

**General Terms and Conditions of Delivery
and related Payment
of AKW A+V Protec Rail GmbH
- effective as of 01.09.2021 –**

1. General

Contracts with our customers (hereinafter referred to as "**Customer**") in regard to all our deliveries, services and offers shall only be concluded on the basis of the following General Terms and Conditions of Delivery and Payment (hereinafter referred to as "**GTC**"), even if we do not expressly refer to them in the future in a continuous business relationship. Upon conclusion of the contract, but at the latest upon acceptance of the delivery or the first partial delivery, the Customer agrees to the exclusive incorporation of these GTC. In case these GTC do not contain a provision, the dispositive statutory law shall apply exclusively. Deviating general terms and conditions of the Customer shall not apply unless we expressly accept them in writing. Any lack of reaction with regard to the incorporation of such deviating terms and conditions shall not be deemed as consent to or acknowledgement of the incorporation of general terms and conditions. Even if we refer to a correspondence containing or referring to the general terms and conditions of the Customer or third parties, this shall not be considered as consent to the incorporation and the validity of such general terms and conditions. If we inform the Customer about our latest GTC these current GTC shall replace any former GTC for all deliveries and services provided by us from that point in time onwards.

2. Conclusion of the Contract, Binding Offers, Contract Amendments

- 2.1. Any of our offers, including those in brochures, advertisements, etc., are subject to change and non-binding, unless we expressly designate the offer as binding. They are invitations to place orders. A contract shall only be concluded when we confirm the order in writing, which constitutes an offer by the Customer. Our order confirmation shall be decisive for the content of the contract. In case of immediate delivery, our confirmation may be replaced by a delivery bill.
- 2.2. The Customer shall inform us in writing in due time before conclusion of the contract of any special requirements for our product. Special requirements of the Customer for our product shall only become part of the contract with our written consent as an express quality agreement (*ausdrückliche Beschaffenheitsvereinbarung*).
- 2.3. We are entitled to procure the pre-material for the entire order immediately after order confirmation, to start production for the order quantity immediately after order confirmation and to manufacture the entire order quantity immediately after order confirmation. Any change requests of the Customer cannot be considered after the order has been placed unless the possibility of changes and a corresponding deadline have been expressly agreed in writing.
- 2.4. The legal relationship between us and the Customer shall be governed solely by the contract concluded in writing, including these GTC. Any oral promises or confirmations prior to the conclusion of the contract shall not be legally binding and any oral agreements between us and the Customer shall be replaced by the written contract. Subsidiary agreements, amendments and additions to the contract shall be agreed in writing. To comply with the requirement of written form, an email is sufficient, provided that the copy of the signed declaration is attached as a scan.

- 2.5. The descriptions and specifications defined at the time of the conclusion of the contract represent the technical standard at that time.
- 2.6. We expressly reserve the right to make changes to the quality of the products within the scope of a contract, provided that these changes
 - 2.6.1. are made on the basis of legal regulations,
 - 2.6.2. represent a technical improvement, or
 - 2.6.3. are not of fundamental natureand the contractual purpose is not significantly impaired.

3. Assignment of Claims

- 3.1. The Customer may only assign claims against us arising from the contract to third parties with our prior written consent.
- 3.2. We are entitled to assign our claims against the Customer arising from the contract to third parties.

4. Pricing

- 4.1. Our prices are Euro prices and are exclusive of packaging, transport, statutory value added tax, and, in the case of export deliveries, customs duties as well as fees and other public charges, unless expressly agreed otherwise.
- 4.2. The agreed prices shall only apply to the scope of services and deliveries specified in the order confirmations or contracts. Additional and special services shall be charged separately.
- 4.3. We reserve the right to unilaterally adjust the prices for further contracts accordingly. If the agreed prices are based on our list prices and the delivery is to be made more than four (4) months after the conclusion of the contract, the list prices valid at the time of delivery shall apply (in each case reduced by any agreed discount).

5. Shipment, Passing of Risk

- 5.1. Unless otherwise agreed in writing, the shipment shall be FCA Hirschau, Incoterms 2020.
- 5.2. In the event of transportation damages, the Customer shall immediately upon delivery, document the damages to the transportation company, in accordance with the respective liability provisions of the transportation company. In the event of hidden damages, the transportation company shall be held liable, immediately after discovery of the damage, in accordance with the respective liability provisions and deadlines.
- 5.3. The risk of accidental loss or accidental deterioration (*zufälliger Untergang oder zufällige Verschlechterung*) shall pass to the Customer when the products are handed over to the Customer, to the forwarding agent (*Spediteur*), to the carrier (*Frachtführer*) or to the companies otherwise designated to carry out the shipment, but no later than when the products leave the place of shipment or are made available to the Customer or a recipient designated by the Customer.
- 5.4. If delivery of the products is delayed because we exercise our withholding right (*Zurückbehaltungsrecht*) in whole or in part, as a result of the Customer's default (*Verzug*) in payment or for some other reason for which the Customer is responsible, or if the Customer is in default of acceptance, the risk shall pass to the Customer at the time we notify the Customer that the products are ready for shipment.

- 5.5. Storage costs after the passing of risk (*Gefahrübergang*) shall be borne by the Customer. In the event of storage carried out by us, the storage costs shall amount to 0.25% of the invoice amount of the products to be stored per commenced week. We reserve the right to claim and prove further or lower storage costs.
- 5.6. The products shall only be insured by us for transport against theft, breakage, transport, fire and water damage and other insurable risks at the express request of the Customer and at the Customer's expense.
- 5.7. In case of return of products, the Customer shall bear the risk until receipt at the agreed place of return.

6. Acceptance (*Abnahme*)

- 6.1. If the requirement of an acceptance has been expressly agreed in accordance with special conditions or is required by law, acceptance shall take place at our registered office at the Customer's expense.
- 6.2. If the products are due for acceptance and the Customer does not accept the products as agreed or required by law, we may notify the Customer regarding a reasonable grace period for the acceptance of the products and point out that the products shall be deemed accepted after expiry of the deadline.
- 6.3. Acceptance may only be refused due to significant defects.
- 6.4. If the acceptance of the products or the shipment is delayed for a reason for which the Customer is responsible, we shall be entitled, after the setting and the expiry of a reasonable grace period, to demand immediate payment of the purchase price or to withdraw from the contract and to claim damages instead of the entire performance, at our discretion.

7. Intellectual Property Rights and Third Party Intellectual Property Rights

- 7.1. We reserve the sole ownership and all rights to all offers made by us as well as to all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and auxiliaries made available to the Customer. The Customer is not entitled to make these items available to third parties, either as such or in terms of content, disclose them, use them himself or through third parties, or reproduce them without our express consent. At our request, these items shall be returned to us in full and any copies made shall be destroyed if they are no longer required by the Customer in the ordinary course of business. The same applies if negotiations do not lead to the conclusion of a contract. The foregoing does not apply to the storage of electronically provided data for the purpose of usual data backup.
- 7.2. If deliveries are made according to documents or other requirements of the Customer and if industrial property rights of third parties are infringed in this context, the Customer shall indemnify us against all claims of third parties. In the event of a breach of contract by the Customer, any existing intellectual property rights of the Customer shall not prevent us from exploiting the products in accordance with the contract.
- 7.3. In the event of infringements of rights by products of other manufacturers, we may, at our discretion, assert our claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. In such cases, claims against us shall only exist if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or is futile, e.g., due to insolvency.

8. Warranty and Liability

- 8.1. In addition to the provisions in clause 5.2, the delivered products shall be inspected carefully immediately after delivery to the Customer or to the third party designated by the Customer. The delivered products shall be deemed to have been approved by the Customer with regard to obvious defects or other defects that would have been recognizable in the course of an immediate, careful inspection, if we do not receive a written notice of defect within seven (7) working days after delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Customer if the notice of defect is not received by us within seven (7) working days after the point in time at which the defect became apparent; however, if the defect was already apparent at an earlier point in time during normal use, this earlier point in time shall be decisive for the commencement of the period for giving notice of the defect. At the Customer's request, a delivery item which is the subject of a complaint shall be returned, considering clause 5.8. In the event of a justified complaint, we shall reimburse the costs of the most cost-efficient shipping route; this shall not apply insofar as the costs increase because the delivery item is located at a place other than the place of intended use.
- 8.2. In the event of justified complaints, the Customer shall be entitled to rectification of the defects at first priority. Replacement delivery (*Ersatzlieferung*) or credit voucher (*Gutschrift*) in each case against return of the defective products shall only take place after an express written agreement.
- 8.3. If we refuse the replacement delivery or rectification of defects (*Nacherfüllung*), or do not provide it within a reasonable period of time, or if the subsequent performance has failed or is unreasonable for the Customer, the Customer may demand a reduction of the purchasing price or rescission of the contract.
- 8.4. Further claims of the Customer based on law or the contract due to or in connection with defects or consequential damages, irrespective of the reason, shall only exist in accordance with the provisions in clause 9, unless they are claims for damages based on a warranty which is intended to protect the Customer against the risk of any consequential damages. In this case, we shall only be liable for the typical and foreseeable damage.
- 8.5. We may refuse to remedy defects as long as the Customer fails to fulfil its obligations under the contract, to an extent that is reasonable considering the defect.
- 8.6. The warranty period shall be one year from delivery or, if acceptance is required, from acceptance. This period shall not apply to claims for damages by the Customer arising from injury to life, body or health or from intentional or grossly negligent breaches (*vorsätzliche oder grob fahrlässige Pflichtverletzungen*) of duty by us or our vicarious agents (*Erfüllungsgehilfen*), which shall in each case be time-barred in accordance with the statutory provisions.
- 8.7. Our warranty is excluded insofar as defects and related damages are not traceable to faulty material or faulty application documentation. In particular, the warranty and liability shall be excluded if the Customer modifies the products himself or has them modified by third parties without our consent, and the rectification of defects is thereby rendered impossible or unreasonably difficult, as well as in the event of incorrect use, for abrasion of the products in normal or extraordinary business operations, and for deterioration of the products due to unsuitable storage.

9. Limitation of Liability

- 9.1. In the event of intent or gross negligence (*Vorsatz oder grobe Fahrlässigkeit*), we shall generally be liable in accordance with the statutory provisions.

- 9.2. In the event of slight negligence (*einfache Fahrlässigkeit*), we shall only be liable insofar there is a breach of an essential contractual obligation. In this case, our liability shall be limited to the foreseeable damage typical for the contract. An essential contractual obligation is an obligation, the fulfilment of which makes the orderly execution of a contract possible in the first place, and on the compliance with which the Customer may regularly rely.
- 9.3. However, in the event of damage caused by slight negligence, our liability shall in any case be limited to an amount equal to the total value of the respective contract. We expressly point out to the Customer that in order to cover a higher liability sum, there is the possibility of taking out a corresponding insurance policy, at request and expense of the Customer.
- 9.4. This limitation of liability shall also apply in favour of our legal representatives, employees and vicarious agents.
- 9.5. Claims for damages under the German Product Liability Act (*Produkthaftungsgesetz*), in the event of the assumption of a warranty and in the event of injury to life, body or health shall not be affected by the above limitations of liability.
- 9.6. In the event of liability for slight negligence, our liability to pay compensation for damage to property and further financial losses resulting therefrom shall be limited to the total value of the respective contract with the Customer per case of damage, even if this involves a breach of material contractual obligations.
- 9.7. Unless otherwise expressly provided above, our liability is excluded.
- 9.8. We shall only be liable for the assumption of a procurement risk (*Beschaffungsrisiko*) if we have expressly assumed the procurement risk by virtue of a written agreement.

10. Delivery Period, Retrieval, Right to Self-Delivery, Delay in Delivery

- 10.1. The delivery periods are decisive for the time of handover to the transport company.
- 10.2. The delivery periods shall be extended appropriately if the Customer does not properly fulfil his obligations as a creditor (*Gläubiger*) of our performance.
- 10.3. Periods and dates for deliveries provided by us are non-binding. Binding delivery dates and deadlines shall be expressly agreed in writing as "fixed dates".
- 10.4. Delivery periods shall commence upon receipt of our order confirmation by the Customer, but not before all details of the execution of the order have been clarified and all other requirements, that shall be fulfilled by the Customer have been met; the same shall apply accordingly for delivery dates. If the Customer has requested changes after placing the order, a new delivery period shall commence upon our confirmation of the change.
- 10.5. Deliveries before the expiry of the delivery period are permissible. The date of delivery shall be the date of notification of readiness for dispatch, otherwise the date of dispatch of the products. In the absence of any other written agreement, interest in our performance shall only lapse if we fail to deliver essential parts or deliver them with delay.
- 10.6. We are entitled to make partial deliveries, if
- 10.6.1. the partial delivery can be used by the Customer within the scope of any agreed contractual purpose,
- 10.6.2. the delivery of the remaining products is ensured and
- 10.6.3. the Customer does not incur any significant additional expenses or costs as a result thereof.

- 10.7. If the order is not retrieved or specified, or not retrieved or specified in time, it is generally no longer in our interest to adhere to the contract. In this case, we shall be entitled, without prejudice to any other rights to which we are entitled by law, to set a reasonable grace period and, after the expiry thereof, to withdraw from the contract or to claim damages.
- 10.8. If we are prevented from fulfilling our obligations by unforeseen circumstances, which could not have been avoided despite reasonable care, or if we are not responsible for the non-fulfilment of our obligations for other reasons, the delivery period shall be extended for the duration of the hindrance. This applies in particular if, due to force majeure or other reasons for which we are not responsible, we do not receive deliveries or services from our sub-suppliers, do not receive them correctly or do not receive them on time, as well as in the event of epidemics or pandemics, labour disputes, shortages of labour, energy and raw materials, disruptions in our own operations, disruptions in the operations of our sub-suppliers including the transport companies, disruptions due to measures taken by public authorities (e. g. refused or delayed permits), changes in import or export regulations, shortages of energy and raw materials, hindrances to operations through no fault of our own (e.g. due to fire, water and damage to machinery) and disruptions to transport routes. In such cases, we shall inform the Customer in writing in due time. If, as a result of these circumstances, the delivery or service becomes impossible or if we are not responsible for the impossibility for other reasons, we shall be released from the delivery without any obligation to pay damages. Compensation shall also not be owed if the performance is only delayed, as a result of the aforementioned circumstances.
- 10.9. We shall not be in default (*Verzug*) as long as the Customer is in default with the fulfilment of obligations towards us, including those from other contracts.
- 10.10. If we are in default of delivery, the Customer shall first set us a reasonable grace period for performance. However, claims for damages due to breach of duty, irrespective of the reason, shall only exist in accordance with the provision in clause 9 of these GTC. If we have not performed the delivery on a date or within a period specified in the contract, the Customer may only withdraw from the contract without setting a reasonable grace period if he has expressly tied his interest in performance to the timeliness of the delivery.

11. Financial Situation of the Customer

- 11.1. If payment terms are not met or circumstances become known or recognizable which, according to our due commercial discretion, give rise to justified doubts as to the creditworthiness of the Customer, or give rise to the assumption that the financial circumstances of the Customer have degraded to such an extent that the counter-performance is at risk, we shall be entitled at any time, also within the framework of an ongoing business relationship, to make outstanding deliveries from us only against advance payment, if they concern products which, due to their characteristics, are only suitable for a specific Customer. A corresponding provision regarding advanced payment shall be declared at the latest with the order confirmation.
- 11.2. Without prejudice to more extensive statutory rights, we shall also be entitled in such cases to discontinue further work on current orders or to demand the provision of securities acceptable to us, and to withdraw from the contract after the unsuccessful expiry of a reasonable grace period for the provision of such securities. In this case, the Customer is obliged to compensate us for all damages resulting from the non-execution of the contract.

12. Payment, Default in Payment, Legal Costs

- 12.1. Unless otherwise agreed, our invoices are due and payable within 30 days without any deduction. The date of receipt on the bank account specified by us shall be decisive for the date of payment.

- 12.2. If agreed advance payments are not made or if payment is not made as agreed, we may withdraw from the contract and/or claim damages after the unsuccessful expiry of a reasonable grace period.
- 12.3. If the Customer is in default of payment, he shall not be entitled to have the products, to which we have sole or joint title, at his disposal without our consent. Clause 13 of these GTC shall not apply in this respect. The Customer shall furthermore be obliged to surrender to us, upon our request, any products to which we have sole or joint title, insofar as these are not to be released by us in accordance with clause 13 of these GTC. Our demand for return shall only be deemed to be a withdrawal from the contract if we expressly declare this in writing or if mandatory statutory provisions provide for this.
- 12.4. If the Customer does not comply with the terms of payment, he shall immediately forward to us any payments received in respect of claims assigned to us.
- 12.5. The claims to which we are entitled by law in the event of default in payment or other breaches of duty by the Customer shall remain unaffected.
- 12.6. The Customer shall bear all fees, costs and expenses incurred in connection with any successful legal action against him outside Germany.

13. Retention of Title (*Eigentumsvorbehalt*)

- 13.1. We shall retain title to the products delivered by us, until all claims against the Customer to which we are entitled, now or in the future, under the business relationship have been satisfied in full. This shall also apply to a balance in our favour, if individual or all claims are included by us in a current account and the balance has been drawn.
- 13.2. The retention of title shall extend to the products resulting from the processing, mixing or combination of the delivered products at their full value, whereas we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with products of third parties, their title remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined products. In all other respects, the same shall apply to the resulting product as to the products delivered under retention of title.
- 13.3. The risk of damage and loss of the products shall in this case be borne by the Customer.
- 13.4. The Customer shall be obliged to separately store and label the products subject to retention of title.
- 13.5. In order to ascertain the stock of the products delivered by us, we may at any time during normal business hours enter the business premises of the Customer, in which products subject to retention of title are stored.
- 13.6. The Customer shall keep all items owned by us in safe custody for us, with due commercial care. The Customer shall insure products subject to the retention of title sufficiently, in particular against fire and theft. Claims against the insurance company arising from a case of damage affecting the products subject to retention of title, are hereby already assigned to us in the amount of the value of the products subject to retention of title. We accept this assignment in advance.
- 13.7. The Customer may only sell the delivered products and the products resulting from their treatment or processing, in the ordinary course of business, either against cash payment or, in the case of granting of a payment target, only subject to retention of title. Transfer by way of security, pledging and other dispositions that jeopardize our rights are not permitted. The right to resell the products subject to retention of title shall lapse without further action, if the Customer ceases to make

payments, defaults on payments to us or undertakes actions which are likely to jeopardize our rights.

- 13.8. The Customer hereby assigns to us, as security, all claims, including securities and ancillary rights, to which he is entitled from the resale or from any other legal reason relating to the products subject to retention of title, in the amount of the value of the resold reserved products or, if the sales proceeds have not reached the value of the products, in the amount of the sales proceeds. If the products subject to retention of title are sold by the Customer together with other products, the Customer shall assign to us the purchase price claim for the products subject to retention of title in the full amount or, in the event of prior treatment or processing with products not belonging to us, in the amount of the value of the processed products subject to retention of title. If such a sale is made at a total price, the Customer shall assign the purchase price claim in the amount of the value of the products subject to retention of title which are the subject of this purchase. We accept this assignment in advance.
- 13.9. If the Customer includes claims from the resale of products subject to retention of title in an existing current account relationship with his customers, he hereby assigns to us any recognized closing balance in his favour, in the amount corresponding to the total amount of the claim from the resale of our products subject to retention of title included in the current account relationship. We accept this assignment in advance.
- 13.10. The Customer may not enter into any agreement with its customers that excludes or impairs our rights in any way or nullifies the assignments in advance of the claims.
- 13.11. If the Customer has already assigned claims from the resale of the products delivered or to be delivered by us to third parties, in particular on the basis of non-recourse (*unechtes Factoring*) or recourse factoring (*echtes Factoring*) or has entered into other agreements on the basis of which our current or future security rights may be impaired in accordance with clause 13, the Customer shall notify us thereof without undue delay. In the event of recourse factoring, we shall be entitled to withdraw from the contract and demand the return of products already delivered; the same shall apply in the event of non-recourse factoring if the Customer cannot freely dispose of the purchase price of the claim under the contract with the factor.
- 13.12. As long as the Customer meets his obligations, the assignment shall be treated as an undisclosed assignment. At our request, the Customer is obliged to inform his customers immediately of the assignment. We shall also be entitled to give such notice.
- 13.13. The Customer is authorized to collect the claim. The authorization for collection is freely revocable at any time. In order to collect the claims, we may demand that the Customer informs us of the assigned claims and their debtors, provides all information required for collection, hands over the relevant documents and informs the debtors of the assignment. Furthermore, in this case we shall be entitled to revoke the Customer's authorization to further sell and process the products subject to retention of title.
- 13.14. In the event of conduct in breach of the contract, in particular in the event of default in payment, we shall be entitled - without having to withdraw from the contract beforehand - to demand the return of the products subject to retention of title or to secure them in a suitable manner. The Customer shall be obliged to return the products. The demand for return does not at the same time include the declaration of withdrawal. In such cases, the Customer shall be credited with the realization amount minus the realization costs. If the Customer does not pay the purchase price due, we may only assert these rights if we have previously set the Customer a reasonable grace period for payment without success or if setting such a grace period is dispensable under the statutory provisions.

- 13.15. If the realizable value of the securities exceeds our claims by more than 30%, we shall release securities to this extent at the Customer's request. The choice of the securities to be released shall be made at our reasonable discretion.
- 13.16. The Customer shall notify us immediately in writing of any access by third parties to the products subject to retention of title or the claims assigned to us, handing over the documents necessary for an intervention.
- 13.17. The costs of the intervention, in particular all judicial and extrajudicial costs incurred for the removal of seizures (*Pfändungen*) and withholdings (*Einbehaltungen*), as well as for the retrieval of the object, shall be borne by the Customer, insofar as he has culpably caused these costs to arise.

14. Set-off

The Customer shall only be entitled to offset against our payment claims if the counterclaims have been expressly acknowledged by us in writing or have been established by a court of law.

15. Place of Performance (*Erfüllungsort*), Place of Jurisdiction

- 15.1. The place of performance for the delivery shall be Hirschau, unless otherwise agreed in writing.
- 15.2. Place of performance for payments is Hirschau.
- 15.3. The exclusive and international place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Amberg.

16. Applicable Law

These GTC shall be governed by the laws of the Federal Republic of Germany excluding the UN Convention on the International Sale of Goods (CISG).

17. Severability

In case a provision of these GTC is or becomes void, invalid or unenforceable in whole or in part, or in case a provision which is necessary in itself is not included, the validity and enforceability of all other provisions of these GTC shall not be affected. In place of the void, invalid or unenforceable provision or in order to fill the gap in the provision, we and the Customer shall agree on a legally admissible provision which corresponds as far as possible to what we intended or would have agreed, according to the sense and purpose of these GTC, if we had recognized the invalidity or the gap in the provision. If the invalidity of a provision is based on a measure of performance or time (period or date) stipulated therein, we shall agree on a provision with a legally permissible measure coming closest to the original measure. It is our both express intention that this severability clause does not result in a mere reversal of the burden of proof, but that Section 139 of the German Civil Code is waived altogether.

18. Data Protection

We would like to point out that we process personal data in connection with our business relationship, regardless of whether it originates from the Customer itself or from third parties, in compliance with the German Data Protection Regulation and the German Federal Data Protection Act. In this regard, we expressly refer to our data protection declaration, available at <https://www.protec-bioreactor.com/datenschutz/>.

AKW A+V Protec Rail GmbH

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