

1. SCOPE OF APPLICATION

The following terms and conditions of sale and delivery of SAPA ("Terms of Sale") shall apply exclusively for companies, legal persons under public law or special funds under public law within the meaning of Section 310 para. 1 BGB [German Civil Code].

Any and all quotations, order confirmations and other transactional declarations made by SAPA shall be subject to the exclusive applicability of these Terms of Sale for the sales contract concluded with the customer. Any general terms and conditions of the customer shall not apply, even if the customer refers to those in its purchase order or otherwise in connection with a purchase order. Deliveries by SAPA are made exclusively on the basis of these Terms of Sale.

2. QUOTATIONS AND ORDERS

SAPA's quotations shall be subject to confirmation. Contracts with SAPA shall not be deemed to have been concluded until purchase orders placed by the customer have been accepted or confirmed by SAPA in writing. Amendments and additions to contracts must be made in writing to be effective.

SAPA's quotations, order confirmations and deliveries are based on the customer specific requirements (CSRs) known to and accepted by SAPA. The customer is responsible to communicate any changes in its CSRs to SAPA. These become effective only after written confirmation.

3. PRICES AND PAYMENT TERMS

Unless otherwise agreed in writing, all prices are ex works ("EXW" according to Incoterms 2010) and exclude delivery cost and all statutory sales, value added or similar taxes, except for taxes on SAPA's income. For SAPA's products the prices shall be including simple customary packaging; for specific packaging (e.g. containers) additional fees will be charged.

Unless otherwise agreed in writing, all prices are based on metal prices (LME and metal premium) which will be adjusted monthly based on the values paid by SAPA to its suppliers.

Unless otherwise agreed, payments shall be due without deduction thirty (30) days after the date of invoice. In the event of a significant deterioration of the customer's financial situation, or if the customer does not meet its payment obligations to SAPA in due time, SAPA reserves the right to amend these payment terms, in particular to request advance payment or appropriate collateral securities.

SAPA shall be entitled to charge default interest in the amount of ten percent (10%) p.a. above the respective base rate in accordance with Section 247 BGB and to suspend further deliveries and/or services, if payment of an invoice has not been effected on the due date. SAPA's right to claim higher damages shall remain unaffected.

The customer shall only have a right of set-off if its counterclaims are legally ascertained (*rechtskräftig*) or undisputed. The customer shall only be entitled to exercise a right of retention if its counterclaim is based on the same contract.

4. DELIVERIES

If delivery dates or times have been confirmed by SAPA in writing within the scope of a purchase order, SAPA shall take all appropriate steps to deliver the products on the date indicated. The delivery dates indicated presume that any and all commercial and technical details are clarified and that all certificates required at the time of acknowledgement of the purchase order are available; they are extended accordingly in case of delays.

Delivery prior to an agreed delivery date is always allowed. A delivery delay shall be established in accordance with the statutory provisions; provided, however, that a reminder note by the customer shall always be required. In case of a delivery delay caused by SAPA non-intentionally or gross-negligently and exceeding a grace period of one week, SAPA shall be liable for liquidated damages of 0.5% of the price of the delayed products per additional completed week of delay, not to exceed a total

maximum of 5% of the price of the delayed products. Further claims for damages shall be excluded.

SAPA reserves the right to deliver products in more than one consignment and to invoice each consignment separately. Furthermore, SAPA shall be entitled to exceed or fall short of the agreed delivery quantity by up to 10%.

If the customer does not accept delivery of the products at the agreed site or within the agreed period, SAPA shall be entitled, in its sole discretion, to withdraw from the contract or demand immediate payment for the products. In the latter case, SAPA will store the products at the expense and risk of the customer. The same shall apply if, in case of a frame agreement or call-off sale, the products are not called off within the agreed time period. Further claims for damages by SAPA shall remain unaffected.

5. RETENTION OF TITLE

Title to delivered and/or installed products (~~retained products~~) shall remain vested in SAPA and shall not pass to the customer until all claims of SAPA arising under the contract or the business relationship with the customer now and in the future, irrespective of the legal basis, have been fulfilled. This shall also apply to all future deliveries, even if SAPA does not expressly refer hereto. The customer shall keep the retained products in proper condition, store them separately and mark them as the property of SAPA.

The customer shall be entitled to resell, process, mix or combine and subsequently sell the retained products in the ordinary course of business. Any pledging or assignment of retained products as collateral security is not permitted. Any processing or alteration of the retained products shall be effected in the name and on behalf of SAPA. If retained products are combined or mixed with other products not belonging to SAPA, SAPA shall acquire co-ownership in the new products according to the ratio between the invoice value of the retained goods and the value of the new products. New items generated from the processing shall be deemed to be retained goods within the meaning of this provision.

The customer shall assign to SAPA in advance, as collateral security, all of its claims in connection with the resale, as well as any claims against its insurer, in the amount of SAPA's co-ownership ratio. In case the retained products are exported, the customer shall also assign all those claims to SAPA which are due to the customer or will be due to the customer in the future against domestic and foreign banks in connection with the export, in particular claims arising from collection orders, from letters of credit as well as from sureties and guarantees. If the customer sells retained products together with other goods not belonging to SAPA (without or after processing), claims shall be deemed assigned to SAPA in the amount of the invoice value of such retained goods. Despite the assignment, the customer shall be authorized and obliged to collect claims arising from the resale as long as SAPA has not revoked this authorisation. The customer shall pay any amounts collected promptly to SAPA, up to the amount due. At the customer's request, SAPA shall re-transfer the property rights in the retained products and any claims assigned to SAPA to the extent to which their value exceeds the value of all claims of SAPA against the customer by more than 20%.

6. WARRANTY / NOTICE OF DEFECTS

Any warranty claims by the customer are conditional upon the customer having fulfilled its duties of examination and notification of defects in accordance with Section 377 HGB [German Commercial Code].

SAPA warrants only that, at the time of delivery, the products shall conform to the agreed specifications and rejects any liability for the fitness of the products for a particular purpose or the use intended by the customer, in particular for the correctness of the construction.

By derogation from Section 438 para. 1 no. 3 BGB, the limitation period for warranty claims shall be twelve (12) months after delivery of the products. Any special regulations for recourse claims pursuant to Section 479 BGB, in case of fraudulent intent (Section 438 para. 3 BGB) and product liability claims remain unaffected.



Should the products delivered have a defect that already existed at the time of the passing of risk, SAPA shall . subject to a notice of defect (*Mängelrüge*) in due time . repair or replace the products at SAPA's discretion; the customer must always surrender the defective products to SAPA for examination purposes and grant SAPA an opportunity to cure the defect within a reasonable period of time; in case of complex products, the customer shall grant SAPA at least two attempts to cure the defect within a reasonable period of time; the cure (*Nacherfüllung*) shall neither include the disassembly of the defective products nor their re-installation. Any rights of recourse shall remain unaffected by this provision. If the cure fails, the customer may withdraw from the contract or reduce the purchase price. Further claims for damages for defects shall be excluded, unless such claims are based on intent and/or gross negligence or personal injury.

Warranty claims shall be excluded where the deviation from the agreed specifications is insubstantial, where the usability is not substantially impaired, in case of natural wear and tear, as well as in case of damages arising after the passing of risk due to improper handling, processing or storage, unless the customer can prove that the defect has not been caused by such circumstances.

The customer shall promptly notify SAPA of any defects and shall return defective products to SAPA. Products returned to SAPA must be packed, shipped and insured appropriately. SAPA shall bear the costs for the examination, the repair or replacement, the shipment and insurance, unless SAPA can prove that a returned product was not defective.

Any products delivered by SAPA as samples or for testing purposes are delivered as isq without any warranty, and SAPA disclaims any warranty or liability for such products. SAPA's product warranty applies only after both Parties have declared that a product has entered the state of series production readiness (*Serienreife*).

7. TOOLS AND INTELLECTUAL PROPERTY RIGHTS

Unless otherwise agreed in writing, production tools manufactured by SAPA for the production of the products shall remain the property and in the possession of SAPA, even if the customer has paid the costs in whole or in part. SAPA shall not surrender tools manufactured for customers to third parties and shall not use them for any other customers. Three years after the last production with tools manufactured by SAPA, SAPA shall be entitled to destroy the relevant tools without prior notice.

SAPA does not warrant that products manufactured according to the customer's specifications do not infringe intellectual property rights of third parties (including, but not limited to patents, trademarks, copyright, trade secrets or other similar protective rights); in this regard, SAPA shall have no duty of examination. SAPA shall not be liable in case of the infringement of intellectual property rights which is owned by the customer or which results from specifications provided by the customer, modifications or alterations made by the customer, or from the combination of products with third party products not delivered by SAPA.

8. LIMITATION OF LIABILITY

SAPA's liability for delivery delays is determined exclusively in clause 4 above. In all other instances of contractual or non-contractual liability arising from or in connection with the conclusion and performance of a contract concluded on the basis of these Terms of Sale, SAPA shall be liable only as follows:

a) In the event of intent, claims under the product liability act (if applicable) and bodily injury, SAPA shall be liable in accordance with the statutory provisions.

b) In the event of gross negligence, liability shall be limited to typical and for SAPA foreseeable damages unless such damages are caused by directors or officers of SAPA or a significant contractual obligation (*wesentliche Vertragspflicht*) is breached.

c) In the event of negligence, SAPA shall only be liable if a significant contractual obligation has been breached or in case of delay or impossible performance (*Unmöglichkeit*) for which SAPA is responsible. In such events, liability shall be limited to typical damages foreseeable for SAPA at the time of the conclusion of the contract.

d) If guaranteed characteristics (*zugesicherte Eigenschaften*) are lacking, in case of initially impossible performance (*anfängliche Unmöglichkeit*) or impossibility occurring during delay, liability shall be limited to typical damages foreseeable for SAPA at the time of the conclusion of the contract.

e) In any event, liability under paragraphs b) to d) above shall be limited to an amount equal to the respective order/contract value. The customer shall notify SAPA expressly and in writing if the typical and foreseeable damage exceeds such an amount.

9. GENERAL PROVISIONS

a) SAPA reserves the right to transfer these Terms of Sale and any contracts concluded hereunder, together with all rights and obligations, to an affiliated company (within the meaning of Section 15 AktG [German Companies Act]). The customer hereby consents to such transfer. After such a transfer has taken place, the customer shall be notified by one of the companies involved.

b) These Terms of Sale, as well as any contracts concluded hereunder, shall be governed by and construed in accordance with the laws of Germany. The United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply to or govern these Terms of Sale or any contracts concluded hereunder, including the performance thereof or any dispute arising therefrom.

c) The parties shall initially present any disputes or disagreements to the management of SAPA and of the customer who shall meet in person and endeavour to amicably settle such dispute within thirty (30) days. Should an amicable settlement not be possible, the courts competent for the defendant's business address shall have sole and exclusive jurisdiction.

d) Both the customer and SAPA agree to treat any and all information related to SAPA's or the customer's products, as well as their business activities and prices, confidential and treat them at least with the same care with which they treat and protect their own confidential information.

e) In the event the customer exports products or technical data obtained from SAPA, the customer guarantees the compliance with all export control rules of the relevant countries.

f) Amendments and additions to these Terms of Sale, as well as to any contracts concluded hereunder, must be made in writing to be effective. This shall also apply to any waiver of the written form requirement. Should any of the provisions of these Terms of Sale be or become invalid or be found invalid by an authority or a court competent to decide thereon, then all other provisions of these Terms of Sale shall remain in full force and operative, and said invalid provision shall be replaced by a valid provision which comes as close as possible to the economic purpose of the original provision.

place, date _____
 company _____
 name, function _____
 signature _____

Remscheid, _____
 Sapa Precision Tubing Remscheid GmbH

