

# AT GmbH

## General Conditions of Sale and Delivery



(based on the 03/2002 VDMA' recommendations)

### I. General

1. All deliveries and services are subject to these conditions, as are any separate contractual agreements. The differing purchase conditions of the Buyer will not become part of the contract, even upon acceptance of the order.

A contract comes into being – absent a special agreement – with the Supplier's written confirmation.

2. The Supplier reserves to himself the ownership and copyright on samples, quotations, sketches and the like, whether material or immaterial – also in electronic form; they may not be made accessible to third parties.

The Supplier obligates himself not to make information and documentation identified by the Buyer as confidential accessible to third parties without the Buyer's written consent.

### II. Price and Payment

1. Absent a special agreement, the prices are "ex works", including, however, loading within the factory, but excluding packing and unloading, VAT at the then ruling rate must be added thereto.

2. Absent a special agreement, the payments to the Supplier's account are to be made without any deduction as follows:-

1/3 advance payment following receipt of the order confirmation;

1/3 as soon as the Buyer has been informed that the major components are ready for shipment; and

the balance within one month following transfer of risk.

3. The Buyer only has the right to withhold payments, or of set-off against counterclaims, insofar as the counterclaims are undisputed, or legally established.

### III. Delivery Dates, Delivery Delays

1. The delivery date depends on the agreements between the contracting parties. The Supplier's compliance assumes that all the parties' commercial and technical questions have been clarified, and that the Buyer has fulfilled all his obligations; such as, for example, providing the necessary official certificates or consents, or making an advance payment. If this is not the case, then the delivery date is extended appropriately. This does not apply insofar as the Supplier is answerable for the delay.

2. Compliance with the delivery deadline is subject to correct and timely deliveries to the Supplier. The Supplier will make potential delays known as soon as possible.

3. The delivery deadline is complied with, if the delivery item has left the factory prior to its expiry, or readiness for shipment has been reported. Insofar as an acceptance needs to follow, – other than in the case of justified refusal of acceptance - the acceptance date, alternatively, the notification of readiness for acceptance, is definitive.

4. If the shipping or the acceptance of the delivery item is delayed on grounds for which the Buyer is answerable, then he will be charged for the resultant costs of the delay, beginning one month following the notification of shipping or of readiness for acceptance.

5. If the non-compliance with the delivery date is due to force majeure, labour disputes or other events which are out of the Supplier's sphere of influence, then the delivery date is postponed accordingly. The Supplier will notify the Buyer of the beginning and the end of such circumstances as soon as possible.

6. The Buyer may withdraw from the contract without giving notice, if it becomes finally impossible for the Supplier to complete the entire performance prior to the transfer of risk. The Buyer may also withdraw from the contract if the fulfilment of part of the delivery is impossible, and he has a justified interest in rejecting the partial delivery. If this is not the case, then the Buyer must pay the contracted price in respect of the partial delivery. The same applies in the event of the Supplier's incapacity. Otherwise § VII.2 applies.

If the impossibility or the incapacity arises during the acceptance delay, or if the Buyer is solely or mainly answerable for these circumstances, then he remains liable for the *quid pro quo*.

7. If the Supplier is in default, and if damage results to the Buyer, then the latter is justified in demanding a lump sum compensation for the default. This amounts, for each full week, to a total of 0,5 % of the value of those parts of the entire delivery which were not delivered in time, or which, due to the delay, could not be used in accordance with the contract, but limited to 5 % of that total value.

If the Buyer, after the due date, gives the Supplier - taking into account the statutory exceptions - reasonable notice to perform, and if the deadline is not met, the Buyer is entitled to withdraw within the framework of statutory regulations. Further claims in respect of delivery delays are determined exclusively pursuant to §VII.2 of these conditions.

### IV. Transfer of Risk, Acceptance

1. The risk is transferred to the Buyer if the delivery item has left the factory, and also in case of partial deliveries, or if the Supplier has assumed other services; e.g. the shipping costs or delivery and installation.

Insofar as an acceptance must take place, then this is definitive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively, after the Supplier's notification of the readiness for acceptance. Absent a material defect, the Buyer may not refuse the acceptance.

2. If the shipping or the acceptance is delayed due to circumstances for which the Supplier is not to blame, then the risk is transferred to the Buyer from the day of notification of the readiness to ship or for acceptance. The Supplier obligates himself, at the Buyer's cost, to enter into whichever insurances the latter requires.

3. Partial deliveries are permissible, insofar as reasonable for the Buyer.

### V. Lien

1. The Supplier retains the ownership of the delivery item until all payments relating to the supply contract have been received.

2. The Supplier is entitled, at the Buyer's cost, to insure the delivery item against theft, breakage, fire, water and other damages, insofar as the Buyer has not himself verifiably entered into such insurances.

3. The Buyer may not sell, charge, or assign the delivery item as security. He must immediately inform the Supplier in case of distraint, and confiscation or other third party injunctions.

4. In the event of behaviour by the Buyer in breach of the contract, in particular in case of payment default, after setting a deadline, the Supplier is entitled to take back the delivery items, and the Buyer is obligated to hand them over.

5. The Supplier may only demand the return of the delivery item based on the lien, if he has withdrawn from the contract.

6. The application for the opening of insolvency proceedings justifies the Supplier's withdrawal from the contract, and to demand the immediate return of the delivery item.

### VI. Claims in respect of Defects

Subject to §VII, the Supplier warrants as follows in respect of physical and title defects in the delivery, to the exclusion of additional claims:-

### Physical Defects

1. All such components which turn out to be defective due to circumstances arising prior to the transfer of risk are, at the Supplier's option, to be cured or replaced, free of charge. The establishment of such defects must be immediately reported to the Supplier, in writing. Replaced components become the Supplier's property.

2. After communicating with the Supplier, the Buyer must give the Supplier the necessary time to undertake all the apparently necessary cures and replacement deliveries, falling which the Supplier is released from the liability for the consequences. Only in urgent cases, where operational safety is endangered, or to fend off disproportionately greater damage, whereby the Supplier must be immediately notified, the Buyer has the right to eliminate the defect himself, or to have it eliminated by third parties, and to demand reimbursement of the necessary expenditure from the Supplier.

3. Insofar as the complaint turns out to be justified, the Supplier bears the direct costs of the cure or delivery of the replacement part - including the shipping costs. In addition, he bears the costs of disassembly and assembly, as well as the costs of providing any of the necessary fitters and assistants, including travelling costs, insofar as the charges incurred by the Supplier are not disproportionate.

4. The Buyer has the right to withdraw from the contract, within the framework of the statutory requirements - taking into account the statutory exceptions – if the reasonable notice given by him to the Supplier for the cure or replacement delivery due to a physical defect has fruitlessly passed. If there is only a minor defect, the Buyer only has a right to a reduction of the contract price. The right to a reduction of the contract price is otherwise excluded. Further claims are governed by §VII.2 of these provisions.

5. No warranty will be undertaken in the following cases in particular:-

unsuitable or inappropriate use, incorrect assembly or installation by the Buyer or by third parties, normal wear and tear, incorrect or careless treatment, improper maintenance, unsuitable maintenance resources, defective construction, unsuitable foundations, chemical, electrochemical or electric influences - insofar as the Supplier is not answerable therefor.

6. If the Buyer, or a third party, repairs incorrectly, the Supplier has no liability for the consequences. The same applies to alterations to the delivery item undertaken, without the prior consent of the Supplier.

### Rights Defects

7. If the use of the delivery item leads to a breach of domestic, commercial trademarks or copyrights, the Supplier will, at his own cost, procure the Buyer's basic right to the continued use, or modify the delivery item for the Buyer in such reasonable manner as to eliminate any continued breach of trademark.

If this is not possible on reasonable commercial conditions or within a reasonable time limit, the Buyer is justified in withdrawing from the contract. Under the conditions referred to, the Supplier also has the right of withdrawal from the contract.

In addition, the Supplier will hold the Buyer free and harmless from undisputed or legally established claims of the affected trademark owner.

8. The Supplier's responsibilities referred to in §VI. 7 are, subject to §VII.2, definitive in the case of breach of trademarks or copyright.

They only exist if:-

- the Buyer immediately notifies the Supplier of asserted breaches of trademarks or copyright;

- the Buyer supports the Supplier to a reasonable extent in the defence of the asserted claims, or makes it possible for the Supplier to carry out the modification measures in accordance with §VI. 7;

- all defence measures, including out-of-court settlements, remain reserved to the Supplier;

- the title defect is not based on a Buyer's directive, and the rights breach was not caused by the Buyer having altered the delivery item without authority, or used it in a manner not in accordance with the contract.

### VII. Liability

1. If, due to the Supplier's default, resulting from omitted or incorrect execution of suggestions and consultations before or after conclusion of the contract, or due to the breach of other, secondary contractual obligations, - in particular instructions for operating and maintaining the delivery item - the delivery item cannot be used by the Buyer in accordance with the contract, then, subject to the exclusion of other claims by the Buyer, the rules under §§VI and VII.2 apply accordingly.

2. For damage not sustained by the delivery item itself, the Supplier is liable – regardless of the legal grounds – only in case of:-

a. intent;

b. gross negligence by the owners/the institution or executives;

c. culpable damage to life, limb, health;

d. defects which he maliciously concealed, or whose absence he guaranteed;

e. defects in the delivery item, insofar as there is a liability under the Product Liability Act for personal injury or damage to property in respect of privately used items.

In case of culpable breach of material contractual obligations, the Supplier is also liable for gross negligence of non-executive employees, and in cases of simple negligence; in the latter case, limited to the contract-typical, reasonably foreseeable damage.

Further claims are debarred.

### VIII. Limitation

All the Buyer's claims – regardless of the legal grounds – expire after 12 months. The statutory time limits apply in respect of claims for compensation pursuant to §VII. 2. a – e. They also apply to defects in a building, or to delivery items, which were used for a building in accordance with their normal usage and which gave rise to their defects.

### IX. Software Use

Insofar as software is part of the delivery, the Buyer is granted a non-exclusive right to use the delivered software, including its documentation. It is provided for use in connection with the delivery item for which it is intended. A use of the software on more than one system is prohibited.

The Buyer may only use the software to the legally permissible extent (§§ 69 a ff. of the Copyright Law ("UrhG")) for duplication, adaptation, translation or conversion from the object code to the source code. The Buyer obligates himself not to remove manufacturer's details – in particular copyright notations - or to change them without the prior, express consent of the Supplier.

All other rights to the software and the documentation, including the copies, remain with the Supplier or with the software supplier. The granting of sub-licences is not permissible.

### X. Applicable Law, Jurisdiction

1. The relevant laws of the Federal Republic of Germany alone govern the domestic legal relationships between the Supplier and the Buyer

2. Jurisdiction is that of the courts covering the registered office of the Supplier. The Supplier is, however, entitled to sue at the Buyer's head office.

As at 02.01.2007