bound to the order.
- (2) The use of placed orders for advertising purposes is not permitted. Any use for the purpose of representation of the Seller's business processes in reports and publications is not permitted either.
- (3) The order may not be passed on to any third party without our prior permission, neither partially nor wholly.
- (4) Assignment of liabilities against us arising out of the order is only permissible upon our prior agreement.
- (5) Free drawings and static calculations are to be provided to us in the required quantity if necessary.

**§ 3 Prices and payment terms**

- (1) Prices specified in the order are binding.
- (2) Delivery "DDP place of destination" including loading and packaging is equally binding.
- (3) We are entitled to setoff and retention rights to the extent stipulated by law.
- (4) Insofar as no separate agreement applies, invoices shall be paid at our discretion within 14 days following delivery and receipt of invoice with a 2% discount, or without deduction within 30 days, insofar as we were able to convince ourselves of the agreed quality of the delivery by that time. The invoice amount shall become due from the day of receipt of both invoice and goods.
- (5) Should circumstances become known after conclusion of contract and expiry of the statutory period of limitation for defects as to quality and title which could affect the Supplier's creditworthiness, we reserve the right to retain 10% of the order sum to secure our claims for defects as to quality and title. These 10% are only to be paid if the delivered products are in a condition in conformity with the contract at the end of the statutory period of limitation.
- (6) Billing shall be based only on quantities and units determined by us.

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<sup>1</sup>BGB = Bürgerliches Gesetzbuch, German Civil Code

#### **§ 4 Delivery dates, delays in delivery and contractual penalty**

- (1) The delivery dates and times specified in the order are binding. Goods received by us or by the receiving site agreed and specified by us are authoritative.
- (2) In case of delays in delivery, we reserve the right to impose a contractual penalty of 0.2% of the delivery value per completed calendar day; however, we may only demand at most 5% of the net order sum.  
In this respect, the Supplier shall have the right to prove to us that delivery delays caused no damage or significantly lower damage than we claimed.  
We reserve the right to assert further statutory or contractual claims (especially damages for breach of duty). The Purchaser shall have the right to assert his contractual penalty reservation towards the Seller until final payment.
- (3) In case of premature deliveries, the Purchaser reserves the right to initiate the return of the goods at the Seller's risk and expense. If, in case of premature delivery, the Purchaser does not return the goods, they shall be stored on the Purchaser's premises at the Seller's risk and expense. Invoice payment shall be effected within the prescribed time limit in relation to the agreed date.
- (4) Agreed dates are binding. Delivery without assembly or installation shall be deemed timely upon receipt of the goods by the receiving site specified by the Purchaser; delivery with assembly or installation as well as contractual works and services, upon their acceptance.
- (5) For deliveries of chemicals or other hazardous substances, the relevant DIN safety data sheets are to be enclosed to the order confirmation or at the latest to the delivery.
- (6) The Supplier shall take back packaging free of charge upon our request.
- (7) Order number and use from the headers of our orders are to be specified in all letters, delivery notifications, consignment notes, waybills, package addresses, invoices, etc.
- (8) With all deliveries to our incoming goods department, consignments must include a delivery note.

#### **§ 5 Goods inspection, time limit for claims**

- (1) You shall only send products that successfully passed all quality control tests, and therefore do not require further quality control by us upon receipt. In this respect, §377 HGB<sup>2</sup> shall apply. This applies to deliveries that are not delivered to the Purchaser's received goods department, rather to building sites, export collection points or as side deliveries to other suppliers. Delivery defects shall be notified to the Supplier without delay as soon as they are determined within the frame of ordinary course of business.  
In case of deliveries to building sites or export collection points, incoming goods quality control may only occur in some circumstances after days or weeks of delivery, which is within the frame of ordinary course of business.
- (2) We shall not in any way accept wrong or different deliveries. In this respect, no specific objection is needed.

#### **§ 6 Liability for defects as to quality and title in purchase contracts, liability for collateral and other obligations**

- (1) We shall enjoy full statutory rights in the case of defects as to quality and title.  
Any deviation from the specifications stipulated by us in the order shall especially constitute a defect as to quality.  
In case of defects, we are especially entitled to at our discretion demand remedy of defects or delivery of a product free of defects; full costs thereof shall be borne by the Supplier.  
Furthermore, we are entitled to unreduced and unlimited statutory damage claims.
- (2) Unreduced statutory periods of limitation shall apply insofar as no other set times are specified in our order.
- (3) We reserve the right to remedy defects ourselves in case of imminent danger or of acute emergency, or to prevent significant financial or material damage.
- (4) If we only notice defects during processing or commissioning, we are also entitled to claim for damages for the works unsuccessfully carried out.
- (5) The Supplier commits himself to ensure that his deliveries meet industrial safety requirements and statutory regulations for the prevention of accidents (especially those of the chemical industry), in particular, that any necessary protective equipment in accordance with the aforementioned regulations is also delivered, even if individual parts that are necessary

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<sup>2</sup> HGB = Handelsgesetzbuch, German Commercial Code

for proper operation are not specified separately in this order. In addition, he commits himself to execute the delivery in accordance with the terms of the relevant professional association.

The Supplier shall be liable in case of breach of this and other duties in accordance with statutory regulations.

- (6) Insofar as building works are to be carried out, the company (Supplier) commits himself upon the Purchaser's request to prove that he and any subcontractors commissioned by him meet all obligations in keeping with the German Employee Secondment Act (AEntG), i.e. that respective current minimum wages and contributions to a joint body representing the collective bargaining parties in the meaning of § AEntG were paid. Supplier invoices shall only become due for payment upon production of the documents, i.e. after the Purchaser has become a guarantor to both employees and joint body.
- (7) Return of defective goods shall be at the Supplier's risk and expense.

#### **§ 7 Liability for defects as to quality in contracts for services**

- (1) The contractor shall be fully liable to us for any defects in the contractual services provided.  
Repair orders are also contractual services. We shall have a legal right to self-execution in accordance with § 637 BGB; § 6 III applies accordingly.
- (2) Unreduced statutory periods of limitation apply.
- (3) § 6 applies accordingly in the case of contracts for works done and materials supplied on movable objects.
- (4) When executing contractual services, behaviour guidelines for third-party companies are to be observed, which can be sent upon request. The same applies to compliance with technical regulations; § 6 applies accordingly concerning compliance with any other regulations.
- (5) Cost estimates shall not be remunerated.

#### **8. Claims for defects**

- (1) You are to ensure that goods supplied and services performed meet all statutory or official regulations applicable to distribution and use, and that they do not infringe commercial proprietary rights or any other third-party rights.
- (2) Deliveries and services must meet generally accepted technical regulations as well as other statutory provisions, technical testing specifications and regulations for the prevention of accidents at the time of acceptance or delivery. Especially DIN and VDE standards are to be observed. Furthermore, you shall ensure quality of the used material, professional construction and design of the supplied products as well as execution of specified or agreed services.
- (3) We are entitled to unreduced statutory warranty rights. We are furthermore entitled to at our discretion demand from you either remedy of defects or replacement delivery. In such case, you shall carry all necessary costs in connection with remedy of defects or replacement delivery. If you fail to meet your obligations to carry out repairs or provide replacement within an appropriate time, or not adequately, or if immediate remedy of defects becomes necessary on emergency grounds, we may have defects remedied or provide short covering at your expense.
- (4) Statutory period of limitation for warranty claims is 36 months from passing of the risk or 5 years for construction works, unless nothing else is agreed and insofar as the legislation does not foresee longer periods. We can suspend running time for warranty claims through a written notification of defects to you. The warranty period shall only recommence upon your written notification of completed improvement or replacement measures (date of receipt at place of destination), or upon your written refusal to carry out improvements or to effect replacement delivery. Insofar as a longer warranty period is regulated by law in the future, the longer warranty period shall apply.
- (5) In case of lacking assured characteristics as well in cases of negligent, incomplete or wrong delivery, we reserve the right to assert damage claims for non-performance instead of warranty claims, whereby our claim for damages shall include all consequential charges we are entitled to. In this respect, you shall relieve us of third-party claims.
- (6) The statutory period of limitation shall begin to run again for newly delivered or improved parts following replacement delivery by the Supplier.

#### **§ 9 Reservation of title**

- (1) Insofar we provide parts to the Supplier, we hereby reserve ownership thereof.

- (2) Sole ownership of the goods shall pass to us without limitation upon payment of ordered and duly delivered goods. We do not acknowledge Supplier or third-party reservations of title. This also applies for equipment under construction and partly delivered equipment.

If our components are mixed or connected with other objects, we shall also acquire co-ownership thereof in the aforementioned proportion. Should the process occur in such a way that the Supplier's part is to be viewed as main object, we hereby agree that the Supplier shall pass on co-ownership to us on a pro rata basis.

The manufacturer shall keep our property with all due care and diligence customary in the trade.

- (3) Insofar as the estimated value of our security rights exceeds the value of the secured debts by more than 50%, excess security rights shall be free, subject to our decision.

#### **§ 10 Claim to damages**

- (1) If we are held liable for defects in the goods delivered by the Supplier on the grounds of manufacturer, product liability or any other liability grounds, the Supplier shall relieve us from liability as a result of defects insofar as he is responsible for the defect and is himself liable in relation to third parties. Relief shall occur upon first request.
- (2) Against this background, the Supplier is also liable to reimburse any expenses in accordance with §§ 683, 670 BGB or §§ 830, 840, 426 BGB resulting from or in connection with a call-back campaign. Within the frame of reasonableness and possibility, we shall inform the Supplier without delay of content and scope of this action. Subject to further statutory claims.
- (3) If we are otherwise held liable for defects in the article delivered by the Supplier, we may exercise full right of recourse against the Supplier as specified in § 478 BGB; there can only be an exception thereto if we were previously granted equal compensation for the right of recourse.
- (4) To secure these claims, the Supplier shall take up and produce a relevant liability insurance policy with an insured lump sum of at least 10 million euros per person/material damage.

#### **§ 11 Patents and proprietary rights**

- (1) The Supplier shall ensure that no third-party rights are infringed in connection with his deliveries.
- (2) If we are held liable by third-parties on this account, the Supplier commits himself to hold us harmless against these claims. Indemnity shall occur upon first request. We are not entitled to conclude any agreements (especially to reach any settlement) with third-parties without the Supplier's permission.
- (3) This obligation of indemnity applies to all expenses incurred by us from or in connection with being held liable by a third party.
- (4) The statutory period of limitation for these claims is ten years and shall commence with delivery.
- Construction drawings and similar company documents shall remain our property and are to be kept strictly confidential at all times. They may not be reproduced and made available to third-parties without our consent. Even extracts and manufacture of individual parts by third parties are not permissible. The Supplier shall be held fully liable in case of violation of these obligations in accordance with statutory regulations.

#### **§ 12 Total liability and unforeseeable events**

- (1) According to legal provisions, we shall be liable insofar as we or our agents or legal representatives fail to fulfil our duties intentionally or by gross negligence; legal provisions also apply if we negligently violate a main contractual obligation (cardinal obligation); insofar as we cannot be charged with intentional breach of duty, our remaining liability shall be limited to typical contractual foreseeable damage.
- We shall also be liable if, according to legal provisions, we can be charged with causing injury to life, body or health. The same applies when taking over a warranty and when securing a characteristic if an included defect triggers our liability.
- The aforementioned applies in case of reimbursement of expenses. A reversal of the burden of proof is not intended.
- (2) Should unforeseeable events occur which cannot be attributed to us, and which we, despite exercising reasonable care according to the circumstances of the case, could not prevent – no matter whether they occur on our or a subcontractor's premises – like for instance force majeure (e.g. war, fire and natural disasters), delays in delivery of essential raw materials, etc. – we reserve the right to withdraw from the delivery contract wholly or partly, or to extend our duty of performance by the duration of the impediment. We have the same rights in case of strike or lockouts in our own or in our subcontractors'

works. We shall notify our customers of such circumstances without delay. In the absence of any fault, no Supplier claims for damages shall be accepted.

### **§ 13 Place of performance, jurisdiction, applicable law, allocation of the burden of proof and data protection**

- (1) The place of performance for the fulfilment of our obligations is the place of destination.
- (2) The place of jurisdiction for all legal disputes arising out of the contractual relationship is Arnberg.  
We also reserve the right to take legal action in other permissible general or specialist courts.
- (3) The non-standardised law of the Federal Republic of Germany (BGB, HBG) shall apply to all claims and rights arising out of this agreement. The United Nations Convention for the International Sale of Goods (CISG) is thus explicitly excluded.
- (4) The legal or judicial allocation of the burden of proof shall not be changed by any of the agreed clauses included in these terms.
- (5) Personal data that become known in the course of the business relationship or in connection with it shall be treated in accordance with the German Data Protection Act Regulations.

### **§ 14 Work Environment**

The supplier shall comply with the respective statutory provisions governing the treatment of employees, environmental protection and health and safety at work and to work on reducing the adverse effects of its activities on human beings and the environment. Further, the supplier shall comply with the principles of the United Nations Global Compact Initiative relating basically to the protection of international human rights, the right to collective bargaining, the abolition of forced labor and child labor, the elimination of discrimination when personnel is engaged and employed, the responsibility for the environment and the prevention of corruption. Further information on the UN Global Compact Initiative is available at: [www.unglobalcompact.org](http://www.unglobalcompact.org).

In the event that a supplier repeatedly violates the law and/or violates the law despite being given respective advice, and fails to evidence that the violation of the law has been cured as far as possible and that appropriate precautions have been taken to avoid violations of the law in future, we reserve the right to terminate or withdraw from existing contracts with-out notice.

### **§ 15 Severance clause**

Changes to the contract shall only be valid with our permission.

Should individual provisions of these terms and conditions become wholly or partly unworkable or invalid, the validity of the other provisions shall not thereby be affected.

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