

**Article 1 - Use and enforceability of the conditions of sale:**

**1.1** Insofar as particular terms and conditions from APEM have not been accepted and subscribed to, the following conditions of sale apply to all product sales, carried out by APEM and/or its subsidiaries or connected businesses (hereafter called "APEM" or "the Seller"). The terms and conditions consist of these written conditions of sale, in which payment terms and discounts are defined, as well as of the item price list, of which it is an integral part. They apply to every sale of products (hereafter called the "product") without any specific agreement. Should any business dealings occur with the purchaser (hereafter called the "customer"), the present conditions form the exclusive basis therefor. As such, they cancel and replace any similar document, supplied earlier by the customer or the seller. These terms and conditions may not be altered unilaterally by general or specific conditions of sale on the part of the customer by a purchase order form or otherwise from this document, as communicated. Requirements to the contrary from the customer are explicitly refuted by APEM. The seller therefore reserves the right, not to entertain any demands from the customer, that are exaggerated or deviate from the terms and conditions and were not agreed with the customer beforehand.

**1.2** These terms and conditions may be altered on a case-by-case basis by particular conditions of sale, which have been explicitly agreed between APEM and the customer. These and orders fulfilled by APEM constitute the conditions of sale in relation to the seller's products. The information in other documents issued by APEM, particularly catalogs, electronic documentation, brochures and advertising documents are purely indicative and may be altered at any time without prior notice, insofar as they do not restrict the usability of the products for the contractually agreed purposes.

**1.3** Alterations or exceptions to these conditions of sale, granted by a representative, distributor or employee of APEM, are not binding upon APEM, apart from having been accepted in writing by the seller by an authorized APEM Director in the proper manner.

**1.4** Any omission by APEM, to implement any rights arising from these conditions of sale cannot be interpreted as a waiver to the right to a contractual fulfilment of these conditions of sale.

**Article 2 - Offers - Ordering - Alteration - Cancellation**

**2.1** Offers by APEM are always non-binding. This means that APEM may withdraw its offers at any point and offer new conditions.

**2.2** All orders, for them to be considered, must be sent to APEM by mail, fax or email. They will only be processed after written, explicit and unconditional acceptance (confirmation of order) by APEM, to be binding and final, particularly in relation to the type of ordered products, prices, payment conditions, deadlines and delivery site, as well as in selling abroad, in relation to the choice of INCOTERM and the delivery site. Orders are binding and final, once APEM has accepted them by means of the dispatch of confirmation of order to the customer. The confirmation of order dispatched by APEM is valid between the parties. Offers are valid for 30 days after receipt.

After receipt of the confirmation of order, the customer cannot alter or cancel the order, without APEM having confirmed beforehand in writing the prices, deadlines and delivery method of the altered order, in which case the customer is accorded a legal right of withdrawal and cancellation. The customer can, in the event of alteration or cancellation of an order, be required to compensate APEM for potential losses or additional costs in connection with the processing of the altered or cancelled order, in which case the customer is accorded a legal right of withdrawal and cancellation. APEM's legal rights in cases of the exercise of the legal right of withdrawal and cancellation on the part of the customer hereby remain

unaffected. Any change to the order desired by the customer is only accepted on an exceptional basis, if this has been submitted in writing to the seller at the latest five (5) days before the planned delivery date. This option is, however, not offered during the ordering of specific products.

**2.3** APEM does not conduct retail sales. The minimum quantity per order and the minimum order per item are stated in our offers.

A framework agreement concerning a total order value of 4,000 Euros, excluding tax, may be agreed for a period of 12 months. In the context of this agreement, individual deliveries will be negotiated; it is, however, specified, that the minimum sum per order stands at 500 Euros before tax. Postage and package is calculated by APEM according to delivery site, however, it is at least 15 Euros before tax per delivery. APEM reserves the right to surcharge for opened packaging units.

**2.4** Information on the technical characteristics of APEM's standard products is given on our website [www.apem.com](http://www.apem.com). If the customer has not requested any particular specification (which would be acceptable to APEM), the sold products' characteristics correspond with the details of the specifications, catalogs or APEM data sheets at the time of ordering.

APEM reserves the right to alter its products at any time and without prior notice at its own discretion, insofar as the products' usability for the contractually agreed purposes has not been impaired thereby.

**2.5** Orders should not be for below the minimum purchase of 500 Euros, excluding taxes. Below this sum, APEM invoices for a handling cost/minimum quantity surcharge of 65 Euros.

**2.6** Customers from abroad must provide to APEM, during their orders and before the acceptance of order, their account number, as well as an official document from the local authorities in relation to the legality, social security number and official registration in relation to the commercial activities undertaken, potentially the intra-community VAT number, as well as information on the labelling of products and more generally, the regulations prevailing for the products in the destination country. Orders are only accepted, if the seller's credit insurance company accepts an appropriate assumption of risk or payment occurs before execution of the order.

**Article 3 - Deliveries - Transfer of risk**

**3.1** Insofar as the order has no other requirements, the delivery shall take place via APEM's Incoterm DAP logistics center (Incoterm 2010) by provision of the products to the agreed site. The transfer of risk for products sold by APEM occurs during their delivery to the customer or to any transporting company engaged by the customer. The loading of products occurs at the customer's risk or that of the transporting company, if the delivery occurs EXW (Ex works), i.e. at the APEM logistics center.

**3.2.** APEM charges 15 Euros per delivery. The customer undertakes to retain the delivery notes and to provide them to APEM immediately upon request. With the precondition, that the parties have agreed the use of another Incoterm, the products are dispatched at the customer's risk, who must particularly ensure, that the goods undergo no deterioration or become lost, whatever the cause may be. The 15 Euros mentioned in paragraph 1 is also applied by APEM, if the customer collects the goods himself or has them collected, in order to cover the packaging and handling costs.

**3.3** If delivery is made EXW, the customer undertakes to carry this out within 10 (ten) working days after successful notification of its availability. In the event of default of acceptance on the part of the customer, the risk transfers to the customer from the moment of default of acceptance.

**3.4** The delivery times provided by APEM are to be understood as the date of seller's ex works dispatch of the products. The delivery times are provided as accurately as possible after consideration to availability and production scheduling. APEM resorts to part deliveries, if meaningful, with the aim of making deliveries to the customer as quickly as possible. For successive part deliveries of the same order, these will be carried out in accordance with the schedule stated (while still only remaining indicative) by APEM.

Suspension of deliveries of products in the event of (i) non payment, (ii) delays due to failure to provide the necessary information on the part of the customer or (iii) an alteration during the course of fulfilling the contract bestows upon the customer no right to cancel the order or demand damages. APEM assumes no liability for being unable to carry out any delivery or delays in delivering, insofar as these are caused by (iv) events outside APEM's control, (v) any inability to manufacture outside APEM's responsibility or (vi) arising from any "force majeure". Insofar as such events would cause considerably greater difficulties, or render impossible, for APEM to provide deliveries or services and the hindrance is not purely temporary, APEM is entitled to withdraw from the contract. For hindrances subject to a time-limited delay, the delivery and service provision dates shall be extended or the delivery and completion dates shall be postponed for the duration of the hindrance plus an appropriate start-up period. Insofar as the delay cannot be expected of the customer, that he can make use of the delivery or the service, he may withdraw from the contract by immediately informing APEM in writing.

**3.5** In the event of a damaged or missing product, the customer is responsible for informing the transporting company of existing reservations in relation to the delivery contract being carried out, by communicating such at the latest by registered letter with advice of delivery or the issuance of an extrajudicial document within three (3) days after receipt of goods.

**3.6** The products shall be delivered in disposable packaging. Recycling and/or destruction of packaging is the buyer's responsibility. Products are packaged according to APEM's current packaging and standard units. The collection, recycling, processing and recovery of components and products sold to customers, as well as the attendant costs, shall be borne by the customer to their full extent, insofar as no other agreement exists between the parties.

**3.7** In the event of a review procedure for confirmation of the agreement for goods or services with the contract being planned, the corresponding time period in accordance with good practice shall be established and may under no circumstances exceed 30 days after delivery of the products. Under no circumstances should the duration of such an acceptance procedure lead to the duration or the start of the agreed payments being postponed, as this is contrary to good practice.

#### **Article 4 - Warranty**

**4.1** Regardless of measures to be taken applying to the transporting company in the event of damage or absence, complaints in relation to visible deficiencies or discrepancies in the delivered products of the customer with those ordered, or appearing on the delivery note, are to be filed immediately, i.e. without undue delay, at the latest, however, within three (3) working days after delivery of the products. This must occur by registered mail with confirmation of receipt and with identification of the affected product(s) (batch number) and with details of the affected quantities and the nature of the established deficiency. All complaints must be justified in all cases. Failure to complain within the above-mentioned time period or use of the products mentioned (with the exception of appropriate quantities, used for test purposes and for inspection) means that APEM has fulfilled its obligations satisfactorily and excludes any warranty claims from the customer.

**4.2** The customer is responsible for reporting any alleged deficiencies or irregularities. The customer must allow and permit checks for these deficiencies by APEM, as well as their remedies. The customer is not to intervene himself and/or through a third party for this purpose, insofar as this has not been expressly approved by APEM.

**4.3** The warranty period for deficiencies lasts for 1 (one) year from delivery or acceptance (should this be required). In the event of deficiencies or discrepancies in the delivered products, APEM is obligated and justified in, according to its own choice, either repairing or providing a replacement within a suitable time period, which must amount to at least 8 weeks. For negative outcomes in this regard, i.e. with the impossibility/unacceptability of a repair or delivery of a replacement or refusal or unreasonable delay, the customer may withdraw from the contract or reduce the purchase price accordingly. Should the deficiency be caused due to our fault, the customer may demand compensation, according to the conditions stated in section 11.

The warranty is invalid in cases, in which the customer has modified or allowed to be modified by third parties the delivery object without APEM's approval, whereby the alleviation of the deficiency has been made impossible or unacceptable. In each of such cases, the customer shall bear the additional costs for alleviation of deficiencies caused by alterations made by himself. In addition, the warranty does not apply in the event that the customer has opened up the delivered item or removed or damaged any seals present without APEM's approval, in which case, the opening of the delivered item is necessary for the intended use or the customer indicates, that the opening of the delivered item or the removal or damaging of the seal has not caused or worsened the error. Customer's claims for purposes of repair or delivery of a replacement for the necessary costs, in particular transportation, road, labor and materials costs are excluded, insofar as costs rise, because the object of delivery is subsequently taken to a different site other than the delivery address stated as the delivery address for the customer.

**4.4.** Complaints do not exempt the customer from payment for the relevant products. Irrespective of the type of complaint (deliveries, invoicing), APEM accepts no administrative fees for investigation or processing of these complaints.

**4.5** The return of faulty and order-non-compliant products must occur according to APEM's returns policy, for which an RMA document (Return Material Authorization) must be completed. The return of the faulty or order-non-compliant products occurs at the cost and risk of the customer, with the original packaging and in good order. If the complaint is justified, APEM shall repair the products or deliver replacement products as it sees fit. The representative or APEM sales is under no circumstances authorized to take back products, which are the object of an approved returns policy by APEM, apart from this being agreed in writing by APEM beforehand. Should the complaint be unjustified, APEM is entitled to demand compensation for transport costs, from the customer to APEM and back again, before return of the products.

**4.6** APEM products are not intended for use in the aviation and space industries. APEM cannot be held accountable for any obligation of the sold products to conform on grounds of valid regulations, standards or other requirement, accepted by the customer, in either of these sectors.

**4.7** Warranty claims by the customer shall not arise from, any purely minor deviation from the agreed quality, slight restriction in usefulness, natural wear and tear or damage, which after the transfer of risk arise as a consequence of faulty or negligent handling, excessive use, unsuitable equipment, defective construction works, unsuitable building ground or as a result of special exterior influences, which were not assumed under the contract, as well as in the case of non-reproducible software faults. Should improper alterations or maintenance work be undertaken by the customer or third parties, then equally no warranty claims shall arise for these or any consequences therefrom.

**4.8** Customer's recourse claims against APEM, in accordance with §478 BGB (recourse of the contractor) only arise insofar as the customer has made no agreements with his purchaser about lawful defect claims.

#### **Article 6 - Price**

**6.1** The products are sold based on the agreed price between APEM and the customer, on the basis of the moment of ordering from the current APEM price list and potential additional negotiations, occurring before the placing of the order. Prices are given in Euros and reflect the applicable VAT rate at the time of the order. Calculated prices vary according to the discounts awarded to the customer. These reductions are stated in the invoice.

**6.2** Prices are not binding. Insofar as nothing else has been agreed between the parties, APEM is therefore entitled to review and alter the prices stated in the price list, in accordance with changes in economic conditions, which have an effect upon the costs of manufacturing of APEM's and its suppliers' products included in any components and raw materials. In such cases, the customer waives separate notification from APEM.

#### **Article 7 - Payment conditions:**

**7.1** Invoices are to be paid at the latest within 30 days from the date of invoice without deduction of Bank transfer costs. The payment period of each invoice shall be calculated from the day of issuance. Extensions are not possible. After expiry of the payment period, the customer is in default of payment.

No discounts are given for payment in advance.

Payment is deemed to be successful, if the invoicing sum has finally been credited to APEM's bank account and not by notification of the payment sum by the customer.

For customers with no existing customer account, APEM may request payment in advance upon receipt of order.

**7.2** In the event of a delayed or no payment, APEM may, irrespective of other measures, suspend all outstanding orders.

All unpaid sums, upon falling due, without prior formal request, from the payment deadline stated on the invoice, shall attract interest, added at the rate of 9 percentage points above the base rate of the German Bundesbank, in which case, the seller may request a higher rate of interest based on other legal grounds. In the case of default of payment, APEM requires, without prior notification, a flat-rate sum of forty (40) Euros as compensation. If the collection costs, which are incurred by the seller in the context of collecting the receivable, exceed the cost of this flat-rate compensation, then they are charged to the customer in full, including any further costs associated with this process (lawyer's, bailiffs', etc.).

**7.3** Any deterioration in the customer's creditworthiness and/or non-observance on his part of the payment conditions may lead to APEM demanding collateral, cash payments or bills on demand for the fulfillment of orders placed.

**7.4** No complaint or dispute shall allow the customer to delay payment of an invoice. The customer enjoys no right of offset or retention, apart from any counterclaim being undisputed by APEM or determined as lawful.

**7.5** Should the customer default upon payment of a demand and requires representation, then all other demands, which APEM has against the customer of whatever nature, shall fall due immediately. In such cases, APEM also enjoys the right to withdraw from individual or all incompletely carried-out business. Finally, APEM enjoys the right in such cases to carry out still outstanding deliveries only against prepayment.

#### **Article 8 - Retention of title**

**8.1 APEM RESERVES THE RETENTION OF TITLE FOR ALL ITS DELIVERED PRODUCTS, UNTIL SUCH TIME AS THE RELEVANT PURCHASE PRICE (INCLUDING VAT AND DISPATCH COSTS AND INTEREST ON ARREARS) HAS BEEN PAID IN FULL (CONDITIONAL GOODS). SHOULD WE WITHDRAW FROM THE CONTRACT DUE TO**

**BEHAVIOR FROM THE CUSTOMER CONTRARY TO THE CONTRACT - PARTICULARLY DEFAULT IN PAYMENT - WE HAVE A CLAIM TO THE RETURN OF CONDITIONAL GOODS. THE CUSTOMER MUST KEEP THE PRODUCTS SEPARATE AND CLEARLY IDENTIFIABLE AND MUST NOT COMBINE THESE WITH SIMILAR GOODS FROM DIFFERENT DELIVERIES. IF THIS IS NOT DONE, APEM HAS THE RIGHT TO A REFUND OR SHALL ASSUME THAT THESE PRODUCTS ARE STILL IN THE WAREHOUSE.**

**The customer undertakes to inform APEM immediately of any changes in his situation, particularly if an application for insolvency has been made or insolvency proceedings have begun. The customer must also inform APEM without delay of any threats, negotiations, seizures, distraints or dstraint procedures, demands or other measures, which could put ownership of the goods into question.**

**During the existence of retention of title, mortgaging or chattel mortgaging is prohibited. Resale of right of retention goods, when APEM has still not received the purchase price from the customer, is prohibited in relation to the customer.**

**Non-compliance on the part of the customer with these conditions creates a liability in relation to APEM and permits APEM to withdraw from the sale, to take back goods situated in the warehouse and to refuse the fulfillment of still outstanding orders.**

**8.2** The conditions of this clause do not affect the transfer of risk to the customer upon delivery of products in relation to loss, deterioration, theft or disappearance.

For the purposes of protecting against the risks in connection with delivery, the customer must take out insurance. In the event of partial or complete damage, the customer must bear the associated costs of restitution. He must also for disappearance of goods (for whatever reason) pay compensation for the sums incurred.

The conditions of this retention of title clause replace any other kind of clause, which regulates the transfer of ownership and risks in conditions of purchase by the customer or any other document exchanged between the parties and take precedence for this reason.

In the event of there being no mutual conditions in the agreement made with the customer and insofar as the general terms of business are an integral part of the agreement, by becoming a signatory to the above-mentioned agreement, acceptance of this retention of title clause is confirmed by the customer. APEM may make use of this as material proof in the event of a dispute.

This clause and all general terms of business come into effect on April 1 2019 and apply without time restrictions for all goods, that are delivered or collected from this date.

#### **Article 9 - Force Majeure**

APEM assumes no liability for non- or delayed fulfillment of any of the contractual obligations, if non-fulfillment arises from force majeure outside of APEM's control, such as floods, fire, storms, epidemics, strikes, halts of production following industrial outages, interruptions to electrical or raw material supply or

means of transportation and by irrevocable means, the production or the transportation of the ordered products is hindered or delayed and thereby the proper execution of the contract has been hindered.

#### **Article 10 - Industrial property rights/confidentiality**

**10.1** All information that APEM makes available to its customers, particularly commercial data, prototypes, samples, studies and documents of any kind and in any medium, remains the property of APEM. Patented or unpatented technology and specialist knowledge as a component of products, as well as all industrial and intellectual property rights in relation to the products are the exclusive property of APEM. The customer enjoys only a non-exclusive right to use the products. All equipment, tools and casting molds, developed or acquired by APEM for the fulfillment of the order remain the exclusive property of APEM, insofar as the parties have not agreed otherwise.

The APEM warranty does not protect the customer in relation to complaints from third parties, which validate the infringements of its industrial or intellectual property rights, if the alleged infringement may be traced back to the integration of APEM products into another product, another piece of equipment or a more complex combination of products on the part of the customer or the non-observance of plans, specifications and instructions delivered by APEM to the customer.

**10.2** Each party recognizes the confidential nature of all information, which is given from one party to the other in the context of this agreement, starting from first contact between the parties and subsequently over the course of the entire business relationship. The customer undertakes not to publicize any of the above-mentioned information disclosed to him by APEM and will mail back to APEM all documents upon a simple, written request. This confidentiality obligation applies for all dealings between the parties, during the validity of this agreement and after its expiry or also cancellation for whatever reason. APEM enjoys the right to make documentation from the customer available to third parties, to whom APEM has transferred the performance of deliveries or services.

#### **Article 11 - Liability**

**11.1** APEM's liability for damages, on whatever legal grounds, particularly on grounds of inability to deliver, delays, faulty or incorrect delivery, infringement of contract, infringement of duty over the course of contractual negotiations and tort, is in every case limited to this article 11.

**11.2** APEM's liability for direct damage caused to property arising from it or the product shall not exceed the purchase price of the faulty products, as shown in the net cost invoice sent to the purchaser. The customer guarantees waiver of his insurer or any third party in a contractual obligation in relation to APEM and his insurer concerning the demands associated with the specified limits of the insurance policies of APEM. APEM assumes no liability from simple negligence upon APEM's equipment, authorized representative partners, legal representatives, employees or other auxiliary persons, insofar as significant contractual obligations have not been infringed. Significant in the contract are obligations for prompt delivery and assembly of the object of delivery, its defect-free status (i.e. without minor impairments in function or use), as well as an obligation to give advice, protection and care, which enables the customer to use the object of

delivery in accordance with the contract or serve its purpose, to protect the life and limb of the customer or his employees or his property against severe damage.

**11.3** APEM shall under no circumstances pay for consequential losses or immaterial damage of whatever cause (e.g. operating losses, loss of income, commercial losses). The customer guarantees the waiver from his insurer or any third party in a business relationship with him in relation to APEM for this type of loss.

All consensually established contractual penalties between the parties and indemnities are of a flat-rate and compensating nature and exclude all further sanctions or indemnities.

**11.4** These limitations and restrictions of liability apply to the same extent to APEM's equipment, authorized representative partners, legal representatives, employees or other auxiliary persons.

**11.5** Insofar as APEM supplies technical information or acts as an adviser and this information or advice is not included in the contractually due scope of services, this occurs free of cost and excluding any liability.

**11.6** The restrictions in this Article 11 do not apply to APEM's liability for willful misconduct, assured properties, any damage to life, body or health or the product liability law.

**11.7** Insofar as claims for damages apply to the customer, these become time-barred upon expiry of the valid warranty claim limitation period according to Article 4.3. For claims for damages according to the product liability law, the valid legal limitation prescriptions apply.

#### **Article 12 - Export control**

The customer recognizes that products, sold to him in accordance with these conditions of sale, may be subject to export control laws and jurisdiction rules, including those of countries in the European Economic Area. Should this be the case, the customer undertakes not to export or re-export the products in infringement of these laws or regulations. The customer is responsible for these laws or regulations of the destination country for the products being observed and all due taxes being paid.

#### **Article 13 - Formalities - Standards - Authorizations**

**13.1** If the sale, import and the use of the products is subject to formalities, which are to be carried out by the government, especially customs and excise authorities, the customer shall make APEM aware of them before becoming a signatory to an order. The customer is aware, that he is responsible for the obtaining of the necessary licenses for import, use, export or re-export, as well as observance of regulations and applicable rules for export control.

**13.2** Furthermore, the customer shall inform APEM in writing about the current rules for the products and about the absolutely necessary technical characteristics, packaging, designation and customs and other regulations.

**13.3** The customer must cooperate with the relevant authorities in his country in permissions for the acquisition for sale, import or use of products and must obtain the prior agreement of APEM for the intended procedure.

If the customer does not fulfill the obligations according to this article and particularly neglects his obligation to inform, he shall compensate APEM for any consequences in connection with this infringement and additionally pay the selling price of the affected products immediately.

#### **Article 14 - Non-transferability**

The customer may not sell on or transfer any contract concluded with APEM in any form to a third party, without the prior and written agreement of APEM.

#### **Article 15 - Applicable law - Competent court - Choice of domicile**

Insofar as the parties have not agreed otherwise, their contractual and extra-contractual relations, including these general conditions of sale, are subject exclusively to German law, with the exception of conflict of laws, which may make the application of the laws of another territory necessary and with the exception of the UN Convention on Contracts for the International Sale of Goods. For disputes on the existence, validity, interpretation and execution of contractual relations between APEM and the customer, the parties shall in the first instance try to resolve their differences amicably. If the customer is a corporate entity, joint-stock company or a partnership or in other ways a commercial enterprise ("businessman" in the sense of § 1 Section 1 of the German Commercial Code - HGB), a legal person or a public separate estate or with no general legal domicile in the Federal Republic of Germany, have in case of any dispute, be they of a contractual or extra-contractual nature, the courts in Munich as their exclusive jurisdiction. APEM is, however, also entitled to complain in the customer's domicile, as it sees fit.

#### **Article 16 - Miscellaneous**

All correspondence must be sent to APEM at the following address: Paulsdorfferstrasse 34 - D-81549 Munich - Deutschland.

In the circumstance, that APEM does not exercise the conditions of these general conditions of sale, this may not be interpreted as a denial of it being able to call upon such conditions of sale at a later date. If it becomes apparent, that certain conditions of these general conditions of sale are unworkable or have become so or it becomes apparent, that one or more clauses is/are wrong, then the validity of the other conditions of these general terms and conditions remains unaffected.