

## **General Terms and Conditions of Sale and Delivery of the APURO GmbH**

### **§ 1 Validity**

a) All deliveries, services, and offers of APURO GmbH are made exclusively on these General Terms and Conditions of Sale and Delivery. These are part of all contracts which we conclude with our contractual partners (consumers and companies, hereinafter collectively referred to as “customers”) regarding the deliveries or services offered by us. They shall also apply to all future deliveries, services, or offers to the customer, even if they are not separately agreed upon again.

b) Terms and conditions of the customer or third parties do not apply, even if APURO GmbH does not separately object to their validity in individual cases. Even if we refer to a letter that contains or refers to the terms and conditions of the customer or a third party, this does not constitute an agreement to the validity of those terms and conditions unless we expressly issue a written confirmation.

c) Consumer in the sense of these business relationships, is every natural person with whom a business relationship is entered into without this business relation being predominantly attributable to a commercial, self-employed or freelance activity of the person.

d) Entrepreneur, in the sense of these terms and conditions, is any legal entity or partnership with legal capacity with which a business relationship is entered into. An entrepreneur is also any natural person with whom a business relationship is entered into if this business relationship can be attributed predominantly to a commercial, self-employed, or freelance activity of the person.

### **§ 2 Offer and Acceptance**

a) The offers of APURO GmbH are subject to change. Orders shall only be binding on us if and insofar as we have confirmed them in writing or have commenced with their execution. The APURO GmbH can accept orders within fourteen days of receipt. Verbal agreements, promises, and guarantees made by our employees - except for, executive bodies authorized signatories, and general representatives - in connection with the conclusion of the contract shall only become binding upon written confirmation by an authorized employee of the APURO GmbH. The waiver of this written form requirement must also be in writing. The written form is always maintained by sending a letter or e-mail.

b) Supplementary clauses to the description of the goods such as "approximate", "as already delivered", "as before", or similar additions in our offers, refer exclusively to the quality or

quantity of the goods, but not to the price. Such information in orders of the customer will be understood by us accordingly.

c) The quantities stated in offers of APURO GmbH are approximate. Our information on the object of the delivery or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances, and technical data) are only approximately authoritative unless usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics but descriptions or identifications of the delivery or service. Deviations that are customary in the trade and deviations that occur due to legal regulations are permissible insofar as they do not impair the usability for the contractually intended purpose. In the case of delivery in top-mounted or permanently connected tanks and silo vehicles, deviations of +/- 10 % of the agreed quantity are considered to conform with the contract. Such quantity deviations reduce or increase the agreed purchase price accordingly.

### **§ 3 Purchase price and payment**

a) Our prices are exclusive of value-added tax and, in the case of export deliveries, customs duty, fees, and other public charges. They are calculated based on the quantities or weight determined by us or our pre-supplier unless the consignee ascertains them by using calibrated scales, and the goods were transported at our risk; in this case, his determinations shall be decisive for the price calculation.

b) The purchase price is due net cash upon delivery of the Goods unless otherwise agreed in writing.

c) Receipt by APURO GmbH is decisive for the timeliness of payment.

d) In the event of default, we shall charge default interest at a rate of 5 percentage points above the base interest rate for consumer transactions and 9 percentage points above the base interest rate for legal transactions where a consumer is not involved.

e) Bills of exchange and check shall only be accepted on account of performance and with a corresponding agreement. Checks shall not be deemed to be payment until they have been cashed. Customary bank charges for payment transactions shall be borne by the customer.

f) The customer may only offset against our purchase price claim with undisputed or legally established claims. He shall only be entitled to the rights of retention insofar as they are based on the same contractual relationship.

g) If the customer does not meet his payment obligations, in particular, if he stops his payments or if a check is not honored, or if we become aware of other circumstances that call his creditworthiness into question, we shall be entitled to call due to the entire

remaining debt except for the time-barred claims, even if we have accepted checks/bills of exchange. We are also entitled to demand advance payments or securities. Furthermore, we may withhold or refuse further deliveries, not only from the respective contract but also from other contracts, in whole or in part, and demand immediate payment for all deliveries.

#### **§ 4 Delivery**

a) The agreed delivery times and dates shall always be considered approximate unless a fixed date has been expressly agreed as such in writing.

b) If dispatch has been agreed upon, delivery periods and delivery dates refer to the time of handover to the freight forwarder, carrier, or other third party commissioned with the transport. Delivery date and deadline are therefore deemed to have been met if the goods leave the place of delivery in time so that the delivery arrives at the recipient in time within the usual transport time.

c) Force majeure events – including public law restrictions, strikes, and lockouts – entitle us to withdraw from the contract. Compensatory damages due to the breach of duty are excluded in such cases. This also applies in the event of non-in-time delivery by our suppliers, for which we are not at fault. We are obliged to inform the client immediately of such events.

d) APURO GmbH may – without prejudice to its rights arising from the default of the Client – demand from the Client an extension of delivery and performance periods or a postponement of delivery and performance dates for the period in which the Client fails to fulfill its contractual obligations towards APURO GmbH.

e) We shall not be liable in the event of impossibility or delay in the fulfillment of delivery obligations, if and to the extent that the impossibility or delay is due to circumstances caused by the customer, including in particular the obligations in connection with the European Regulation (EC) No. 1907/2006 (REACH Regulation) as amended from time to time.

f) If APURO GmbH is in default with a delivery or service or if a delivery or service becomes impossible for APURO GmbH for whatever reason, APURO GmbH's liability for damages is limited under § 8 of these General Terms and Conditions of Delivery.

#### **§ 5 Shipping and acceptance**

a) If the customer is an entrepreneur, the risk of damage to the goods shall pass to him when the goods are handed over by APURO GmbH to the shipping company. This also applies to freight-free deliveries like free house deliveries.

b) If the customer collects the goods at the place of delivery he or his representative must load the vehicle and comply with the legal regulations, in particular concerning the transport of dangerous goods.

c) The customer is in any case, responsible for unloading and storage of the goods.

d) APURO GmbH insures the consignment against theft, breakage, transport, fire and water damage, or other insurable risks only at the express request of the customer and at his expense.

e) Insofar as our employees, in the cases of paragraphs b) to d) above, help during unloading, they act at the sole risk of the client and not as our vicarious agents. Costs arising from a standstill and waiting times shall be borne by the client.

## **§ 6 Packaging**

a) Delivery in returnable packaging shall be made exclusively to entrepreneurs. If we deliver in returnable packaging, this must be returned to us by the customer at the latest within 30 days of its arrival at the customer's premises in an empty, proper condition at the customer's expense and risk or is, if applicable, returned free of charge to our vehicle against acknowledgment of receipt.

b) If the customer does not fulfill the obligation mentioned under a) in due time, we are entitled to charge an appropriate fee for the time exceeding 30 days and to demand the replacement price after unsuccessfully setting a deadline for the return of the packaging, taking into account the before mentioned fee.

c) Markings affixed to the packaging shall not be removed. Loan packaging may not be exchanged or refilled. In this respect, the client bears the risk of depreciation, exchange, and loss. The decisive factor is the receipt of the examination in our company. The use of the loan packaging as a storage container or its passing on to third parties is not permitted unless agreed in advance in writing.

## **§ 7 Reservation of title in transactions with entrepreneurs**

a) The provisions of this paragraph shall apply only to dealings with entrepreneurs.

b) In the case of business transactions with entrepreneurs, ownership of the goods (goods subject to retention of title) shall not pass to the customer until the purchase price and all other claims, including future claims arising from the business relationship with us, have been paid in full. This shall also apply if payments are made on specially designated claims.

In the case of a current account, the reserved property shall be deemed to be security for our balance claim.

c) As long as the customer duly fulfills his obligations towards us, he is entitled to further use the reserved goods in the normal course of business under the condition that his claims from the resale are transferred to us following f).

d) If the customer does not meet his payment obligations even after setting a grace period, we are entitled to demand the return of the goods subject to retention of title without setting a further grace period and without a declaration of withdrawal. For redemption, we are, if necessary, entitled to enter the premises of the client.

e) Any processing or treatment of the goods subject to retention of title shall be carried out on our behalf without any obligation on our part. We are considered a manufacturer i. S. d. § 950 BGB (German Civil Code) and acquire ownership of the intermediate and end products in the ratio of the invoice value of our goods, subject to the retention of title to the invoice values of third-party goods; to this extent, the customer shall hold them in trust for us and free of charge. The same applies in the case of combination or mixing i. S. d. §§ 947, 948 BGB of goods subject to retention of title with third-party goods.

f) The customer hereby assigns to us the claims against third parties arising from the resale of the reserved goods to us to secure all our claims. If the customer sells goods, in which we have proportionate ownership following point e), he assigns to us the claims against the third parties for the corresponding partial amount. If the customer uses the reserved goods in the context of a work or similar contract, he assigns the corresponding claim to us.

g) In the course of a duly business, the customer is authorized to collect the receivables from further use of the reserved goods. If we become aware of facts that indicate a substantial deterioration of the assets of the client, the client shall, at our request, inform his customers of the assignment, refrain from any disposition of the claims, provide us with all necessary information about the inventory of the goods owned by us and the claims assigned to us, as well as the documents for the assertion of claims to hand over the assigned receivables. Access by third parties to the goods subject to retention of title and the assigned claims must be notified to us immediately.

h) If third parties access the reserved goods, in particular by distraint, the customer shall immediately inform them of the ownership of APURO GmbH and inform us of this to enable us to enforce our property rights. If the third party is unable to reimburse APURO GmbH for any legal or extrajudicial costs arising in this connection, the client of APURO GmbH shall be liable for this.

i) If APURO GmbH withdraws from the contract in the event of non-contractual conduct of the client – in particular default of payment – we are entitled to demand the reserved goods.

j) If the value of the collateral to which we are entitled exceeds the total claim against the client by more than 50%, we shall be obliged to release collateral of our choice at the client's request.

## **§ 8 Liability for material defects**

a) The internal and external properties of the goods owed shall be determined according to the agreed specifications, in the absence of such according to our product descriptions, markings, and specifications, and the absence of such according to practice and commercial usage. References to standards and similar regulations, the information in safety data sheets, information on the usability of the goods, and statements in advertising material are no assurances or guarantees, nor are declarations of conformity. In particular, identified uses under REACH Regulation (EC) No 1907/2006 do not constitute either an agreement on a corresponding contractual quality or a use presupposed under the contract.

b) If we advise an entrepreneur verbally, in writing, or by other means, this is done to the best of our knowledge and does not release the entrepreneur from his responsibility to check the delivered goods for their suitability for the intended processes and purposes.

c) For the inspection of the goods and notification of defects, the statutory provisions apply to transactions with entrepreneurs, e. g. § 377 HGB (German Commercial Code) with the provision that the customer must notify us of defects in the goods in writing (§ 1a, sentence 5). If the goods are delivered in several packages, he shall additionally check the labeling of each individual package for conformity with the order. In the event of delivery in tank vehicles and attachment tanks, the customer must ensure that the goods are in accordance with the contract by taking samples following normal commercial practice before pumping them out.

d) In the event of a justified and timely notification of defects, we may, at our option, remedy the defect or deliver a defect-free product (subsequent performance). In the event of failure or refusal of subsequent performance, the customer shall be entitled to the statutory rights. If the defect is not significant and/or the goods have already been sold, processed, or redesigned, the customer is entitled only to the right of reduction.

e) Further claims are excluded for transactions with entrepreneurs following § 8. This applies in particular to claims for compensation for damages that have not been incurred to the goods themselves (consequential damages).

f) A return obligation for goods of APURO GmbH vis-à-vis entrepreneurs is hereby expressly excluded.

### **§ 9 General Limitation of Liability and Statute of Limitations**

a) We shall be liable for breach of contractual and non-contractual obligations, in particular for impossibility, delay, culpa in contract initiation and tort - including for our executive employees and other vicarious agents - only in cases of intent and gross negligence, limited to the typical contractual foreseeable damage at the time of conclusion of the contract. Indirect damages and consequential damages which are the result of defects in the delivered goods are also only eligible for compensation insofar as such damages are typical to be expected when using the good as intended.

b) These limitations do not apply in the event of culpable breach of essential contractual obligations, insofar, as the achievement of the purpose of the contract is endangered, in cases of our liability according to the German Product Liability Act, in the event of injury to life, body or health, and also if and insofar as we have fraudulently concealed defects of the goods or guaranteed their absence. This does not affect the rules on the burden of proof.

c) Unless otherwise agreed, contractual claims of entrepreneurs that arise against us by the entrepreneur on the occasion of and in connection with the delivery of the goods and our other services shall be time-barred one year after the delivery of the goods. This does not affect our liability for intentional and grossly negligent breaches of duty culpably caused damage to life, body, and health. The statute of limitations in consumer transactions is governed by the applicable legal regulations.

### **§ 10 REACH**

If the entrepreneur informs us about a use according to Article 37. 2 of Regulation (EC) No. 1907/2006 of the European Parliament and the Council on the Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH Regulation), which requires an update of the registration or the Chemical Safety Report or which triggers another obligation under the REACH Regulation, the entrepreneur shall bear all verifiable expenses incurred by APURO GmbH for these activities. We shall not be liable for any delays in delivery resulting from the notification of such a use and the fulfillment by us of the corresponding obligations under the REACH Regulation. If for reasons of health or environmental protection, it is not possible to include this use as an identified use and if contrary to our advice, the entrepreneur intends to use the goods in the way we have advised against, we may withdraw from the

contract. The entrepreneur cannot derive any rights against us from the clauses in this paragraph.

### **§ 11 Place of Jurisdiction, Applicable Law, Severability Clause**

- a) The place of jurisdiction is Arnsberg, Germany.
- b) The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- c) Should any of the foregoing clauses be or become ineffective, the ineffective terms shall be replaced by those provisions which are closest to the economic purpose of the contract, with due regard for the interests of both parties.

#### **Note:**

The customer acknowledges that Apuro GmbH stores data from the contractual relationship according to § 28 of the German Data Protection Act for data processing and reserves the right to transfer the data to third parties (e. g. insurance).

APURO GmbH

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