

## General Terms and Conditions of Sale and Delivery of Angst+Pfister B.V. (Version 2010, 1.1)

### 1. Scope of Application, Quotations

1.1 The General Terms and Conditions of Sale and Delivery herein shall apply to all contracts of purchase and delivery, hereinafter referred to as "the Contracts", concluded between Angst+Pfister B.V., hereinafter referred to as "the Seller", and its customers, hereinafter referred to as "the Buyer", except where otherwise agreed. In any and all other cases these General Terms and Conditions shall take precedence over any and all alternatively worded terms and conditions supplied by the Buyer.

The Buyer shall be deemed to accept the applicability of these General Terms and Conditions also with respect to the offers subsequently made to him by the Seller, the instructions given by him to the Seller and the contracts entered by him with the Seller.

The Seller shall be entitled to alter these General Terms and Conditions. Alterations to the General Terms and Conditions herein enter into force on the announced date of entry into force and in the absence thereof on the date that the Buyer has been informed of the alteration or the date that this has been made known to him.

1.2 A quotation shall only constitute a binding offer after confirmation thereof in writing by the Seller.

1.3 The documents and data as to its nature and characteristics forming part of the offer do not constitute undertakings or warranties and shall only be binding after express confirmation thereof in writing by the Seller.

1.4 Discrepancies between the items supplied and the Customer's specifications shall be permitted as allowed for in the technical standards confirmed by the Seller in writing.

1.5 The mere making of an offer by the Seller shall not bind the Buyer, unless the Seller has expressly stated otherwise in writing. All offers are based and estimated on the assumption that the contract to be concluded by the Seller in accordance with this offer can be carried out under normal circumstances and during regular working hours. A contract shall only be deemed to be concluded, if and in so far the Seller accepts an order of the Buyer in writing or if the Seller has started the performance thereof.

The Buyer shall be obliged to timely notify the Seller in writing of any possible significant changes

with respect to the execution of an order given. The order which is subject to such a change shall be regarded as a new order, which will only result in a contract with the Seller if the Seller accepts this order in writing. In the event of non-acceptance of the new order by the Seller, the original order shall be cancelled, and mutual obligations to undo are created for the performance already carried out, if any. The Seller shall be entitled to charge the Buyer for the additional costs involved with a change in the execution.

The Buyer shall not be entitled to withdraw an order already given for the delivery of goods, except in the event that the Seller has given its explicit permission thereto in writing. In the event that the Seller accepts the cancellation of an order given for the delivery of products, the Seller shall remain entitled to the down payment already made and/or shall be entitled to charge costs incurred, if any. With due observance of the other terms stipulated in this article, the Seller shall only be bound by advice, calculations, notifications and specifications provided the Seller with respect to capacities, results and/or performance to be expected of the goods to be delivered by or work to be carried out by the Seller if and in so far such data have been included in the Seller's written order confirmation or constitute part of the written contract separately concluded between the Buyer and the Seller.

### 2. Prices

2.1 Prices shall not be binding unless confirmed by the Seller in writing, and, except where otherwise agreed, shall be exclusive of Dutch value-added tax, freight, postage and packaging.

2.2 In order to partially offset the order handling costs on invoices with a value below EUR 200.00 a surcharge will be applied, except where otherwise previously agreed or when the order is placed through our APSOparts® online shop.

2.3 Orders shall be placed in writing (email, fax, letter). If so agreed, the Buyer may place an order via an electronic marketplace. Any costs charged by the marketplace provider shall be borne by the Buyer. Orders placed through electronic document interchange (EDI) require joint agreement.

### 3. Terms of Payment

3.1 Invoices shall be payable within 30 days of the date of invoice, without any deduction, except where otherwise agreed in writing.

3.2 Any discount agreed upon shall always relate to the invoice amount excluding Dutch value-added tax, freight, postage and packaging.

3.3 The value date shall be the criterion by which the adherence to the payment period and entitlement to a discount are assessed.

3.4 If the payment period is not adhered to, the Seller shall, without demand for payment, be entitled to charge a default statutory commercial interest rate in accordance with Article 6:119a Dutch Civil Code to be increased by EUR 17.50 administrative costs, from the date on which payment is due.

3.5 Failure to comply with the payment conditions shall, without prejudice to his other rights, entitle the Seller to suspend subsequent deliveries. In addition, the Seller shall be entitled, if there is a well-founded assumption that the Buyer will fail to fulfil a material part of his obligations, to demand payment in advance for further orders.

3.6 Claims by the Buyer which are contested by the Seller or which have not been legally confirmed shall not entitle the Buyer to defer or offset payment. If the Buyer believes that he can enforce a claim arising from the contract concluded with the Seller, it shall not release him from his obligation to pay in the agreed manner and he shall not be entitled to defer his obligation to pay. Payments made by the Buyer shall first be applied to pay the interest and costs due, if any, and subsequently, to pay the exigible invoices that are outstanding the longest, also if the Buyer states that the payment made refers to an invoice of a later date.

3.7 Title to all things delivered by the Seller is expressly retained by the Seller until payment in full has been made of all his claims, including possible interest and costs due in this respect, pursuant to contracts to deliver goods and the performance of related work. The Buyer may also dispose of the things subject to retention of title within the context of his ordinary course of business. In that case the Seller's title shall not lapse until the things in question have been delivered to a third party. The Buyer undertakes to place the non-paid things at the Seller's disposal on first demand and shall

grant irrevocable authorization to the Seller or the person or persons designated by the Seller to enter the place where these things are stored in order to repossess these things and to store these in warehouses of the Seller's choice. As security for the payment of any and all amounts due by the Buyer at any time, the Seller shall have the right of retention and the right of pledge to all the Buyer's things which the Seller retains possession of or will acquire at some time in the future.

### 4. Deliveries

4.1 Any and all Contracts are subject to the EXW (Ex Works) delivery conditions (in accordance with ICC Incoterms 2000), except where agreed otherwise.

4.2 Delivery dates shall be considered to have been complied with if the item to be supplied has been handed over to the forwarding agent/carrier before the delivery date has expired.

4.3 In the case of events caused by force majeure which are outside the Seller's influence, the delivery dates shall be extended by a specific time. This shall also apply if these circumstances affect suppliers. The Seller shall notify the Buyer of such circumstances without delay. If performance of the Contract should become unreasonable for either of the two Parties for the reasons mentioned hereinbefore, the Party may terminate the Contract.

4.4 Returns for which the Seller cannot be held liable shall be charged to the Buyer.

4.5 The Seller shall be permitted to carry out partial deliveries, except where otherwise agreed. Delivery of up to 10% more or less than the quantity agreed upon shall be permissible.

4.6 If the delivery is delayed for reasons for which the Buyer is responsible, or if the Buyer refuses to take delivery, the Seller reserves the right to store the items at the Buyer's risk and expense.

4.7 The Seller shall supply the Buyer in accordance with ISO 9001:2000 certified processes. Additional demands of the Buyer must be separately agreed in writing.

4.8 Delivery dates specified or agreed by the Seller are approximate only and are never firm dates, except where parties have expressly otherwise agreed in writing. The Seller shall never be in default by the mere expiry of the delivery date. The Seller makes every effort that can reasonably be

required in order to be able to deliver on the specified or agreed date. Except in case of gross negligence or intent, exceeding a delivery date shall not give the Buyer the right to claim any damages, to refuse the product, to fail to comply with or to suspend obligations arising from a contract concluded with the Seller, or to set aside or partially set aside this contract.

Only in the event that a delivery date, which has been explicitly agreed in writing and expressly specified as firm date, has been exceeded by the Seller, the Buyer shall be entitled to claim damages. The damages referred to hereinbefore shall never exceed the price agreed upon before the delayed performance.

## **5. Warranty, Liability**

5.1 The Seller undertakes to execute the order in accordance with the Contract and to fulfill his warranty obligations. Products supplied by the Seller are subject to a warranty period of one year, unless a different warranty period has explicitly been incorporated in writing. In derogation of the foregoing, natural rubber shall be subject to a warranty period of six months.

The Buyer shall not be entitled to any claim under any warranty explicitly given by the Seller in writing if, in accordance with the contract, the Seller has delivered used products, if the goods delivered have been processed according to the Buyer's instructions, if the Buyer has used the delivered products for another purpose than for which these goods were destined or if the Buyer has handled or used the products in another negligent manner. Nor is there any warranty with respect to the normal wear and tear. If the products delivered have been previously used by third parties, the normal wear and tear with respect to the previous use thereof shall be included. Any further liability with respect to the Buyer for any loss or damage (direct or consequential, indirectly or directly) shall, to the extent permitted by law, be expressly excluded.

5.2 The Seller's products shall be inspected in accordance with ISO 2859 AQL (Acceptance Quality level) 2,5/Checl Level S3, except where otherwise agreed.

5.3 Complaints shall be reported in writing immediately upon taking delivery of the goods, or at the latest within eight days of receipt thereof. Complaints regarding any hidden defects shall be reported in writing immediately after discovery, or at the latest within three months of the receipt of the goods. If the complaint has not been filed in due

time, all warranty claims shall lapse. The Seller's warranty shall be limited to manufacturing or material defects, which he may rectify either by repair or replacement. Any claim of the Buyer to damages, annulment of the Contract and/or a reduction of the purchase price shall be expressly excluded. Should the Seller not be able to replace the goods or should the Seller refuse to do so, the Seller shall reimburse the purchase price.

5.4 The Seller shall not be held liable for any loss or damage during shipment of goods. Any claims for such loss or damage shall be addressed direct to the carrier delivering these goods.

## **6. Restriction of liability, Limitation of claims**

6.1 Under no circumstance shall the Seller be liable for lost profit and consequential loss or damage. Also excluded is any liability with respect to the Buyer for direct or consequential loss or damage resulting from any cause whatsoever, even those which are the result of his own actions or the actions of the Seller's employees – with the exception of gross negligence or intent on the part of the Seller's managing directors – and any claim of the Buyer for annulment or dissolution of the Contract. The Buyer indemnifies the Seller against all claims of third parties pertaining to acts or omissions on the part of the Seller or his employees with respect to the performance of the obligations arising from a contract or faulty delivery. This also applies with respect to third parties, if any – such as suppliers and/or manufacturers - who are engaged by the Seller in fulfilling the obligations arising from a contract. In so far the failure on the part of the Buyer to comply with his contractual or statutory obligations results in the fact that the Seller is held liable with respect to third parties, the Buyer shall indemnify the Seller against all consequences arising from this liability. The Buyer shall be liable for all loss or damage, including lost profits, costs and interest, which the Seller or third parties through the Seller may sustain as a consequence of a failure or wrongful act on the part of the Buyer.

6.2 Unless otherwise agreed, any contractual claims which the Buyer is entitled to with respect to the Seller in connection with the delivery of the goods shall be barred one year after the goods have been delivered to the Buyer. This limitation period shall also apply to such goods which, according to their normal purpose of use, have been used for construction work and which have caused defects to this construction; this purpose of use is deemed to be agreed in writing. This

limitation period shall not apply to the Seller's liability resulting from breaches of contract caused by gross negligence and wrongful intent; neither shall it apply to any statutory rights to recourse. In cases of replacements, the limitation period shall not start again.

## **7. Copyrights, Patent rights and Trademark rights**

7.1 The Seller reserves ownership of and copyright in offers, designs, drawings and other documents; these shall be made accessible to third parties only with the Seller's agreement. Drawings and other documents forming part of offers shall be returned on request.

7.2 If the Seller delivers goods in accordance with drawings, models, test parts or other documents supplied by the Buyer, the Buyer shall warrant that these do not infringe the intellectual property rights of third parties. If, by relying on intellectual property rights, a third party forbids the manufacture and delivery of such goods, the Seller shall be entitled – without being obliged to verify the legal position – to discontinue any further activity in this respect and to claim damages if the Buyer is at fault. In addition, the Buyer undertakes to indemnify the Seller in respect of all claims by third parties in connection with an infringement of their rights.

## **8. Test parts, Moulds, Tools**

8.1 If the Buyer has to provide test parts, moulds or tools for the execution of the order, these shall be supplied in due time, free of charge and defect, to the production site in the agreed quantities, or else with a sufficient additional quantity for potential rejects. If this is not done, all costs caused thereby and other consequences shall be borne by the Buyer.

8.2 The production of test parts, including the costs for moulds and tools shall be borne by the Buyer, except where otherwise agreed in writing.

8.3 The property rights in the moulds, tools and other devices required for the production of parts ordered shall depend on the Contracts in question. If the moulds, tools or devices become unusable prior to completion of the order, the costs necessary for replacement shall be borne by the Seller.

8.4 With respect to tools, moulds and other devices provided by the Buyer, the Seller's liability shall be limited to the same care as exercised in own

matter. Costs for maintenance and servicing shall be borne by the Buyer. The Seller's obligation to keep the same shall expire – regardless of the property rights of the Buyer – at the latest two years after the last manufacture from the mould or tool.

## **9. Concluding terms and conditions**

9.1 Amendments of and additions to these terms and conditions shall be done in writing. The same shall also apply to any waiver of the requirement for the written form.

9.2 Contracts and the individual rights and obligations arising there from may only be passed on subject to the approval of the other contracting party.

9.3 Unless the Contract specifically provides otherwise, the place of performance for all due deliveries and performances agreed upon shall be the place where the Seller has its registered office.

9.4 If, on whatever grounds, one or more stipulations of these General Terms and Conditions of Sale and Delivery are or become ineffective either in whole or in part, the other stipulations shall continue to apply unimpaired. If such is the case, the Contracting Parties undertake to agree on replacement stipulations which represent as closely as possible the non-binding stipulations.

9.5 Any and all Contracts shall exclusively be governed by Dutch law, to the exclusion of the 1980 United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention).

9.6 The competent court in The Hague shall have exclusive jurisdiction with respect to all disputes arising from or in connection with the Contracts and/or these General Terms and Conditions of Sale and Delivery.