

# GENERAL CONDITIONS OF SALE AND DELIVERY

June 2021

## I. General

1. All deliveries, services and offers of Enapter S.r.l. (hereinafter: SELLER) are provided exclusively on the basis of these General Terms and Conditions. They are an integral part of all contracts concluded by the SELLER with its contractual partner (hereinafter: BUYER) for the supplies or services offered by the SELLER. They also apply to all future deliveries, services or offers to the BUYER.
2. Any deviating provisions shall require written confirmation by the SELLER. Terms and conditions of the BUYER or third parties shall not apply, even if the SELLER does not separately object to their validity in individual cases.

## II. Offers, orders, conclusion of contract

1. Offers of SELLER are non-binding and subject to change with regard to price, quantity, delivery time and delivery possibility, unless they are expressly marked as binding or contain a specific acceptance period.
2. Orders of BUYER become binding for SELLER by written or printed confirmation of SELLER (including invoice or delivery bill).
3. The legal relationship between SELLER and BUYER shall be governed solely by the written purchase contract, including these General Terms and Conditions of Sale and Delivery. This contract fully reflects all agreements between the contracting parties regarding the subject matter of the contract. Verbal commitments of the SELLER are legally non-binding.
4. Information provided by SELLER on the subject matter of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximately decisive, unless the usability for the contractually intended purpose requires exact conformity. Customary deviations and deviations due to legal regulations or technical improvements as well as the replacement of components by equivalent parts are permissible, provided that they do not impair the usability for the contractually intended purpose.

## III. Prices and Payment terms

1. SELLER's prices being valid at the time of delivery shall be charged for the scope of services and deliveries specified in the order confirmations; additional or special services shall be charged separately. The prices are in EUR ex works exclusive of packaging, the statutory value-added tax, customs duties in the case of export deliveries as well as fees and other public charges.
2. Invoice amounts are to be paid within the period given in the Sales Order from SELLER without any deduction, unless otherwise agreed in writing. The date of receipt by SELLER shall be decisive for the date of payment. If BUYER fails to make payment when due, interest of 5% p.a. shall be charged on the outstanding amounts from the due date; the right to claim higher interest and further damages in the event of default shall remain unaffected.
3. Offsetting with counterclaims of BUYER or withholding of payments due to such claims shall only be permissible if the counterclaims are undisputed or have been established by



a court of law or result from the same order under which the respective delivery was made.

4. The SELLER shall be entitled to perform or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, circumstances become known to the SELLER which are likely to substantially reduce the creditworthiness of the BUYER.
5. Payments are considered to be effected only when the amount is finally available on an account of SELLER.

#### IV. Delivery

1. Deliveries shall be made EXW, registered office of the SELLER (Incoterms 2020), unless expressly agreed otherwise.
2. Deadlines and dates for deliveries and services put into perspective by SELLER are always just approximate unless a fixed deadline or a fixed date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third parties commissioned with the transport.
3. SELLER may - without prejudice to his rights resulting from default of the BUYER - demand from BUYER an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period of time during which BUYER does not comply with his contractual obligations towards SELLER.
4. SELLER shall not be liable for impossibility of delivery or for delays in delivery if these are caused by force majeure or other events not foreseeable at the time of conclusion of the contract (e.g. epidemics / pandemics, operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortage of labour resources, energy or raw materials, difficulties in obtaining the necessary official permits, official measures or the non-delivery, incorrect delivery or late delivery by suppliers), as far as SELLER is not responsible for these circumstances. If such events make the delivery or performance of SELLER substantially more difficult or impossible and the hindrance is not only of temporary duration, SELLER shall be entitled to withdraw from the contract. In case of hindrances of temporary duration, the delivery or service deadlines shall be extended or the delivery or service dates shall be postponed by the period of the hindrance plus a reasonable start-up period. If BUYER cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediate written declaration to SELLER.
5. If SELLER is in default with a delivery or service or if a delivery or service becomes impossible for SELLER, whatever legal basis, SELLER's liability for damages shall be limited in accordance with these General Terms and Conditions of Delivery.
6. If the BUYER is in default of acceptance, fails to cooperate or if the delivery is delayed for other reasons for which the BUYER is responsible, the SELLER shall be entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose, a lump-sum compensation in the amount of 0.5% of the invoice amount per calendar week, beginning with the delivery deadline or - in the absence of a delivery deadline - with the notification of readiness for shipment of the goods, or 5% in the event of non-acceptance of the goods, will be charged. Further claims of the SELLER - in particular to withdraw from the contract - remain unaffected. The BUYER is allowed to prove that no damage or only a lower damage than the aforementioned lump-sum has occurred.



#### V. Place of performance, shipment

1. Place of performance for all obligations arising from the contractual relationship is the registered office of the SELLER, unless otherwise specified.
2. Additional costs caused by special shipping requests of BUYER shall be borne by BUYER. The same applies to increases in freight rates occurring after conclusion of the contract, any additional costs for rerouting, storage costs, etc., unless freight-free delivery has been agreed.
3. The risk shall pass to BUYER at the latest upon handover of the delivery item (whereby the start of the loading process shall be relevant) to the forwarding agent, carrier or other third parties designated to carry out the shipment. This shall also apply if partial deliveries are made or SELLER has assumed other services (e.g. shipping or installation). If the dispatch or the handover is delayed due to a circumstance being caused by BUYER, the risk shall pass to BUYER from the day on which the delivery item is ready for dispatch and SELLER has notified BUYER thereof.
4. Further services of the SELLER (e.g. installation at the place of delivery) shall only be owed if this has been expressly agreed in writing.

#### VI. Inspection obligations

1. The delivered goods shall be inspected carefully immediately after delivery to BUYER or to a third party designated by BUYER. With regard to obvious defects or other defects which would have been recognizable in the course of an immediate, careful inspection, they shall be deemed to have been approved by BUYER if SELLER does not receive a written notice of defects within seven working days after delivery. With regard to other defects, the delivery items shall be deemed to have been approved by BUYER if the notice of defect is not received by SELLER within seven working days after the point in time at which the defect became apparent; if the defect was already apparent at an earlier point in time during normal use, however, this earlier point in time shall be decisive for the beginning of the deadline for giving notice of defects. Notices of defects shall be submitted in text form, enclosing all supporting documents.
2. Complained delivery items may be returned only with the express consent of SELLER.

#### VII. Warranty

1. The warranty period is one year from delivery. This period shall not apply to claims for damages by BUYER arising from injury to life, body or health or from intentional or gross negligent breaches of duty by SELLER or its vicarious agents, which shall in each case be time-barred in accordance with the statutory provisions.
2. In the event of material defects of the delivery items, SELLER shall first be obligated and entitled to repair the defect or to make a replacement delivery at its own discretion within a reasonable period of time. In case of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, BUYER may withdraw from the contract or reasonably reduce the purchase price.
3. If a defect is based on SELLER's fault, BUYER may claim damages under the conditions specified in Clause VIII.
4. The warranty does not apply if the BUYER modifies the delivery item or has it modified by a third party without the SELLER's consent or opens the device without the SELLER's explicit consent - for whatever reason - and the possible elimination of defects becomes impossible or unreasonably difficult as a result. In any case the BUYER has to bear the additional costs of the defect removal resulting from the modification.



## VIII. Liability, compensation

1. SELLER's liability for damages, irrespective of the legal grounds, in particular for impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties in contractual negotiations and tort, shall be limited in accordance with this Clause VIII, insofar as fault is relevant in each case.
2. SELLER shall not be liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, unless this involves a breach of major contractual obligations. Major contractual obligations are the obligation to deliver the delivery item in due time, its freedom from defects of title as well as such material defects which impair its functionality or usability more than insignificantly, as well as consulting, protection and care obligations which are intended to enable BUYER to use the delivery item in accordance with the contract or which are intended to protect the body and life of BUYER's personnel or to protect BUYER's property from considerable damage.
3. Insofar as SELLER is liable on the merits for damages in accordance with the above paragraph (2), this liability shall be limited to damages which SELLER foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which it should have foreseen if it had exercised due care. Indirect damage and consequential damage resulting from defects of the delivery item shall also only be compensable insofar as such damage is typically to be expected when using the delivery item for the intended purpose.
4. The above exclusions and limitations of liability shall apply to the same extent in favour of SELLER's corporate bodies, legal representatives, employees and other vicarious agents.
5. The limitations of this Clause VIII shall not apply to the liability of SELLER for intentional conduct, for guaranteed characteristics, for injury to life, body or health or under the German Product Liability Act. Mandatory statutory liability provisions shall remain unaffected.

## IX. Property rights

1. The SELLER warrants in accordance with the provisions of this Clause IX that to the best of its knowledge that the delivery item is free from intellectual property rights or copyrights of third parties.
2. In the event that the delivery item infringes an industrial property right or copyright of a third party, the SELLER shall, at its discretion and at its own expense, modify or replace the delivery item in such a way that no rights of third parties are infringed any more, but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the BUYER by concluding a license agreement with the third party..

## X. Retention of Title

1. Sold delivery items remain property of the SELLER until full payment by the BUYER (retention of title).

## XI. Technical advice, use and processing

1. Any technical application advice given by SELLER verbally, in writing and by means of tests shall be given to the best of SELLER's knowledge, but shall be deemed to be non-binding advice only, also with regard to any third-party property rights, and shall not release BUYER from its own examination of the products supplied by SELLER as to their suitability for the intended processes and purposes.



2. Application and use of the delivery items are beyond SELLER's control and are therefore exclusively the responsibility of BUYER. BUYER is not entitled to open and/or analyse the delivery items for the purpose of "reverse engineering".

## XII. Miscellaneous

1. The contractual relations between SELLER and BUYER shall be governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 (CISG) shall not apply.
2. Exclusive place of jurisdiction for all disputes arising from the business relationship between SELLER and BUYER shall be Münster. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
3. If individual clauses of these Terms and Conditions of Sale and Delivery should be invalid in whole or in part, this shall not affect the validity of the remaining clauses or the remaining parts of such clauses. An invalid provision shall be replaced by the parties with a provision that comes as close as possible to the economic purpose of the invalid provision and is effective.
4. Insofar as these General Terms and Conditions of Sale and Delivery contain any gaps, those legally effective provisions shall be deemed to have been agreed to fill these gaps which the contracting parties would have agreed to in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had been aware of the gap. Any special agreements between the BUYER and the SELLER, e.g. within the framework of the SELLER's voluntary additional guarantee, shall take precedence over these General Terms and Conditions of Sale and Delivery, insofar as the prerequisites of Clause I.2 are fulfilled.