

**AP AMERICAS INC.**  
**TERMS AND CONDITIONS OF SALE**  
**[Version 1.2 / June 2016]**

**1. Contract of Sale.** AP Americas Inc. ("AP") sells its products only on these terms and conditions and such additional or different terms or conditions as are stated in AP's offer to the customer or AP's order acknowledgment. Any terms or conditions contained in the customer's order or in any other communication from the customer which are inconsistent with or in addition to these terms and conditions or those stated in AP's offer or acceptance of the customer's order are automatically rejected and will not become part of any contract of sale, unless specifically accepted by AP in writing. AP's failure to object to any such inconsistent or additional terms or conditions of the customer will not constitute AP's acceptance of the customer's terms or conditions or a waiver of any of AP's own terms or conditions.

An offer by AP to sell remains valid and capable of acceptance by the customer for 30 days from issuance. A customer's purchase order based on an offer by AP confirms the customer's acceptance of these terms and conditions and of such additional or different terms as are stated in AP's offer. A customer's purchase order that is not based on a sales offer by AP will become binding on AP and create a contract only upon AP's written acceptance of the customer's order. AP will respond promptly to any such purchase order, but AP's failure to do so may not be construed as an acceptance.

**2. Delivery.** Orders must specify delivery no later than 120 days after the date of the order. Shipment will be by common carrier selected by AP, unless otherwise requested by the customer. Delivery will be FOB - DESTINATION. In either case, title and risk of damage or loss will pass to the customer on delivery. Acceptance will be deemed to occur 10 days after delivery or 10 days after completion of installation unless the customer informs AP prior thereto that the products are non-conforming. Partial deliveries are permitted.

AP will make reasonable efforts to meet the customer's requirement as to the time of delivery, but quoted or acknowledged delivery dates are not binding unless expressly accepted as "firm" by AP. If AP does not meet a firm delivery date, the customer may cancel the order but will have no other remedy.

**3. Services.** Any services by AP in connection with the delivery of the products, such as installation, calibration, and testing, will be provided as specified and at the price quoted in AP's offer or order acknowledgment. Site preparation is the responsibility of the customer. AP will provide repair and calibration services on terms and conditions applicable to such services.

**4. Prices.** In AP's published price lists and other general sales materials, prices are quoted FOB - DESTINATION. In AP's offers, prices are generally quoted FOB - DESTINATION Flower Mound, Texas, but may exclude freight and insurance, depending on the type of product. If excluded from quoted prices, freight and insurance will be charged separately. In case of export sales, customs duties, customs clearance and the cost of export documentation will be charged separately. Any sales, use, value added, or similar taxes will be collected by AP if required by law, and otherwise shall be paid by the customer directly to the relevant taxing authority.

**5. Payment.** For customers with approved credit, AP's payment terms are net thirty (30) days from date of invoice. Late payments are subject to a late charge of 1.5% of the contract price per month or any part of a month beginning on the day following the payment due date. Any order for more than US\$ 30,000 requires a down payment of 30 percent of the contract price, which will be non-interest bearing.

AP has the right to modify the payment terms after acceptance of an order if, in AP's opinion, the payment record or financial condition of the customer warrants, or if AP has otherwise reason to feel insecure about receiving payment.

The customer may not refuse or reduce payment due to any dispute about the conformity, condition, performance, or functioning of the products delivered, or any warranty claim, or any other dispute with AP, whether in connection with the sale of the products or for any other reason.

**6. Security Interest.** AP reserves a security interest in the products sold and their products or proceeds until payment in full. AP may perfect its security interest by any necessary filing in public registers. The customer irrevocably appoints AP as its agent to make such filings and shall cooperate with AP to perfect or document its security interest as may be required by law.

**7. Rescheduling.** A request to reschedule or cancel an order must be in writing. AP will honor a request to reschedule if it is received no later than 28 days before the contractual delivery date, and may charge a rescheduling fee equal to 12.5 percent of the contract price.

AP will honor a request to cancel an order if it is received no later than 14 days before production is scheduled to commence, and may charge a cancellation fee equal to 28 percent of the contract price.

**8. Returns.** A request to return a product must be in writing. Except for customized products which cannot be returned, AP will honor a return request if it is received no later than 10 days after delivery, and may charge a restocking fee equal to 20 percent of the contract price or \$700, whichever is higher. The customer must follow AP's return instructions, and the product must be returned at the customer's expense in its Destination al unopened packaging.

**9. Excusable Delays.** AP will not be liable for failure or delay of delivery if it is directly or indirectly caused by natural calamities such as fire, flood, storm or earthquake, civil disorder, strikes or shortage of labor, government interference, or other difficulties (whether or not similar to any of the foregoing) beyond AP's reasonable control, or if performance would cause AP unreasonable expense. Delivery will be suspended for as long as any such cause prevents performance, and AP will make and the customer will accept delivery whenever such cause no longer exists. If such cause continues for more than 180 days, the order may be cancelled by either party by written notice to the other party.

**10. Infringement.** AP warrants that its products do not infringe the patent or other intellectual property rights of any third party. The customer's remedies for a breach or alleged breach of this warranty shall be exclusively as set forth in this Section, and all other remedies or liabilities are excluded.

If a claim of infringement is made or, in AP's opinion, is likely to be made, AP may at its expense procure for the customer the right to continue using the product, modify the product to make it non-infringing, replace it with a substantially equivalent non-infringing product, or recall the product and reimburse to the customer the depreciated value of the product after its return to AP.

If any action is brought against the customer based on a claim that AP's product infringes any patent or other intellectual property right of a third party in the United States, AP will settle or defend such action and will pay all damages finally awarded to the customer in such action to the extent that the damages are based on such infringement; provided that the customer promptly gives AP the notice, authority and assistance necessary to effectively defend or settle such action, and provided further that the customer will have complied with any recall of the product. Notwithstanding the foregoing, AP will have no such obligation if the infringement arises from compliance with the customer's specifications, modification of AP's product by the customer, or from a combination of AP's product with products not supplied by AP.

**11. Software.** AP retains any copyright and other rights with respect to any software incorporated in, accompanying, or delivered for use with AP's products, and any accompanying documentation. AP grants to the customer a perpetual, nonexclusive and royalty-free license to use the software on the unit of product with or for which it was delivered. The license may be terminated by AP in case of unauthorized use of the software. Back-up copies of the software may be made for archiving purposes and for purposes authorized by AP in writing, and must bear the same copyright notices as the Destination al. In the event of a transfer of the product by the customer, the license will be automatically transferred to a legitimate transferee, subject to the same conditions as herein stated.

**12. Warranty.** AP warrants that its products are free from defects in material or workmanship under normal use and condition of service. Software is warranted to operate in accordance with its programmed instructions, but is not warranted to be error free. The warranty period is one year from the date of acceptance, unless a different warranty period is stated in the warranty document accompanying the product. AP's warranty will be void if the customer makes any modifications of the product without express authorization by AP.

AP's obligation under this warranty is to repair or replace a product which AP determines to be defective. Products subject to a warranty claim must be shipped to AP at the customer's expense, and the repaired or replaced product will be returned to the customer at AP's expense. Products that have been repaired or replaced may contain remanufactured materials which are equivalent to new in performance and functionality. The warranty period on repaired or replaced products is equal to the remaining warranty period of the Destination al product.

If AP determines that the malfunctioning or defect of the product has been caused by misuse, neglect, accident or abnormal use or conditions of service, the product will be repaired and the customer will be charged for the costs of repair at AP's standard rates.

THE AFORESAID WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, AND THE CUSTOMER'S REMEDIES UNDER THIS WARRANTY ARE EXCLUSIVELY THOSE SET FORTH HEREIN.

**13. Limitation of Remedies and Liability.** WITH RESPECT TO THE PRODUCTS SOLD AND WITH RESPECT TO ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION OF AP OR ANY BREACH THEREOF, THE CUSTOMER'S REMEDIES SHALL BE EXCLUSIVELY AS SET FORTH HEREIN, AND AP'S LIABILITY SHALL NOT EXCEED THE PRICE OF THE PRODUCT WITH RESPECT TO WHICH SUCH LIABILITY ARISES (EXCEPT AS OTHERWISE PROVIDED IN SECTION 10).

IN NO EVENT SHALL AP BE LIABLE FOR ANY LOSS OF PROFIT OR USE, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER BASED ON CONTRACT, WARRANTY, INDEMNITY, TORT, OR ANY OTHER LEGAL BASIS.

**14. Export Restrictions.** AP's products may be subject to export restrictions or end-user certification. The customer will bear any United States export duties and other costs. AP shall be free of any delivery obligation if any necessary export permit or other government approval is denied.

The customer may not export or otherwise transfer any product or technical data received from AP to any country or user to which such transfer is restricted by the law of the United States or any other country, without first obtaining any required governmental license or other form or approval.

#### **15. General.**

The customer may not assign a contract for the sale of an AP product without AP's prior written consent, and any attempted assignment shall be void and without effect against AP.

A decision by AP not to enforce any of its rights or remedies or any delay in such enforcement will not constitute a waiver thereof or preclude such enforcement at a later time or in other circumstances.

If any of the terms or conditions set forth herein or in AP's offer or order confirmation are held to be in violation of law, the remaining provisions will remain in full force and effect, and the parties will seek to replace the unlawful provision with one that approaches it in commercial effect without being in violation of law.

The contract of sale between AP and the customer will be governed by the law of the state where AP's principal office is located and by the law of the United States, without applying any conflict of laws rules. The UN Convention on Contracts for the International Sale of Goods shall not apply to any sale hereunder.

Any dispute arising out of, in connection with, or incidental to the contract of sale between AP and the customer, or the performance or breach thereof, shall be exclusively resolved by the courts in the aforesaid state, and the customer accepts the exclusive jurisdiction of such courts and waives any equitable defenses to such jurisdiction or venue.