

General Terms and Conditions of Sale of AEMtec USA Inc.

1 Validity

- 1.1 These General Terms and Conditions of Sale apply to all sales and deliveries of products (hereinafter referred to as "Products") and other services of AEMtec USA Inc. (hereinafter: "Seller") to their customers (hereinafter referred to as "Buyer"). They shall also apply to all future transactions, deliveries and services, even if no separate reference is made to them.
- 1.2 These General Terms and Conditions of Sale shall apply exclusively. Terms and conditions deviating from, conflicting with or supplementing these General Terms and Conditions of Sale are excluded. Deviating, conflicting or supplementary terms and conditions shall only apply if and to the extent that the Seller has expressly agreed to their validity in the individual case. The reference to an order, letter, e-mail or other statements of the Buyer which contain or refer to deviating, conflicting or supplementary terms and conditions, or the unconditional performance of a service or delivery of the Seller with knowledge of such terms and conditions, shall not constitute an agreement of the Seller and in such cases the exclusive application of these General Terms and Conditions of Sale shall remain unaffected.

2 Offer and acceptance of contract

- 2.1. The offers of the Seller are subject to change and non-binding unless they are expressly designated as binding by the Seller in individual cases.
- 2.2 Orders or commissions of the Buyer shall be deemed to be a binding offer of contract.
- 2.3 The contract will become binding only after the Seller's written confirmation of the order and acceptance by Buyer of the Seller's terms and conditions. Oral agreements between the contracting parties shall be replaced by these General Terms and Conditions of Sale. Additions and amendments to the contract, including these General Terms and Conditions of Sale, must be made in writing or text form (e.g. by letter, fax or e-mail) in order to be effective.

3 Delivery

- 3.1 Unless expressly agreed otherwise, the Products shall be delivered ex Seller's facility. Unless expressly agreed otherwise, the risk shall pass to the Buyer when the Products are handed over to the forwarding agent, carrier or other third party entrusted with the transport or (in the event of collection by the Buyer) to the Buyer.
- 3.2 Unless expressly agreed otherwise, the information on delivery times is approximate. Unless expressly agreed otherwise, information on delivery times refers to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.
- 3.3 The Seller is entitled to partial delivery for justified reasons, insofar as this is reasonable for the Buyer. Each partial delivery leads to partial fulfilment of the delivery obligation.
- 3.4 Deliveries presuppose the timely and proper fulfilment of all obligations of the Buyer. The right to plead non-performance of the contract remains reserved.
- 3.5 In the event of default in acceptance or other culpable breach of duties to cooperate on the part of the Buyer, the Seller shall be entitled to compensation for the resulting damage, including any additional expenses. Further claims remain reserved. In this case, the risk of accidental loss or accidental deterioration of the Products shall pass to the Buyer at the time of default of acceptance or other breach of obligations to cooperate.
- 3.6 The Seller shall not be liable for the impossibility to deliver or for the delay in delivery, insofar as this was caused by an event of force majeure or other events unforeseeable at the time of the conclusion of the contract for which the Seller is not responsible. Events of force majeure and unforeseeable events within the meaning of the preceding sentence are, in particular, fire, storm, flood, earthquake, acts of God, work disruptions and interruptions, impossibility or delays in the procurement of raw materials, delays in transport, strikes, lockouts, energy shortages, difficulties in obtaining official permits, official measures, pandemics or epidemics or non-delivery, incorrect delivery or late delivery by upstream suppliers for which the Seller is not responsible. If the Seller is not able to meet delivery times due to such events, it will immediately inform the Buyer. If such events are only of temporary duration, the delivery times shall be extended accordingly. If such events make it considerably more difficult or impossible for the Seller to deliver and the hindrance is not only temporary, the Seller shall be entitled to withdraw from the contract in whole or in part; in this case, any payment already made or other consideration already provided shall be refunded to the Buyer without delay.

4 Prices, terms of payment, set-off and retention

- 4.1 Unless expressly agreed otherwise, prices are in dollars, ex Seller's facility and exclude the cost of packaging. Unless otherwise agreed, they are to be intended net of the respective statutory value added tax, sales and use tax, and any other taxes, customs duties or other import or export charges.
- 4.2 Unless expressly agreed otherwise, the purchase price is due and payable without deductions thirty (30) days after invoicing and delivery. However, the Seller is entitled at any time to make a delivery in whole or in part only against advance payment. The Seller must declare a corresponding reservation at the latest with the order confirmation.

- 4.3 In the event of default in payment, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. The Seller reserves the right to assert further damages caused by delay.
- 4.4 In the event that taxes or public charges of any kind are newly introduced or increased after the contract with the Buyer has been concluded, the Seller is authorized to add the cost increase to the agreed price accordingly.
- 4.5 In the event that, after the acceptance of the contract, the Seller has reasonable grounds to assume that the Buyer is not in a position to fulfil its obligations (e.g. if the Buyer fails to make timely payments), the Seller shall be authorized, at its discretion, to deliver Products only against advance payment or appropriate security. The legal claims of the Seller remain unaffected.
- 4.6 Offsetting with counterclaims of the Buyer or the retention of payments due to such claims is only permissible insofar as the counterclaims are undisputed or have been legally established.

5 Use of the Products and requirements of Buyer

- 5.1 Insofar as the use of the Products delivered by the Seller or the products resulting from the use of the Products are subject to special statutory regulations (e.g. in the case of the use of the Products for medical products) and insofar as it is not expressly agreed otherwise, it is the Buyer's responsibility to check whether the Products are suitable for this use and whether the products comply with the relevant statutory regulations.
- 5.2 Insofar as the agreed quality of the Products is based on plans, designs, specifications or other requirements of the Buyer (hereinafter together referred to as "**Requirements**"), the Buyer is solely responsible for the correctness and completeness of such Requirements. Possible faults or qualities of the Products which result from Seller's compliance with such Requirements shall not constitute a defect and shall not give rise to any warranty claims on the part of the Buyer.

6 Warranty

- 6.1 THE SELLER WARRANTS THAT THE PRODUCTS SHALL CONFORM TO SELLER'S STANDARD SPECIFICATIONS, AND WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP FOR TWELVE (12) MONTHS FOLLOWING THE PASSING OF RISK OF LOSS TO THE BUYER. IF ANY OF THE PRODUCTS ARE FOUND BY THE BUYER TO BE DEFECTIVE, SUCH PRODUCTS WILL, AT THE SELLER'S OPTION, BE REPLACED OR REPAIRED AT THE SELLER'S COST. THE PARTIES HERETO EXPRESSLY AGREE THAT THE BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST THE SELLER SHALL BE FOR THE REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS AS PROVIDED HEREIN. THE SOLE PURPOSE OF THIS EXCLUSIVE REMEDY SHALL BE TO PROVIDE THE BUYER WITH FREE REPAIR AND REPLACEMENT OF DEFECTIVE PRODUCTS IN THE MANNER PROVIDED HEREIN. THIS EXCLUSIVE REMEDY SHALL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SO LONG AS THE SELLER IS WILLING AND ABLE TO REPAIR OR REPLACE DEFECTIVE PRODUCTS IN THE PRESCRIBED MANNER. **THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE NOT EXPRESSLY SET FORTH HEREIN.** NO AFFIRMATION BY THE SELLER, BY WORDS OR ACTION, OTHER THAN AS SET FORTH IN THIS SECTION 6.1, SHALL CONSTITUTE A WARRANTY. PRODUCTS WHICH MAY BE SOLD BY THE SELLER BUT WHICH ARE NOT MANUFACTURED BY THE SELLER ARE NOT WARRANTED BY THE SELLER, BUT ARE SOLD ONLY WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURERS' THEREOF. THIS WARRANTY DOES NOT COVER LABOR OR OTHER COSTS OR EXPENSES TO REMOVE OR INSTALL ANY DEFECTIVE, REPAIRED OR REPLACED PRODUCTS. THIS WARRANTY DOES NOT APPLY TO ANY PRODUCTS WHICH HAVE BEEN SUBJECTED TO MISUSE, MISHANDLING, MISAPPLICATION, NEGLIGENCE (INCLUDING BUT NOT LIMITED TO IMPROPER MAINTENANCE), ACCIDENT, IMPROPER INSTALLATION, MODIFICATION (INCLUDING BUT NOT LIMITED TO USE OF UNAUTHORIZED PARTS OR ATTACHMENTS), OR ADJUSTMENT OR REPAIR PERFORMED BY ANYONE OTHER THAN US OR ONE OF.
- 6.2 The Products must be inspected by the Buyer immediately after delivery to the Buyer. The Products shall be deemed to have been approved by the Buyer with regard to obvious defects or other defects which would have been recognisable during an inspection if the Seller does not receive a written notification of defects immediately, at the latest, however, within 5 working days after delivery. With regard to other defects which are not recognisable during the inspection, the Products shall be deemed to have been approved by the Buyer if the Seller does not receive written notification of the defect immediately, at the latest, however, within 5 working days after the discovery of the defect. If the Buyer fails to properly inspect the Products and/or give notice of defects, the Seller's liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions.
- 6.3 The Buyer must grant to the Seller the necessary time for all repairs and replacement to be completed as the Seller deems necessary, otherwise the Seller will be released from any liability for ensuing costs, expenses, damages and consequences thereof. The Buyer will only have the right to repair the defect itself or have it repaired by third parties in urgent cases in which safety is jeopardized or for prevention of disproportionately material damage and to demand reimbursement of the expenses thereby incurred. However, the prerequisite to exercise this right is that the Seller has been informed immediately about the problem.
- 6.4 Where the Buyer or a third party repairs the defective Products or alterations are made to such Products without the Seller's consent, the Buyer will not be liable for any costs, expenses, damages and the consequences thereof.
- 6.5 The Buyer shall be entitled to claims for damages or reimbursement of expenses in the event of defects in the Products only in accordance with Section 7 of this contract.

7 Liability

- 7.1 LIMITATION OF LIABILITY. THE SELLER'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, TORT, NEGLIGENCE, OR STRICT LIABILITY) FOR ITS PRODUCTS SHALL BE LIMITED TO REPAIRING OR REPLACING THE PRODUCTS FOUND BY THE SELLER TO BE DEFECTIVE, OR AT THE SELLER'S OPTION, TO REFUNDING THE PURCHASE PRICE OF SUCH PRODUCTS OR PARTS THEREOF. AT THE SELLER'S REQUEST, THE BUYER WILL DELIVER, AT THE BUYER'S SOLE EXPENSE, ANY ALLEGEDLY DEFECTIVE PRODUCTS TO THE SELLER'S LOCATION FROM WHICH THE PRODUCTS WERE ORIGINALLY SHIPPED.
- 7.2 DISCLAIMER OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL THE SELLER BE LIABLE FOR CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, INCLUDING WITHOUT LIMITATION BREACH OF ANY OBLIGATION IMPOSED ON THE SELLER HEREUNDER. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON, OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING WITHOUT LIMITATION PROPERTY HANDLED OR PROCESSED BY THE USE OF THE PRODUCTS.) THE BUYER SHALL INDEMNIFY THE SELLER AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED BY THE SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.
- 7.3 IN NO EVENT SHALL SELLER'S LIABILITY PURSUANT TO SECTION 7 EXCEED US\$100,000 PLUS THE PURCHASE PRICE OF PRODUCTS SOLD TO BUYER DURING ANY CALENDAR YEAR PERIOD.

8 Intellectual Property

- 8.1 Intellectual Property. Notwithstanding delivery of and the passing of risk of loss to the Products, nothing in this contract shall have the effect of granting or transferring to, or vesting in, the Buyer any intellectual property rights in or to any Products. The Buyer acknowledges and agrees that all patent, trademark, copyright, trade secret and other intellectual property rights in any work or deliverable item arising from or created, produced or developed by the Seller (the "**Works**"), wherever in the world enforceable (including all documents, data, drawings, specifications, protocols, articles, inventions, improvements, modifications, discoveries, tools, and other items relating thereto) shall immediately upon creation vest in and shall be and remain the Seller's sole and exclusive property, and the Buyer shall acquire no right, title or interest in or to the same except as expressly state in this contract. The Buyer agrees not to reverse engineer the Products.
- 8.2 Patent Infringement. Except in the case of articles, materials and designs furnished or specified by the Buyer, the Seller at its own expense, shall defend any suit brought against the Buyer on the ground that use of the Products furnished hereunder by the Seller infringe any United States Letters Patent existing on the date of the contract, and shall pay the amount of any judgment that may be awarded against the Buyer in any such suit, provided and upon the condition, that the Buyer shall have made all payments due under the contract, and shall (i) promptly deliver to the Seller all infringement notices and other documents received by or served upon the Buyer, (ii) permit the Seller to take complete charge of the defense of such suit and to compromise the same, if deemed advisable, and (iii) assist in every reasonable way in the conduct of such defense. Notwithstanding the forgoing, Seller shall not be liable under this Section 8.2 unless it is determined that Seller acted negligently in furnishing articles, materials and designs in violation of United States Letters Patent.
- In the event that the Buyer shall be enjoined by a court of competent jurisdiction from which no appeal can be taken from using the Products for the intended purpose on the ground that use of the Products infringes any such United States patent, or if it is established to the Seller's satisfaction, upon due investigation, that use of the Products infringes any such United States Patent, then the Seller, at its option, may either (w) procure for the Buyer a license to continue using the Products, (x) modify the Products so as to make them non-infringing without seriously impairing its performance, (y) replace the Products with Products which are substantially the equivalent but non-infringing, or (z) remove the Products from the Buyer's plant, in which event the Seller will refund to the Buyer the purchase price, and the contract shall be cancelled without any further liability by the Seller to the Buyer. The foregoing sets forth the Seller's entire liability to the Buyer for patent infringement based on the possession and use of the Products by the Buyer. The Seller shall have no obligation whatsoever arising out of any patent infringement claims directed to a process or a method.
- 8.3 The Buyer agrees to defend and indemnify the Seller against any claims or liabilities for, or by reason of, the infringement of any United States Patent arising from the manufacture of any of the Products in accordance with specifications furnished by the Buyer or from the sale thereof.

9 Place of performance, choice of law, place of jurisdiction; severability

- 9.1 These General Terms and Conditions of Sale and all contracts between the Seller and the Buyer shall be governed by the laws of the United States and of the State of Delaware. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) is excluded.
- 9.2 The exclusive place of jurisdiction for all disputes arising from or in connection with the contract are the federal and state courts located in the State of Delaware or in Boston, Massachusetts. However, the Seller has the right to bring a lawsuit against the Buyer in the federal or state courts located in any jurisdiction where the Buyer is located.
- 9.4 Should any provision of the contract, as well as any additional agreements between the parties, become invalid, this will not affect the validity of the remaining terms. The invalid term is to be replaced by a term which comes as close as possible to the economic purpose of the invalid term.