

General Sales Terms and Conditions of apt® Kurvers B.V.

1. Formation and content of the agreement

- 1.1. These General Terms and Conditions shall apply to all our offers, quotes and agreements, however termed, and all obligations ensuing from these.
- 1.2. Clauses or agreements deviating from these General Terms and Conditions shall only be effective insofar as they have been confirmed by us in writing.
- 1.3. Any general terms and conditions utilised by the customer shall not apply, and are hereby expressly rejected and declared inapplicable.
- 1.4. If an instruction is furnished by a customer without a prior offer by us, an agreement shall not be formed until we have confirmed this within eight days of receipt or actually carry out the instruction. If the agreement is entered into in writing, this shall be formed on the date the contract is signed by us.
- 1.5. Verbal promises by and agreements with apt Kurvers's employees shall not bind apt Kurvers until and unless they have been confirmed in writing by a duly authorised representative of apt Kurvers.
- 1.6. If possession is taken of the delivery, this shall in any event constitute consent to these Terms and Conditions and confirmation of the order. Written approval by us shall be required for ancillary agreements. Verbal ancillary agreements shall not be valid. Use which is temporary in nature shall not give rise to any rights based on customary practice nor entail a modification of the agreement.
- 1.7. apt Kurvers shall not be obliged to deliver goods sold for export domestically or to send goods sold for the domestic market to foreign countries. apt Kurvers may demand proof of export.

2. Agreement regarding the quality of the goods

- 2.1. The information specified in our offer and in the order confirmation shall be the basis for any orders placed for the production and delivery of a particular article.
- 2.2. Based on the customer's order, apt Kurvers shall also draw up a profile drawing, indicating the specifications which must be complied with and the agreed dimensions and tolerances. This drawing shall be sent with a covering form to the customer and must be countersigned.
- 2.3. In all cases, the information from the profile drawing for producing the tool and thereby for the contractually agreed specification of the article to be delivered shall be decisive.
- 2.4. Changes to this specification shall only be considered to have been agreed on if a new profile drawing has been drawn up and countersigned, and an amended order confirmation has been sent. In addition, the DIN standards indicated in the order confirmation and the profile drawing shall be considered to have been agreed on.

- 2.5 A certain weight for raw material of a certain quality shall be assumed for a customer order. On physical grounds, however, the volume of the material may vary, even though the weight remains the same, so that the number of copies which must be produced from the agreed material may vary within certain limits, too.

3. Prices; price adjustments; tools

- 3.1 Insofar as not agreed otherwise, our prices shall be exclusive of VAT and the costs of transport to a different location than the production site, but inclusive of packaging suitable for transport and common in the market which has been developed pursuant to our guidelines. The metal prices on the London Metal Exchange (LME) shall be factors in calculating the price.
- 3.2 If the period between the price agreement and delivery encompasses more than six weeks, apt Kurvers may – in the event the purchasing costs for raw materials are changed – adjust the price to the agreed delivery period accordingly.
- 3.3 apt Kurvers shall also be entitled to implement an appropriate price increase if, after the agreement is concluded, changes occur with respect to ancillary materials, wages, salaries, freights, public taxes or levies, or government measures increasing costs.
- 3.4 The customer shall not acquire any rights to the tool based on payment of a portion of the costs for the tool. It shall remain our property, and shall be made available up to at most five years after it was last used.

4. Transfer of risk and ownership

- 4.1 The risk shall be transferred to the customer when the goods leave our factory or when, on the contractually agreed date, the customer is notified that the goods are ready to be picked up. Ownership shall not be transferred until full payment has been made in accordance with this Article.
- 4.2 The customer must immediately provide the assistance necessary and desired by apt Kurvers to render our performance, which shall expressly include the obligation to take possession of the goods purchased.
- 4.3 The customer shall be deemed to have refused to take possession of the goods if the ordered goods were presented to the customer for delivery, but delivery was not possible or the customer refused to take possession of the goods. The customer shall consequently immediately be in default, without any further notice of default being required, so that the risk of destruction and damage shall have been transferred to the customer.
- 4.4 The costs ensuing from the refusal to take possession shall be paid by the customer, without prejudice to our other rights concerning this breach by the customer. Such costs shall expressly include reasonable compensation for storage, related to the normal local rates, as well as, if this is deemed appropriate, insurance costs.

- 4.5 apt Kurvers shall only be liable for transport damage falling under our responsibility if, as prescribed, an official report identifying this damage is provided and the damage is attributable to the transport carried out at apt Kurvers's instruction. If the goods are taken back for reasons for which apt Kurvers is not responsible, the customer shall bear any risks until the goods are received by us.

5. Warranty; inspection of the goods; complaints

- 5.1 The warranty period shall be two years after the particular goods are delivered.
- 5.2 Under penalty of forfeiture of its rights, the customer must, immediately after the goods are delivered, inspect them for any defects and, immediately upon discovering a defect, but in any event within 14 days of delivery, provide notice of the defect to apt Kurvers by registered letter. If desired, the customer may, at its expense, check at our location whether the specification for the goods is in compliance with what was agreed. This right shall not, however, entail any limitation of the obligation to take possession of the goods within the stated period.
- 5.3 The customer must furnish written notice of hidden defects and/or explicit deviations from contractual specifications within three months of the date the defects were discovered or at least reasonably could have been discovered.
- 5.4 Fully or partially processed goods shall be deemed to have been approved after the aforementioned 14-day period expires or in the situations referred to in Article 5.3, and our liability for this shall consequently be extinguished in full, unless the defect could only be discovered through or upon processing.
- 5.5 Pursuant to the foregoing, acceptance by the customer shall preclude any claim by the customer concerning breaches of performance by apt Kurvers.
- 5.6 Minor deviations and/or deviations common in the industry, as well as differences in quality, colour, size or the like, shall never provide grounds for complaints.
- 5.7 If the aforementioned period has lapsed without complaints about any defects which were or could have been discovered and which should have been submitted in writing to us and received by us, the good shall be deemed to have been accepted, and the customer shall have waived any rights or powers it had under the law or the agreement.
- 5.8 If the complaint is well-founded, we shall, in a manner chosen by us, subsequently fulfil the conditions in a permissible form, at no charge and carriage paid. Subsequent fulfilment of the conditions shall not be considered unsuccessful or a breach by us until two unsuccessful attempts have been made to repair the goods.
- 5.9 Costs relating to follow-up work by the customer, such as finishing processes, wages, and sorting and storage costs, shall under no circumstances be reimbursed. The delivery of new goods may be made conditional on prior return, at our expense, of the goods complained about.

- 5.10 No rights may be derived regarding partial deliveries based on other partial deliveries which were defective. No rights may be derived regarding follow-up deliveries on account of defects which the customer was or should have been aware of at the time of shipment based on partial deliveries already received earlier and which apt Kurvers, contrary to the required duty of care, was not provided notice of within an appropriate period.
- 5.11 As long as the customer fails to fulfil non-insignificant obligations, we may refuse to repair defects or deliver replacement goods.
- 5.12 If, to satisfy its warranty obligations, apt Kurvers replaces parts/goods, the replaced goods or parts shall become its property.
- 5.13 apt Kurvers's alleged failure to satisfy its warranty obligations shall not discharge the customer from the obligations ensuing for it from any agreement concluded with apt Kurvers nor entitle it to exercise any right to suspend performance.
- 5.14 Complaints about invoices must be submitted in writing within eight days of the date the invoices are sent.
- 5.15 The submission of a complaint shall not discharge the customer from its payment obligations towards us.
- 5.16 No rights may be derived from the manner in which samples or models have been designed, nor from catalogues, photographs, illustrations or the like.

6. Delivery and call-off periods; periods for taking possession of goods

- 6.1 Delivery periods shall apply to the date the shipment is transported ex works.
- 6.2 The period shall be extended appropriately if the customer does not fulfil its obligations or if the work under the agreement is delayed because of unforeseen events, or events for which apt Kurvers is not responsible, in our factory, at a supplier or a transport company, or at another location. apt Kurvers reserves the right to deliver crude metal itself.
- 6.3 The stated delivery periods shall never be considered strict deadlines, but shall merely be indications. If the stated period is exceeded, apt Kurvers shall not be in default until it is given a written notice of default.
- 6.4 The delivery period shall be based on the circumstances at the time the agreement is concluded and on timely delivery of the goods delivered to apt Kurvers. If, through no fault of apt Kurvers's, a delay arises because of a change in circumstances, non-timely delivery of goods ordered and the customer's non-fulfilment of any obligation ensuing from the agreement or its failure to provide the cooperation demanded of it concerning performance of the agreement, the delivery period shall, insofar as necessary, be extended by the period of delay.
- 6.5 The customer shall not be entitled to rescind the agreement in whole or in part if the delivery period is exceeded, unless apt Kurvers has been guilty of gross negligence or wilful acts/omissions.

- 6.6 There shall not be any rights to indemnification because of the non-fulfilment of obligations or because of delays. If the impediment lasts more than a month, our or our suppliers' businesses are shut down, or a situation of *force majeure* exists, apt Kurvers may withdraw from the agreement.
- 6.7 To the extent it is not expressly precluded from doing so, apt Kurvers shall be entitled to carry out partial deliveries, if these are not unreasonable for the customer. Call-off orders and specifications for separate partial deliveries must be submitted as much as possible over uniform periods and for uniform quantities, and on time, so that the goods can be produced and delivered according to the rules and within the contractually agreed periods.
- 6.8 If the call-off orders and specifications are not provided as contractually agreed or on successive call-off dates despite written demands, apt Kurvers may, after three months has lapsed, itself determine the quantities and dates of the partial deliveries within an appropriate period, with the statutory indemnification and cancellation rights remaining in full force.
- 6.9 The good shall be considered delivered upon delivery or – if an inspection has been agreed on under Article 4 – after acceptance by the customer.
- 6.10 In the event of insignificant defects, particularly those which do not or hardly affect the envisaged use of the good, the good shall be deemed to have been accepted notwithstanding these defects. apt Kurvers shall correct such defects as soon as possible.

7. Infringement of third-party rights

- 7.1 If an order needs to be executed according to the customer's designs, drawings, samples or other instructions, it shall warrant that this shall not infringe any intellectual or industrial property rights or other rights of third parties.
- 7.2 If deliveries are made based on the customer's drawings, samples or other information and this infringes third-party patent, trademark, design or other rights, the customer shall be liable towards apt Kurvers for the resulting damage and lost profit. apt Kurvers need not ascertain whether there any indemnification rights from third parties.
- 7.3 The customer shall indemnify apt Kurvers against any claims by third parties on account of infringement of their intellectual or industrial property rights or other rights entailing compensation or not.

8. Liability

- 8.1 Subject to the provisions below, apt Kurvers's liability shall in principle be limited to fulfilment of the warranty obligations described in Article 5. If contractual warranties are breached, the scope of liability shall remain limited, however, to compensation of the foreseen damage characteristic of the agreement.
- 8.2 Unless apt Kurvers has been guilty of gross negligence or wilful acts/omissions, it shall not be liable for any direct or indirect damage, in any event including, but not limited to, lost profits or damage resulting from liability towards third parties.

- 8.3 apt Kurvers shall not be liable for:
- infringements of patents, licences and/or other third-party rights resulting from the use of information furnished by or on behalf of the customer;
 - damage or loss, whatever the cause, from raw materials, semi-finished products, models, tools and so forth provided by the customer.
- 8.4 The customer must indemnify apt Kurvers against and compensate it for any third-party claims for compensation of damage for which this agreement precludes liability on apt Kurvers's part towards the customer.

9. Retention of title

- 9.1 Title to the goods delivered shall not be transferred to the customer until the customer has fully paid apt Kurvers all amounts, including interest and costs, owed to apt Kurvers for deliveries or work.
- 9.2 Until full payment has been made, the customer may not grant use of the items or the replacement items, as stated below, to third parties or rent these out, pledge them, transfer ownership of them, or otherwise dispose of or encumber them. In connection with its normal business operations, however, the customer may sell or deliver the items to third parties consistent with their intended use.
- 9.3 apt Kurvers may take possession of the goods delivered subject to the retention of title if the customer has not, or not fully and/or timely, fulfilled its obligations towards apt Kurvers or if there is a reasonable fear to assume that the customer will not, or not fully and/or timely, be able to fulfil its obligations towards apt Kurvers. The customer hereby grants us irrevocable and unconditional authorisation to enter its sites and buildings for this purpose.
- 9.4 The customer must properly insure the items, in any event against the risks of theft, damage and destruction. The customer may not pledge to third parties any claims against its insurer under the insurance policies referred to in this paragraph nor have these serve as security (in the broadest sense of the word) for third parties. Benefits regarding damage and loss of the goods referred to in this Article shall take the place of the goods concerned. At apt Kurvers's request, the customer shall provide any assistance desired by apt Kurvers, so that such benefits are paid to us, or create security for us – in the form of a pledge, for example – in respect of such a benefit.
- 9.5 If the goods are related to other goods or are processed – with the processing being performed by us in each instance –, the customer shall provide proper security to apt Kurvers in the form of a pledge on the treated or processed item. If and insofar as the value thereof is less than that of the delivered goods, a similar pledge on the customer's other goods shall be furnished to apt Kurvers for the difference.
- 9.6 If our rights are prejudiced by third parties, through a pledge, for example, the customer must inform us immediately. It shall bear all costs arising for us because of the information.

- 9.7 The customer hereby transfers to us the claims against third parties arising through the sale of delivered goods (treated, processed or otherwise). At apt Kurvers's request, the customer must, if payment is not made, provide information about the assignment to third parties, and furnish us the documents required to assert our rights with respect to an attachment against a third party and provide the necessary information. Until revocation, the customer shall have the right and duty to collect the claims transferred to us. This authority to collect the claims shall also be extinguished without express revocation, if the customer stops making payments.
- 9.8 The security interests accruing to us shall only cover our claims. If the value of the security interests accruing to us exceeds 25% of the claims, apt Kurvers must, at the customer's request, release the security interests exceeding this amount at apt Kurvers's option.
- 9.9 If the customer does not pay when payment is due, apt Kurvers shall be entitled to rescind the agreement, after setting an appropriate deadline, enforce the transferred claims or demand surrender of the delivered or pledged goods and to obtain these, or have these obtained, from the customer at any time. In addition, the customer hereby expressly gives us permission to enter its storage areas with a view to collecting these goods. The customer shall no longer be entitled to hold the goods then.
- 9.10 The customer must reimburse us for any costs arising as a result of our having to take possession again of the separate assets, as well as any other ensuing damage.

10. Payment terms; indemnification

- 10.1 Insofar as no different payment arrangements have been made, our invoices shall be immediately due and payable, and must be paid without deduction within 30 days.
- 10.2 Set-offs, deductions, discounts or suspension of the payment obligation shall not be permissible, unless apt Kurvers has unconditionally and unambiguously acknowledged the counterclaim in writing.
- 10.3 Payment must be made in euros at our offices or to an account in the Netherlands designated by us, unless we have stated in writing that payment should occur in a different currency.
- 10.4 If it exceeds the payment period stipulated by apt Kurvers, the customer shall be in default by operation of law, and apt Kurvers may, without any notice of default, charge the customer interest of 1% per month from the invoice due date, without prejudice to our further rights.
- 10.5 Any legal or other costs to be incurred by apt Kurvers to effect fulfilment of the customer's obligation shall be paid by the customer. These costs shall be fixed at at least 15% of the amount owed, without prejudice to our right to claim the actual damage, if this is higher.

- 10.6 If apt Kurvers demands indemnification from one of our customers because of the non-fulfilment of obligations, apt Kurvers may, instead of claiming the actual ensuing damage, and without proof of damage, demand as compensation 10% of the fee to which we would have been entitled if the agreement had been performed.
- 10.7 The customer may show that there has not been any damage or that the damage is substantially smaller in scope.
- 10.8 apt Kurvers reserves the right to demand documentary credit or another proper type of payment (or other) guarantee or, in the case of outstanding invoices as well, security from the customer, all of this solely at our discretion.
- 10.9 Bills of exchange shall only be accepted in accordance with previous agreements and to pay off debts, and subject to the option of discounting.
- 10.10 If payment occurs through bills of exchange, cheques or other payment transfer documents, the customer shall pay the discounting and collection costs, unless expressly agreed otherwise.
- 10.11 If the customer is more than two months in arrears with regard to paying a substantial portion of our claims, all our outstanding claims shall become immediately due and payable in cash, without being subject to collected bills of exchange.
- 10.12 The customer may no longer sell the items which are our exclusive property and must surrender these to us upon request. Third-party *in rem* rights shall not be affected by such surrender. The customer must keep separate cash payments regarding claims transferred to us and pass these on to us immediately or pay the proportional amounts from postal order and bank balances to us.

11. **Suspension and rescission**

- 11.1 If the agreement cannot be performed because of a situation of *force majeure*, apt Kurvers may, without court intervention, either suspend performance of the agreement for at most six months or rescind the agreement in whole or in part, without being obliged to pay any compensation. During the suspension, apt Kurvers may, and, at the end of the suspension, must, perform the agreement or rescind it in whole or in part.
- 11.2 In the event of suspension or rescission pursuant to paragraph 1, apt Kurvers may demand immediate payment for the value which may reasonably be ascribed to the raw materials, materials, parts and other items reserved, treated or produced by it to perform the agreement. In the event of rescission pursuant to paragraph 1, the customer must, after paying the aforementioned compensation, take possession of the items, failing which apt Kurvers shall be entitled to store or sell these items at the customer's expense and risk.
- 11.3 For purposes of this Article '*force majeure*', shall mean circumstances which prevent apt Kurvers from completely or partly fulfilling the obligation and which cannot be attributed to apt Kurvers. This shall include strikes, fire and other disruptions in apt Kurvers's business, as well as any hindrance which is not solely within apt Kurvers's control, such as non-delivery or non-timely delivery of items or services ordered in a timely and proper manner.

- 11.4 If the customer does not, or does not properly or timely, fulfil any obligation ensuing for it from the agreement, or if there is a reasonable fear that the customer cannot or will not be able fulfil such an obligation, as well as in the event of liquidation (or a request for this), suspension of payments (or a request for this), placement of the customer under guardianship or stoppage, dissolution or winding-up of its business, or a similar measure under foreign law, the customer shall immediately be in default by operation of law, and we may, at our discretion, without any obligation to pay compensation and without prejudice to our other rights, rescind the agreed in whole or in part, or suspend further performance of the agreement by us, without any notice of default or court intervention being required. In such situations, we may also seek immediate payment of the amounts to which we are entitled.
- 11.5 Under the same conditions, apt Kurvers shall be entitled at any time to inspect the customer's warehouse, to remove the goods belonging to us or pledged goods through sale by execution minus payment for use and to safeguard them at the customer's expense in a manner deemed suitable by us, and to prohibit the resale of goods belonging or pledged to us.
- 11.6 In addition, apt Kurvers may in such cases utilise the goods as well as possible while safeguarding our interests, without having to comply with the regulations concerning the use of pledged goods.
- 11.7 In addition, apt Kurvers may in such cases utilise the goods as well as possible while safeguarding our interests, without having to comply with the regulations concerning the use of pledged goods.
- 11.8 In the event of suspension pursuant to paragraph 4, the agreed price, minus instalments already paid and costs saved by apt Kurvers as a result of the suspension, shall become immediately due and payable, and apt Kurvers shall be entitled to store, at the customer's expense and risk, the raw materials, materials, parts and other items reserved, treated or produced by it to perform the agreement. In the event of rescission pursuant to paragraph 4, the agreed price, minus instalments already paid and costs saved by apt Kurvers as a result of the suspension, shall – if there has not been any suspension prior to this – become immediately due and payable, and the customer must pay the aforementioned amount and take possession of the items included in it, failing which apt Kurvers shall be entitled to store or sell these items at customer's expense and risk.

12. General

- 12.1 Unless it receives prior written permission from apt Kurvers, the customer may not transfer in whole or in part to third parties the rights and obligations ensuing from agreements to which these Terms and Conditions apply.
- 12.2 Article numbers in the agreement concluded between the parties and these General Terms and Conditions have only been included for reference purposes and shall not determine, limit or expand the substance or interpretation of these Terms and Conditions in any manner. They shall not be part of these Terms and Conditions for any purpose whatsoever.
- 12.3 If one or more provisions of these General Terms and Conditions turn out to be invalid, or specific performance of these cannot be claimed for any reason whatsoever, the other provisions of these General Terms and Conditions shall remain in full force, and, with respect to the invalid provision or provision for which specific performance cannot be claimed, the parties shall consult with each other on the manner in which the tenor of the provision in question can be carried out best.

- 12.4 Any disputes based on or in connection with the quotes and/or offers issued by apt Kurvers and/or agreements concluded with apt Kurvers shall be exclusively decided first by the District Court in Roermond, the Netherlands, subject to the jurisdiction in Sub-District Court cases.
- 12.5 Any disputes between the parties concerning intellectual property rights shall be exclusively decided first by the District Court in The Hague, the Netherlands, subject to the jurisdiction in Sub-District Court cases.
- 12.6 Dutch law shall solely apply to all our offers, quotes, these General Sales Terms and Conditions, agreements and any obligations ensuing from these. The Vienna Sales Convention 1980 – and any other international sales conventions – shall not apply.