

# 佛山市顺德区阿波罗环保器材有限公司交付和付款的一般条款和条件

# **GENERAL TERMS AND CONDITIONS OF SALE (10-2020)**

#### 1. 范围

# .1 即使未明确或另行约定,本销售一般条款和条件("本条款")排他性地适用于佛山市顺德区阿波罗环保器材有限公司("本公司")所有的报价、合同、交付和其他服务(下称"交付"),包括与客户所有未来的业务往来,即使双方未对条款的适用做出明确或单独的同意。本条款和条件在下达订单时或最迟在收到货物时被视为已被接受。本公司在此明确拒绝客户提出的任何变更或补充,该等变更与补充对本公司无约束力,除非本公司对其做出明确的书面接受。除非本公司通过单独的承诺性文件做出书面接受,否则客户的任何条款与条件对本公司为无约束力,并被明确的排除适用于双方之间任何形式的业务合作。此外,在本公司使用客户的电子平台并激活任何该电子系统所提示的对话框时,此种激活并不代表本公司接受客户的使用条款或其他一般条款和条件。。若本条款的任何内容变为无效,其余内容不受影响。

#### . Scope

1.1. These General Terms and Conditions of Sale (hereinafter "Terms") shall exclusively apply to all the offers, contracts, deliveries and other services (hereinafter "delivery") by Freudenberg Apollo Filtration Technologies CO., LTD. (hereinafter "Company"), also in all future business relations, even if they are not explicitly and separately agreed upon again. These Terms shall be considered as accepted upon order placement or receipt of goods at the latest. The Company hereby explicitly object to any deviating or supplementary conditions set by our customer, which shall not be binding for us unless expressly accepted by the Company in writing. Unless explicitly accepted by the Company by a separate undertaking document, the Company is not bound by any terms and conditions of the customer which shall be explicitly excluded to apply on the commercial cooperation in any means between the Parties. Also, in case the Company participates in a customer's electronic platform and activate any dialogue boxes requested by the system, such activation does not constitute an acceptance of the terms of use or any other general terms and conditions of the customer.

Should any provision of the Terms be invalid, this shall not affect the validity of the remaining provisions thereof.

#### 2. 合同的订立、文件、工业产权

- 2.1 若双方并未签署其他书面合同,本公司的报价不具约束力。合同关系仅在获得本公司书面的订单确认函之时成立。仅在订单由本公司以书面或文书形式确认后,才是做相应的合同成立。本公司以书面或文书形式做出的订单确认仅针对交付相关的日期、种类和数量。如果本公司未以书面形式确认订单,则合同最迟在订单履行时成立本公司代表所做的口头声明或电话声明仅在本公司以书面形式予以确认的情况下具有法律约束力。
- 2.2 本公司保留所有成本估算、理念、设计、草稿、图纸和其他文件的所有权和版权;仅在本公司的明确批准同意的条件下,才可以保存、修改、复制或向第三方提供该等文件。作为本公司报价的一部分予以提供的图纸和其他文件须按照本公司于任何时候提出的要求或在任何情况下客户不再向本公司发出订单时予以返还。如果本公司根据客户提供的图纸、模型、样本或其他文件交付产品,则客户需保证:(1)不侵犯第三方的工业产权,且(2)基于前述客户信息生产的产品符合所有可适用法律法规,尤其是与产品安全相关的法律法规。如果第三方基于其所有权特别禁止生产和交付该类产品,则本公司有权中止所有相关的事宜并提出案赔,且无需承担分析法律责任的义务。此外,客户应承诺立即赔偿本公司任何由第三方提出的与客户提供的文件有关的索赔。
- 2.3 本公司保留向客户收取产品生产所需的样品、测试件与模具的成本。本公司制造或采购的模具的所有权应保留在本公司,即便模具制造或采购的成本部分或全部由客户承担。
- 2.4 本公司不接受任何形式的口头订单。在本公司出具书面的订单确 认函之后,本公司有权立即采购整个订单的原材料并按总订货量 进行生产。因此,订单下达之后的任何客户变更请求不被纳入考 虑,除非以书面形式另行明确约定。
- 2.5 因生产需要或者计划相关的原因,本公司交付的货物的数量可能 出现浮动,浮动范围在约定数量±10%。

#### 2. Formation of contracts, documents, industrial property rights

- 2.1 Providing that there is no other written agreement between both parties, the Company's offers are not binding. A contract shall only come into force upon the order confirmation in writing or text form by the Company. Solely the order confirmation in writing or text form by the Company is relevant for the date, kind and quantity of the delivery. If the order is not confirmed by the Company in writing or text form the contract shall come into force upon performance of the order at the latest. Statements made by the Company's representatives orally or by phone shall be legally binding only if confirmed in writing or text form.
- 2.2 The Company reserves all proprietary rights and copyrights of cost estimates, concepts, designs, drafts, drawings and other documents; these may be saved, modified or copied, and made available to third parties only with the Company's explicit approval. Drawings and other documents provided as part of an offer must be returned to the Company upon request at any time and in any event if the order is not placed with the Company. In case of delivery of items by the Company according to drawings, models, samples or other documents provided by the customer, the latter shall ensure that: (i) industrial property rights of third parties are not infringed upon, and (ii) products made based on such customer information is in compliance with all applicable laws and regulations, in particular such related to products safety. If a third party, by invoking proprietary rights, prohibits in particular the manufacturing and delivery of such items, the Company shall be entitled to suspend all relevant activities and to claim damages without being obliged to analyze legal situation (see also clause 8.3). In addition, the customer shall immediately indemnify the Company from third-party claims related to documents provided to the Company by the customer.
- 2.3 The Company reserve the right to charge the costs for samples and testing parts as well as for tools required for their manufacturing. In case of doubt, payment shall be due and payable after acceptance of the first sample, test component or tool. The title to all the tools made or procured by the Company shall remain with the Company even if the procurement or manufacturing costs are wholly or partially covered by the customer.
- 2.4 Any oral order is explicitly rejected by the Company. After the Company has confirmed the order in written, the Company shall be entitled to procure materials for the entire order and to manufacture the total order quantity immediately. Any customer requests for changes after order placement can, therefore, not be taken into consideration, unless explicitly agreed upon otherwise in writing.
- 2.5 To the extent necessary for manufacturing or planning related reasons, the Company's deliveries may exceed or fall short of the agreed quantity by up to 10%.

#### 3. 性能描述

- 3.1 交付产品的质量最终以明确约定的产品特征描述为准(例如,规格、标签、批准和其他信息)对于交付的任何其他质量约定应以双方另行的明确书面约定为准。因此,对于所有特殊用途或特定适用性的保证、风险转移后的使用寿命等的约定都应以双方的明确书面约定为准,且不应被认定为本公司就该等方面做出任何默示保证。。本公司保留物理和化学属性的任何法定、常规或技术上不可避免的偏差的权利,包括颜色、制作方法、化学污染、工艺、原材料的使用以及订货尺寸与合理的数量偏差,除非该等偏差对客户而言为不合理。
- 3.2 在设计、信息、数据、规格、操作与技术由客户提供的情况下,或交付是基于客户选择或提供的、或由客户选择的第三方原材料或零部件的,则我们不做任何保证,且当发生第三方索赔时,客户应立即向我们赔偿,并使我们免受任何相关费用和第三方索赔的伤害。通常,仅由客户承担与使用客户产品和所有与客户产品

#### 3. Performance description

- 3.1 The quality of the delivery item shall be finally described by explicitly agreed features (e.g. specifications, labels, approvals, other information). Any other qualities of deliveries are subject to a further explicit agreement. Therefore, any warranty for a special application purpose or particular suitability, life period or durability after passing of risk requires an explicit written agreement, and shall not be regarded as any implied warranties given by the Company. The Company reserves any legally required, customary or technically unavoidable deviations from physical and chemical quantities, including colors, , recipes, chemical contamination, processes and the use of raw materials as well as order sizes and reasonable quantity variances, as far as this is not unreasonable towards the customer.
- 3.2 To the extent the design, information, data, specifications, practices and techniques have been provided by the customer, or the deliveries are based on raw materials or parts and components selected or provided by customer or sterilized by a third party selected by customer we make no warranty whatsoever and the customer shall immediately indemnify us and hold us



- 相关的合规性要求有关的风险,包括但不限于 CE 认证。
- 3.3 交付产品的详细信息(例如目录、产品信息、电子媒体或标签上提供的信息,如"次日期前使用")是基于本公司的一般经验和知识,因此仅作为参考值或参考标记。这些产品的详细信息以及明确说明的特征、使用或用途并不免除客户对产品进行预定用途测试的义务和针对产品特性采取措施以谨慎保管产品的义务。我们的义务取决于客户的行为,例如现场条件、现场公用设施、施工许可、纳税申报、遵守安全规定等。在客户不遵守或延迟此类措施的范围内,我们的责任不包括在内。
- 3.4 此处列出或引用的担保和任何相关的补救措施均为排他性的。我们概不明示或暗示其他任何书面或口头的保证,也不得从交易或使用贸易的过程中推断出任何保证,无论是基于广告、结论性的行动还是商业用途。在当地法律允许的范围内,我们不承担任何默示保证或条件,包括针对特定目的的适销性和适用性的任何默示保证,以及不侵权的保证
- 3.5 关于质量、保用期间以及本公司产品的可能用途的详细信息不包含亦不构成任何保证,除非以书面形式明确约定并以保证的内容讲行陈述。

- harmless from any related costs and third-party claims. Generally, solely customer shall be responsible for risks related to the use of customer products and all customer product related compliance requirements, including but not limited CE certifications.
- 3.3 Details of the delivery item (e.g. provided in catalogues, product information, electronic media or on labels, such as "best before" information) are based on the Company's general experience and knowledge and are thus for purposes of reference values or labelling only. These product details as well as expressly stipulated features, application or purposes shall not relieve the customer from the obligation to test the product for the intended purpose and to take the respective measures for careful storage. Our obligations are dependent on customer's action, such as site condition, site utilities, work permits, tax declarations, compliance with safety provisions etc. To the extent the customer does not comply with or delays such measures, our liability shall be excluded.
- 3.4 The warranties and any associated remedies set out or referenced herein are exclusive. No other warranty, written or oral, is expressed or implied by us or may be inferred from a course of dealing or usage of trade neither based on advertisements, concluding action nor commercial use. To the extent allowed by local law we disclaim all implied warranties or conditions including any implied warranties of merchantability and fitness for a particular purpose, and warranties of non-infringement.
- 3.5 Details of quality, durability and possible uses of the Company's products do not include or constitute any warranties, unless such details are explicitly specified as such in writing and stated as warranties.

#### 4. 交付和交付时间

- 4.1 除非明确同意交货日期是固定的,否则交货时间仅供参考,且不 具有约束力。确认的交货日期取决于本公司正确、完整和及时的 收到产品。除非双方对交货日期的意思另行明确书面约定,否则 产品离开我们的场地或我们已通知客户该订单已准备好发货均视 为己按时交货。在客户适当履行其相应的义务和合同义务(例如 提供技术数据,支付预付款或提供付款担保)之前,交货期并不 开始起算。
- 4.2 本公司有权分批交货。对于小订单,即数量小于相应包装单位的 订单,公司保留对相应包装单位的最低数量或最低总价收取费用 的权利。
- 4.3 如出现导致无法及时履行已接受订单的不可抗力事件或其他超出本公司控制范围的事件,在这些事件仍持续有影响期间内,本公司的交付承诺得以免除。这意味着本公司不承担采购风险。此外,在本公司无法从供应商处取得与订单有关的产品的情况下,本公司保留解除合同的权利;第8条项下本公司因故意或过失导致的损害赔偿义务不受影响。本公司将毫不延迟地通知客户无法及时交付,在解除的情况下,本公司将毫不延迟地返还所有已经收到的对价。
- 4.4 已经卖出的无缺陷产品不接受退货。
- 4.5 如果客户出现资不抵债或者进入破产程序、重组程序或类似程序、 流动资金短缺或出现财务状况的重大恶化,则本公司有权立即中 止交付并拒绝履行当前的合同,除非客户提前提供相应的对价或 者应本公司的要求提供适当的担保。
- 4.6 客户接收或付款时有过错,或违反主合同义务及附随义务时,客户应保证本公司无需支付任何因此产生的损害赔偿或额外费用。其他主张和权利不受影响。若客户存在验收或付款上的过错,则产品毁损灭失的风险在该等过错发生时转移给客户,除非风险根据本条款应在更早时候转移。
- 4.7 产品运送至客户处或根据客户要求运送至第三方时,意外损害或 意外灭失的风险最迟自产品离开本公司的场地/仓库时转移至客 户,不论双方对运送地点有何约定,也不论运输费用由谁承担。
- 4.8 除非另行以明确的方式说明,本合同下任何国际贸易术语都指的 是由国际商会颁布的 2020 年版国际贸易术语。

#### 4. Delivery and delivery time

- 4.1 Lead times are provided for information purposes only and shall be non-binding, unless it is explicitly agreed that the delivery date shall be fixed. Confirmed delivery dates are subject to the correct, complete and timely receipt of supplies by the Company. Unless the meaning of the delivery deadline has bene otherwise agreed by both Parties explicitly in writing, delivery deadlines shall be considered as met if prior to deadline expiry the delivery item has left our facility or if we have informed the customer that the order is ready for shipment. Delivery periods shall not start to run until the customer has properly fulfilled its respective obligations and contractual duties, such as furnishing technical data, approvals, making a down payment or providing a payment guarantee.
- 4.2 The Company is entitled to make partial deliveries. In case of small orders, i.e. orders of quantities smaller than the respective packaging unit, the Company reserves the right to charge either the price for the respective packaging unit as minimum quantity or a minimum lump sum for costs.
- 4.3 Events of force majeure or other circumstances beyond the Company's control that render the timely execution of accepted orders impossible shall relieve the Company of its delivery commitment as long as these events prevail. This means we do not assume the risk of procurement. Furthermore, the Company reserves the right to withdraw from the contract in case the Company does not receive the relevant supplies, the Company's responsibility for damages caused intentionally or negligently according to clause 8 remains unaffected. The Company will inform the customer without undue delay that the delivery item will not be available in time, and in case the Company withdraws from the contract, the Company will return any consideration already received without undue delay.
- 4.4 It is generally not possible to return any sold and non-defective products.
- 4.5 In case that customer becomes subject to insolvency proceedings or subject to bankruptcy proceedings, reorganization proceedings, or comparable proceedings, shortages of liquid funds or a significant deterioration of financial circumstances the Company is entitled to suspend deliveries immediately and to refuse the fulfilment of current contracts unless the customer provides the respective consideration in advance or, on the Company's request, provides appropriate securities.
- 4.6 In case the customer is in default of acceptance or payment or does culpable breach of any primary or accessory obligations, the customer shall indemnify the Company for any damages caused and any additional costs related thereto. Further claims and rights shall remain unaffected. In case of the customer's default of acceptance or payment, the risk of accidental loss and damage of the products shall pass to the customer, unless such risks shall pass to customer at earlier time according to these Terms.
- 4.7 In case the products are sent to the customer or a third party at the customer's request, the risk of accidental loss or accidental damage of the products shall pass to the customer once the products have left the Company's facility/warehouse at the latest, irrespective of the agreed dispatch place and irrespective of which party bears the transport costs.
- 4.8 Unless explicitly stated otherwise, any use of Incoterms shall be deemed as a reference to the INCOTERMS 2020 as published by the International Chamber of Commerce (ICC).

# 5. 担保、出口控制要求

5.1 在所有现有主张(包括因公司业务关系引起的对客户的有条件和附带主张)得到满足之前,公司将保留对所有已交付产品的所有权;为此,所有交付均应视为一项单独的交付交易。如果是往来帐户,则保留所有权应作为公司未偿还余额索偿的担保。所有上述规定也应适用于将来的权利主张。如果客户严重违反合同义务,公司可以在合理考虑到客户的合法利益的情况下立即取回产品,而无需另行通知。客户在此事先同意在这种情况下退还产品。如果公司明确说明,则取回产品应仅视为解除合同。取回产品所产生的所有费用(特别是运输费用)应由客户承担。在公司未明确

# 5. Securities

5.1 The Company reserves title to all delivered products until all existing claims, including conditional and accessory claims against the customer resulting from the Company's business relation have been satisfied; for this purpose, all deliveries shall be considered as one single delivery transaction. In case of a current account, the reservation of title shall serve as security for the Company's outstanding balance claim. All aforementioned provisions shall also apply to future claims. In case of a material breach of contractual obligations by the customer, the Company may immediately retrieve the products without further notice, reasonably taking into account the legitimate interests of the customer; the customer hereby consents in advance to return



- 声明公司解除合同的范围内,客户只有在全额支付了购买价和所 有费用后才可以要求交付产品。。
- 5.2 客户仅有权在其正常业务范围内转售或处理所交付的产品,或者将其与其他货物相混合或组合;但是,对此客户将在双方协议的最终发票总额(包括增值税)范围内,将因交付产品的转售、处理、混合、组合或其他法律原因导致的所有索赔权(尤其是因保险合同或不法行为导致的索赔)事先转让给本公司。如果产品尚未出售但已经为某一工作和物料合同或工作和服务合同的目的被使用,则此条款同样适用。
- 5.3 所有权的保留同样适用于因全数将所交付的产品初次加工或与其他货物一起混合或组合所产生的新产品,在此等情况下所有权保留的效力及于新产品的全部价值。如果所购产品与该第三方的货物一起加工、混合或组合后第三方所有权仍然保留,则本公司将按这些货物的客观价值比例获得共同所有权。如果本公司的所有权因该类加工、组合或混合而失效,则客户须按本公司交付货物的发票价值,将其所有权和/或新存货的预期权利转让给本公司,并免费代表本公司予以保管。
- 5.4 即使有以上 5.2 条的转让,在本公司撤回转让授权之前,客户应被授权收取转售引发的债权的主张。只要客户及时满足对本公司的付款要求,本公司不会自行主张债权。如收到本公司的书面请求,客户有义务将该等已转让主张的债务人告知本公司并将该等转让通知债务人。
- 5.5 如果客户拖欠本公司应支付的款项,或因财务状况的重大恶化而 出现流动资金短缺,或者不妥当履行合同重大义务,本公司有权 立即撤销第5.2条和5.4条下对客户的转售以及转让的债权主张 的授权。如果客户资不抵债或者进入破产程序、重组程序或类似 程序、中止付款,或者如果因为流动资金短缺导致客户业务的所 有权变更,则转售授权和己向本公司转让的债权主张将自动停止。
- 5.6 客户须尽到合理谨慎义务,代表本公司免费保管本公司所拥有的 (共同)材料,并对火灾、盗窃和其他常见风险进行投保。客户 自费定期进行维护和检查。
- 5.7 禁止客户对被保留所有权的交付货物或本公司加工或生产的产品进行任何质押或转让(作为担保)。在第三方做出任何质押或任何其他侵犯本公司所有权的行为之前,客户须立即通知本公司,并以书面形式向本公司和第三方确认所有权。所产生的法律诉讼导致的剩余费用(即使本公司胜诉)由客户承担。
- 5.8 在 5.1 条下的所有权保留需要公开登记或生效需要客户的协助时,客户在此不可撤销地同意办理此种登记,并同意自行承担必要的费用。
- 5.9 如果客户违反合同,尤其是拖欠支付款项,本公司有权收回货物;客户特此提前同意该等情况下的该类收回。除非本公司做出决定并明确通知客户,否则收回货物并不视为合同终止。收回货物招致的所有费用(尤其是运输费用)须由客户承担。仅当已全额支付购买价格和所有费用之时,客户方可在无明确撤销通知的情况下要求交付已收回的货物。

- the products in such instances. Retrieving the products shall only be deemed a withdrawal from the contract if explicitly so stated by the Company. All costs resulting from retrieving the products (in particular transport costs) shall be borne by the customer. To the extent the Company does not explicitly declare the Company's withdrawal from the contract the customer may request delivery of the products only once the purchase price and all costs have been paid in full.
- The customer shall be entitled to resell or process the delivered products or mix or combine it with other items in the scope of its ordinary business only; however, the customer hereby assigns to the Company in advance all claims resulting from resale, processing, mixing, combining or other causes in law related to the delivered product (in particular from insurance contracts or unlawful acts) in the amount of the agreed final invoice total (incl. VAT). The same applies if a product is not resold but used by the customer for purposes to a contract for work and materials or a contract for work and services.
- 5.3 The reservation of title shall also apply to such new products resulting from the processing of the initially delivered items, or their mixing or combining of the purchased items with other items, in each case at the full value of the respective new product. If third-party ownership rights remain after processing of the Company's products or their mixing or combining with third party products, the Company shall acquire joint ownership in the new product at a ratio of the objective value of the processed, mixed or combined products. If the Company's ownership ceases as a result of processing, combining or mixing, the customer shall already transfer to the Company its ownership and any expectant rights in the new product in the amount of the invoice value of products delivered by the Company, and shall store them in custody on behalf of the Company free of charge.
- of the Company free of charge.

  5.4 The customer shall be authorized to collect debt claims from the resale despite the assignment under Clause 5.2 above, as long as the Company has not revoked this authorization. The Company will not collect such debt claims in person, as long as the customer properly fulfils its payment obligations towards the Company. Upon the Company's first written demand the customer shall be obliged to inform the Company about the debtors of assigned claims as shall notify the debtors of the assignment.

  5.5 The Company shall have the right to revoke the authorization to the customer
- 5.5 The Company shall have the right to revoke the authorization to the customer under clause 5.2 and 5.4 to resell the products and to collect the debt claims assigned to the Company with immediate effect if the customer is in default of payments to the Company, experiences payment difficulties due to a significant deterioration of financial situation or does not fulfil other material contractual obligations properly. In case that customer becomes insolvent or subject to bankruptcy proceedings, reorganization proceedings, or comparable proceedings, discontinues payments, or if due to a shortage of liquid funds a change of ownership occurs in the customer's business, the authorization for resale and collection the debt claims assigned to the Company shall cease automatically.
- 5.6 The customer shall store the Company's (jointly) owned materials on behalf of the Company free of charge and with due care and diligence as a prudent businessman and shall insure them against fire, burglary and other usual risks. Any required maintenance and inspection services have to be timely performed at the customer's expense.
- 5.7 Any pledge or assignment as security by the customer of products delivered under reservation of title or any products processed or manufactured on behalf of the Company is forbidden. Prior to any pledge or any other infringement of the Company's ownership rights by third parties the customer shall notify the Company immediately and shall confirm the right of ownership of the respective product in writing, both to the Company and the third parties. Any residual costs arising from resulting legal action despite the Company's winning a case shall be covered by the customer.
- 5.8 If the customer violates the contract, in particular by delays in payment, the Company shall be entitled to recover the goods; the customer hereby gives his advance consent to this recovery in such a case. The recovery shall not be considered as a termination of contract, unless otherwise decided by the Company and explicitly notified to customer. All costs incurred by the recovery (in particular transport costs) shall be charged to the customer. The customer may demand the delivery of goods recovered without an express notice of withdrawal only once the purchase price and all costs have been fully paid.
- 5.9 In case the reservation of title under clause 5.1 needs to be publicly registered or requires any other kind of cooperation by the customer in order to be valid, the customer hereby irrevocably consents to such registration and agrees to take all necessary actions at its own cost.

#### 6. 价格和付款

- 6.1 在订单确认函中没有特别列明的情况下,价格为常规交付期限内 将货物通过陆路运输交付至客户指定地点的的不含税(包括关税) 人民币价格。所有与产品交付相关的税金与关税(如适用)由客 户承担。对于特殊交付期限和交付地点的订单,以订单上的另行 约定为准。
- 6.2 如原材料、工资、能源和其他超出本公司控制的因素出现不可预见的变更,本公司将有权相应地调整价格。对于分批交付而言,每一批交付可单独开具发票。如果合同完成前未就价格达成一致,则以交付日的价格为准。
- 6.3 除非另行书面约定,否则本公司的发票金额须立即支付,无折扣。
- 6.4 本公司无义务接受票据、支票或其他支付承诺,且对于该等支付方式的任何一次接受均不应理解为替换本条款的付款方式,而仅作为收款的可能的补充方式.
- 6.5 收款日为本公司收到款项或款项已计入本公司银行账号之日。如

#### 6. Prices and payment

- .1 Provided that there is no other specific agreement in the order confirmation, the price is in RMB excluding taxes or custom duties for delivery to the agreed venue within normal delivery time by road transportation. All the taxes and duties (if applicable) shall be borne by the customer. For the special delivery term or special delivery venue, it shall be agreed in the order.
- 6.2 Unforeseen changes in costs beyond our control, such as costs for raw materials, wages, energy and others, shall entitle the Company to adjust prices accordingly. For partial deliveries each delivery may be invoiced separately. If no specific prices have been agreed at the completion of contract, the prices valid at the respective delivery shall apply.
- 6.3 Unless otherwise agreed in writing, the Company's invoices are due immediately and payable without discount.
- 6.4 The Company is not obliged to accept bills, cheques and other promises to pay, their acceptance shall not be considered a replacement of the underlying obligation but only as an additional possibility for us to receive payment.
- 6.5 The receipt of payment date shall be the day on which the amount is in the



- 果客户支付出现延迟,本公司有权就该延迟就发票金额的 100% 按日根据中国银行在发布的客户违约期间适用的基准利率上浮 9%收取逾期付款违约金。这不限制本公司主张额外赔偿的权利。
- 6.6 如果客户出现支付延迟,本公司可选择要求客户支付分期付款中 未到期的应付额或其他对客户已有的主张,或者对于未来的交付 也以此条件为前提履行,或对于其他合同可以要求提供事先担保 或者在交付的同时进行付款。
- 6.7 预付款和分期付款不计利息。
- 6.8 客户只可在其反主张不具争议或者已经过判决之时抵消或扣减支付款项。
- 6.9 客户应根据本公司的要求提供所有与税务有关的、根据相关法律条文为跨境运送中的增值税免税所必须的文件证据(如入境证书)。在与上述税务减免要求不符的情况下,客户应在收到改正后的发票后,承担税务部门对本公司提出的任何增值税和利息的要求。如增值税识别号无效或出现任何变更,客户应毫不迟延地通知本公司。
- Company's possession or has been credited to the Company's bank account. In case of delays in payment by the customer the Company shall be entitled to charge nine (9) percentage points above the base interest rate published by the Bank of China for the duration of the default. This shall not restrict the Company's right to claim additional damages or costs.
- 6.6 In addition, in case the customer is in default of payment the Company may choose to call due any outstanding purchase price instalments or other existing claims against the customer as well as to make future deliveries under this or other contracts dependent on an advance security or simultaneous payment against delivery.
- 6.7 No interest will be paid on advance or partial payments.
- 6.8 The customer may set off or withhold payments only if its counterclaim is undisputed or res judicata.
- 6.9 Upon request, the customer shall provide the Company with any documentary evidence for tax purposes (i.e. entry certificate), which the Company considers necessary under the applicable statutory provisions to prove the Company's exemption from VAT for cross-border deliveries. In case of non-compliance against above tax exemption provisions, the customer shall, after receipt of a corrected invoice, cover any VAT claims and interest imposed on the Company by the tax authorities. The customer shall inform the Company about the invalidity or any changes in its VAT identification number without undue delay.

#### 7. 缺陷索赔

- 7.1 本公司只根据以本第7条规定对本公司交付的货物的缺陷负责。
- 7.2 客户须根据《中华人民共和国产品责任法》和《中华人民共和国 合同法》妥当履行其与检验和投诉有关的责任。
- 7.3 如果有缺陷的产品已交付,则本公司在客户使用产品进行生产(加工或安装)开始之前应有机会对该产品进行筛选并修复缺陷或另行交付,除非根据合理预计无法从客户处获得该机会。如果本公司无法完成此项约定或者未能及时予以遵守,客户可就此解除合同,退还货物并由本公司承担风险。出现紧急情况,在和本公司协商后,客户可自行或指示第三方对缺陷进行救济。此种救济活动所产生的费用由本公司根据第8条予以返还。
- 7.4 如果缺陷在客户使用缺陷产品生产或经营开始之后得以发现,则无论是否根据第7.2条履行责任,客户均可要求后续责任的履行(由本公司选择返工或重新交付)。客户有权留置交付的缺陷产品,但前提是留置的部分与缺陷和后续履行的预期费用相匹配,且客户的主张也以同一合同关系为基础。
- 7.5 任何缺陷产品的索赔主张均应在两次替代履行机会无法解决缺陷后提出。如果出现替代交付,客户有义务应本公司请求返还有缺陷的产品。
- 7.6 如果后续履行会产生不合理的费用、不能够接受或者因其他原因 必须视为履行失败的,则仅当缺陷无法在合理期限内修复的情况 下客户才可主张解除合同或降低购买价格。但是,如为轻度缺陷, 客户无权解除合同。
- 7.7 客户需允许本公司立即检验任何拒收货物,尤其是这些货物应根据本公司的要求提供给本公司,费用由本公司承担。若投诉无任何根据,则本公司有权向客户收取运输费用和检验费用的权利。
- 7.8 如果缺陷可归因于违反操作、维护和安装说明、使用或存储不当、 搬运或组装错误或过失、自然磨耗或者客户或第三方篡改交付货物,则任何缺陷索赔不会被接受。
- 7.9 救济履行、因产品有缺陷而导致的合同解除或损坏修复相关的开销等均不予赔付,特别是以下方面的拆卸和重新安、测试、确认、运输、人工和材料的费用:(i)这些索赔和费用是由于以下事实造成的:产品在风险转移后已转移到与约定的履行地点不同的地点,或者(ii)在发生费用时,通常是指交付,但最迟在安装或处理过程中,客户知道或合理地应该知道该缺陷。但是,如果上述转移与我们已知产品的正常使用相对应,则此规定不适用
- 7.10 任何损失、补偿或费用报销仅可根据第8条约定提出主张。
- 7.11 如果产品为双方初次合作的新产品,则上述索赔条款不适用。新产品质量赔偿相关的事宜由双方另行达成的新产品相关的协议约定。

#### 7. Claims for defects

- 7.1 The Company shall be liable for defects of the delivered products delivered by the Company only according to the stipulations in this clause 7.
  7.2 The customer shall properly fulfil its duties regarding inspection and lodging the company of the customer shall properly fulfil its duties.
- 7.2 The customer shall properly fulfil its duties regarding inspection and lodging complaints according to Product Liability Law and Contract Law of People's Republic of China.
- 7.3 If defective goods are delivered the Company shall be given the opportunity, prior to the start of manufacturing (processing or installing) by customer by using the defected goods, to sort out such goods and rectify the defect or to make an additional delivery, unless this cannot reasonably be expected from the customer. In case the Company are unable to accomplish this or fail to comply in due course, the customer may withdraw from the contract to this extent and return the products at the Company's risk. In case of urgency, the customer may, following consultation with the Company, remedy the defects by itself or instruct a third party to do so. Expenses incurred by such remedial activities shall be reimbursed by the Company according to clause 8.
- 7.4 If the defect comes to light only after the start of manufacturing or initial operation by customer by using the defected goods, despite the fulfilment of all duties according to point 7.2, the customer may demand subsequent performance (rework or substitute delivery by the Company's discretion). The delivery of defective products results in a right of retention only insofar as it is in due proportion to the respective defect and the expected costs of the subsequent performance, and provided that the customer's counterclaim is based on the same contractual relationship.
- 7.5 Any claims for damages for defective products shall be subject to two useless attempts of subsequent performance. In case of substitute delivery the customer is obliged to return the defective material on request.
- 7.6 Claims for rescission of contract or reduction of purchase price shall be granted only if the defect cannot be remedied within an appropriate period, if subsequent performance will incur disproportionate costs, is unreasonable or must be considered as failed for other reasons. The customer shall, however, have no right to withdraw from the contract in case of minor defects.
- 7.7 The customer shall allow the Company to inspect any rejected products with undue delay, in particular these products shall be made available to the Company upon request and at the cost of the Company. If complaints are unfounded, the Company shall be entitled to charge transport costs and inspection expenses to the customer.
- 7.8 No claims for defects may be accepted if the defect can be put down to a violation of operating, maintenance and installation instructions, improper use or storage, faulty or negligent handling or assembly, natural wear and tear or tampering with the delivery item by the customer or a third party.7.9 No costs may be claimed regarding the subsequent performance, the
- 7.9 No costs may be claimed regarding the subsequent performance, the withdrawal from the contract or damage-repair because of defective products, in particular costs for de- and reinstallation, testing, validation, shipment, transportation, labour and material, insofar as: (i) these claims and costs result from the fact that the products have been transferred to a place different from the agreed place of performance after passing of risk, or (ii) at the time the costs were incurred, which means generally at the time of deliver but at latest during installation or processing, the customer knew or reasonably should have known of the defect. However, this does not apply in case such transfer corresponds with the normal use of the products known to us.
- 7.10 Damages, compensation and reimbursement of expenses may only be claimed according to clause 8.
- 7.11 The aforementioned claims related clauses do not apply for any products which are new products under the first cooperation between the parties. The quality compensation related matter shall be performed according to the separate agreement relating to such new products between the parties.

# 8. 责任

# 1 后续履行、解除合同或者对缺陷产品进行修理的费用,尤其是拆除、重新安装、测试、激活、装运、运输、劳力和材料费用不应超出相应产品订单的总价,若涉及总括订单,则不应超过相应产品对应的总括订单下的某一单独批次订单的金额。对由于本公司、其员工因为故意或重大过失而造成的损失,尤其是缔约过失责任、

#### 8. Liability

8.1 Costs regarding the subsequent performance, the withdrawal from the contract or damage-repair because of defective products, in particular costs for de- and reinstallation, testing, validation, shipment, transportation, labor and material shall not exceed the total value of the respective order or the value of the specific release corresponding to the relevant goods if any blanket order is involved. The Company shall be liable for any damages, in particular



- 失职和不法行为, 本公司承担相应的责任。
- 8.2 对于因生命、身体伤害导致的损失,本公司也应承担普通过失责任。如果违反了与合同相关的职责,本公司的责任限于该类产品的一般平均可预测的直接损失,且该类所有责任的上限不得超出产品的总售价。上述规定还适用于本公司员工或代理失职的情况。
- 8.3 如果本公司产品的出售侵犯了第三方的工业产权,则仅在该第三方工业产权在中华人民共和国有效并已在交付之时公布,且根据协议使用产品会对该第三方的所有权权益造成侵犯的情况下,本公司才对侵犯第三方工业产权负责。如果本公司根据客户提供给本公司的图纸、模型、描述或其他文件或数据生产交付项目,且因此本公司不知道或者不需要知道任何与本公司开发的产品有关的工业产权的侵权,则此条款不适用。如果客户对当时或未来对第三方工业产权的侵犯负有责任,则客户保证:目前和未来为不会侵犯第三方的工业产权,对于其可能知晓的任何潜在的和主张的第三方工业产权侵权,其将立即通知本公司;就第三方的索赔对本公司做出赔偿;承担因此而招致的所有费用和开支。
- 8.4 已交付产品的缺陷主张将在产品交付一年后失效。当缺陷产品通常用于建筑物并导致建筑出现缺陷时,前款期间不适用;在这种情况下,请求权通常在交付后五(5)年后失效。其他以8.1-8.3为基础的请求权的时效与法律规定相一致。
- 8.5 如果后续履行的主张已失效,则对降价和解除合同的权利的主张 也将于效
- 8.7 当客户对其自己的客户的缺陷的救济仅限于法定的缺陷补偿义务和责任时,本公司才接受客户的追索。除非以书面方式另行约定,第7和第8条适用于任何由客户提出的追索权。
- 8.8 除本一般条款和条件明确约定外,本公司将免于承担任何其它责任,特别是,本公司不会对任何附带性、特殊性、惩罚性、继发性损失承担责任,包括但不限于产品销售、产品瑕疵、使用或其它方面导致的利润损失。

- resulting from a breach of duty of care when entering into a contract (culpa in contrahendo), from a breach of obligations or from unlawful acts, only to the extent that the Company, its employees or vicarious agents have acted intentionally or grossly negligent.
- 8.2 For damages resulting from death or bodily harm, the Company shall also be liable for ordinary negligence. In case of a violation of contractually relevant duties the Company's liability shall be limited to the direct average damage, predictable and typical according to the type of goods, and such total liability shall be capped no more than the total sales value of the goods or the value of the specific release corresponding to the relevant goods if any blanket order is involved. Aforementioned stipulation shall also apply to breach of obligations by the Company's employees or vicarious agents.
- The Company shall be liable for the infringement of third parties' industrial property rights in connection with the sale of the products under the foregoing provisions only if such third parties' industrial property rights are valid in the People's Republic of China and have been published at the time of delivery and only to the extent that such third parties' proprietary rights are infringed upon when using the products as agreed. This shall not apply if the Company has manufactured the product according to drawings, models, descriptions or other documents or data provided by the customer and if the Company thus did not or need not have knowledge of any infringement of industrial property rights in connection with products developed by the Company. In this case the customer is liable for any current or future infringement of third parties' industrial property rights. The customer undertakes to warrant that there has been and will be no infringement of third parties' industrial property rights, to inform the Company with undue delay of any potential and alleged cases of infringement of third parties' industrial property rights which may become aware of, and to indemnify the Company from third parties' claims and, to bear all costs and expenses incurred.
- 8.4 Claims for defects of delivered products shall cease upon expiration of one (1) year after delivery. This shall not apply to products that, consistent with their usual application, are used in buildings and have caused the building's defectiveness; in that case claims shall become time-barred five (5) years after delivery. All other claims under clauses 8.1 to 8.3 shall become time-barred according to the statutory provisions.
- 8.5 Claims for price reduction and rights to withdraw the contract shall be rejected so far as the claim for remedial measures has become invalid.
- 8.6 The Company's liability pursuant to the provisions of the Product Liability Law of People's Republic of China shall remain unaffected by the aforementioned stipulations.
- 3.7 The Company shall only be liable for claims of recourse by the customer if and to the extent the customer has not accepted obligations towards its own customer beyond the mandatory statutory provisions on remedies for defects and liability. Unless agreed otherwise in writing, clauses 7 and 8 shall apply accordingly to any claims of recourse raised by the customer.
- 8.8 The Company shall be exempt from any other liability except for the liabilities explicitly agreed in these General Terms and Conditions. PARTICULARLY, IN NO EVENT SHALL THE COMPANY BE LIABLE FOR INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, WHETHER ARISING FROM THE SALE OF PRODUCTS, ANY DEFECT IN THE PRODUCTS, ANY USE OF OR INABILITY TO USE THE PRODUCTS, OR OTHERWISE.

#### 9. 保密

- 9.1 在任何时间,即便商业关系结束后,客户均应对从本公司处因商业往来获得的、与技术和经济的有关的知识或信息("保密信息")对第三方严格保密,除非客户证明保密信息(i)已经为客户所知,或在披露时处于公有领域,或随后因客户过错外的原因成为公共信息,(ii)随后由客户完全独立地开发获取,或(iii)客户从第三方处通过不违反保密义务的方式获取。
- 9.2 对于任何含有保密信息的在商业往来中披露的文件,尤其是图纸,本公司始终是唯一的所有人。根据本公司要求,此类文件应最迟在商业往来关系结束时返还给。客户无权保留保密信息或含有保密信息的文件或材料。
- 9.3 保密信息的披露不设立任何属于客户的工业财产权、商业秘密权 或版权,也不构成专利、外观设计和实用新型相关法律意义上的 出版公开或在先使用。任何许可均应以书面方式作成。

# 9. Confidentiality

- 9.1 The customer shall keep any knowledge and information of a technical or economical nature it has received from the Company in connection with the business relationship (hereinafter "Confidential Information") strictly confidential towards third parties at any time, even after the end of the business relationship, unless the customer proves that the Confidential Information is (i) already known to the customer or in the public domain at the time of disclosure or subsequently becomes public knowledge other than through a fault of the customer, (ii) subsequently developed by the customer completely independent from the Confidential Information, or (iii) received by the customer from a third party without breach of a confidentiality obligation.
  9.2 The Company remains the sole owner of any documents, in particular
- 7.2 The Company remains the sole owner of any documents, in particular drawings, containing Confidential Information, which are disclosed in the course of the business relationship. Any such documents must be returned to the Company upon the Company's request but at the latest at the end of the business relationship. The customer has no right of retention regarding Confidential Information or documents or materials containing Confidential Information.
- 9.3 The disclosure of Confidential Information does not establish any industrial property rights, rights to knowhow or copyrights of the customer and does not constitute a prior publication or right of prior use according to the applicable patent, design and utility model laws. Any kind of license is subject to a written agreement.

# 10. 合规

10.1 客户应遵守外国贸易法律规定,特别是所有适用的德国、欧盟和美国的出口管制规定。客户不得参与任何与 ABC(核、生物、化学)武器或军事应用相关的业务,并保证不会以直接或间接的方式与恐怖分子、恐怖组织或其他犯罪和违宪的组织接触或合作。客户应采取合理的组织性的措施,特别是适用合适的软件系统,以保障禁运、反恐和反犯罪的欧盟规定和美国法律或其他适用于商业关系的法规的的实行。当产品离开本公司场地后,客户应对前述规定的合规完全承担责任,保证本公司不因任何因客户、其关联企业、雇员、代表或者替代代理人违反相关法律法规而产生

# 10. Compliance

10.1 The customer shall comply with foreign trade law provisions, in particular with any applicable export control regulations under China, EU and US law. The customer will not engage in any business related to ABC (Atomar, Biologisch, Chemisch) weapons or military application, and shall undertake not to deal with or otherwise cooperate, neither directly nor indirectly, with any terrorist or terrorist organizations or any other criminal or anti-constitutional organizations. The customer will in particular establish reasonable organizational measures to implement applicable embargoes, the European regulations against terroristic and criminal acts and the respective requirements under US law or any other law applicable to the business



- 的主张及相关费用而承担责任,包括合理的律师和咨询费用、行 政费用及罚款。
- 10.2 公司将合理地遵守第 1907/2006 号欧洲化学品法规("REACH") 所产生的直接适用于我们的义务,并根据第 8 条对违规行为承担责任。但是,客户应独自承担责任 因客户提供的信息不足而导致的任何负面后果,包括与供应链中产品使用有关的任何不正确或不完整的信息。
- 10.3 如果一方合理地认为需要对交货进行自愿或政府要求的召回,现场更正,市场撤回,库存回收或其他类似行动(以下简称"召回"),则客户应好不拖延的与我们协商,但是处理任何召回的最终决定权应由我们决定。

如果客户得知潜在的召回涉及交付,并且投诉称己发生死亡或健康状况严重恶化,则客户将立即(即在 24 小时或更短时间内)通知我们。在其他情况下,客户会在两(2)个日历日内将投诉通知我们,而不会有任何无法辩解的延迟。

客户将在进行召回时提供我们要求的所有合理协助,并将:(i)向我们提供可用的性能评估、事故报告、工程调查以及与潜在召回有关的其他数据;(ii)为我们提供合理的机会以参与客户、其最终客户和政府机构之间有关召回的需求和范围的查询和讨论;(iii)就纠正或更换系统或组件(包括交货)的最经济有效的方法进行咨询,以纠正所称的缺陷或不合规之处。

除非逐案达成协议,否则我们将独自负责将与交付有关的任何此类事宜通知政府或监管机构,并且客户将与我们合作报告任何要求或其他后续活动(包括但不限于(不限于与此有关的纠正措施)。各方将指定一名代表负责交换此类信息和所有其他监管信息。如果发生召回,客户在未事先通知我们并获得我们对任何此类声明的事先批准之前,不会就此召回向媒体或公众发表任何声明。如果召回是由于任何其他原因引起的,包括客户的设计、规格或指定的供应商,客户在交货或包含交货的产品的营销、分销、存储或处理中的作为或不作为,则召回的成本和责任将由客户承担。双方将保留所有交货和包含足以在适用法律规定的期限内充分执行召回权的交货的产品的记录。

- relationship, in particular by implementing adequate software systems. Once a product has left the Company's facilities, the customer shall be solely responsible for compliance with the abovementioned provisions and shall indemnify the Company from any and all claims or related costs resulting from the violation of the respective laws or regulations by the customer, its affiliates, employees, representatives or any of its vicarious agents, including reasonable attorney or consultant fees, administrative fees and penalties.
- 10.2 The Company will reasonably comply with the obligations resulting from the European Chemicals Regulation No. 1907/2006 ("REACH") that are directly applicable to us and will be liable for breaches according to clause 8. The customer shall, however, be solely liable for any negative consequences resulting from the provision of insufficient information by the customer, including any incorrect or incomplete information relating to the use of products within the supply chain
- products within the supply chain.

  10.3 In the event in the reasonable opinion of one party a voluntary or government-mandated recall, field correction, market withdrawal, stock recovery or other similar action with respect to the deliveries (hereinafter "Recall") is required, the customer will consult with us without delay, however the final decision for handling any Recall shall rest with us.

Customer will immediately (i.e. within 24 hours or less) notify us if the customer learns that a potential Recall implicates the deliveries, and if a complaint alleges that a death or serious deterioration in the state of health has occurred. In other cases the customer will notify us of complaints within two (2) calendar days without any delay that could not be justified.

Customer will provide all reasonable assistance requested by us in the conduct of a Recall, and will: (i) provide us with available performance evaluations, accident reports, engineering investigations, and other data relating to the potential Recall; (ii) provide us a reasonable opportunity to participate in inquiries and discussions among customer, its end-customer and governmental agencies regarding the need for and scope of the Recall; and (iii) consult with us about the most cost-effective method of modifying or replacing systems or component parts, including the deliveries, in order to remedy the alleged defect or non-compliance.

Unless agreed otherwise on a case by case basis, we shall be solely responsible for notifying governmental or regulatory authorities regarding any such matters specifically related to our deliveries, and customer will cooperate with us in reporting any requirements or other follow-up activities (including but not limited to, corrective action) relating thereto. Each party will designate a representative responsible for the exchange of such information and for all other regulatory information.

In the event of a Recall, customer will not make any statement to the press or public concerning the Recall without first notifying us and obtaining our prior approval of any such statement.

If a Recall arises from any other reason, including customer's design, specifications, or mandated suppliers, customer acts or omissions in the marketing, distribution, storage or handling of the deliveries or a product containing the deliveries, the costs and responsibilities of the Recall will be borne by the customer.

The parties will maintain records of all sales of deliveries and products containing deliveries sufficient to adequately administer a Recall for the period required by applicable law.

# 11. 履行地和管辖地、其他约定

- 11.1 对于在本公司和客户的商业关系中发生的主张,尤其是与交付相 关的主张,交付发生的地点应被视为合同履行地点。
- 11.2 客户仅在事先获得本公司事先书面同意的情况下,才可以转让其来自于合同关系的主张。
- 11.3 对于所有由于本公司与客户业务关系而导致的或与本条款或任何本公司与客户之间订立的合同相关的争议或索赔,应提交本公司所在地人民法院诉讼解决。
- 11.4 与客户的业务关系受中华人民共和国法律的排他性管辖,并排除一切冲突法的适用。《联合国国际货物销售合同公约》(CISG)和 其他与货物销售统一法有关的国际公约不适用。

#### 佛山市顺德区阿波罗环保器材有限公司

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# 11. Place of performance, jurisdiction and miscellaneous

- 11.1 For all claims resulting from the Company's business relationship with the customer, in particular regarding the deliveries, the site from which the delivery originates shall be deemed the place of performance.
- delivery originates shall be deemed the place of performance.

  11.2 The customer may assign its claims from the contractual relationship only with the Company's prior written approval.
- 11.3 For all disputes or claims resulting from the Company's business relationship with the customer, or in relation to these Terms or any contract executed by the Company and the customer shall be submitted to the People's Court at the place of the Company.
- 11.4 The business relations with customers shall be exclusively governed by the laws of the People's Republic of China, excluding the applicability of all the conflicting laws. The UN-Convention on the International Sale of Goods (C.I.S.G.) and other bilateral or multilateral conventions on the harmonization of law regarding the international sale of products shall not be applicable.

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