

# GENERAL CONDITIONS OF PURCHASE ATLAS ELEKTRONIK GMBH („ATLAS“)

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## 1. Scope of these general conditions

- 1.1. The Supplier undertakes to provide his deliveries and services (hereinafter referred to jointly as "Products") according to the following provisions.
- 1.2. Supplier's offers shall be free of charge for ATLAS. Supplier shall carry all costs including travel costs involved with the issuance of an offer.
- 1.3. These General Conditions of Purchase shall apply exclusively. ATLAS does not recognise possible general terms and conditions of the Supplier, unless ATLAS has explicitly approved their validity in writing. These General Conditions of Purchase shall also apply exclusively if ATLAS accepts a delivery of the Supplier without reservation in the knowledge of contradictory or deviating terms and conditions of the Supplier.
- 1.4. These General Conditions of Purchase shall also apply to all future transactions with the Supplier.

## 2. Scope of delivery and services

- 2.1. If the Supplier manufactures Products according to production documents / specifications of ATLAS, Supplier shall download these documents / specifications from a platform named by ATLAS or the Supplier shall receive these from ATLAS as production documentation on data carriers, by letter, by fax or by e-mail.
- 2.2. The Supplier shall examine the production documents / specifications for completeness and accuracy of the contents and shall inform ATLAS of possible errors and incompleteness immediately in writing before the start of production.
- 2.3. The Supplier shall comply with the agreed status of technology in the production and provision of the Products and adhere to all mandatory statutory provisions.
- 2.4. The Supplier warrants that the Products shall feature the agreed technical data, in particular the agreed performance features.
- 2.5. The Supplier further warrants that the Products are completely free of rights of third parties and are brand new.
- 2.6. The Supplier is only entitled to have services provided by subcontractors or other third parties in full or in part after having obtained the prior explicit written consent of ATLAS. These must be competent, efficient and reliable and shall be obliged in writing to comply with the obligation to confidentiality according to the below Section 2 (7) and with the obligation to quality assurance according to the below Section 4. The contractual obligations of the Supplier shall remain unaffected hereby.
- 2.7. All data, knowledge and documents in any form ("Information") which the Supplier receives from ATLAS shall remain the exclusive property of ATLAS. These are to be used exclusively for the execution of this Agreement and must not be disclosed to third parties without the prior explicit written consent of ATLAS.
- 2.8. As far as the Supplier develops and/or manufactures Information for ATLAS at ATLAS' expense, the Supplier herewith irrevocably grants ATLAS free of charge the exclusive, transferrable right to use the Information, not limited in terms of contents, time and space, with the right to grant sub-licenses to the Information. The unlimited right to use comprises, in particular, the right to publish, change and reproduce the Information. The latter, in particular, includes the right to the permanent or temporary re-production, in full or in part, using all means and in any form, to the permanent and/or temporary storage, for example on electrical, electro-magnetic and optical storage media, as well as all kinds of hard disks including SSD, on RAM, Blu-ray, DVD, CD-Rom, memory cards, clouds and flash drives.
- 2.9. The above right of reproduction also comprises the storage on future technical forms, which are still unknown at present.
- 2.10. The Supplier shall inform ATLAS of interferences to the production processes immediately. Any change to Supplier's production processes with regard to the manufacture of the Products is to be coordinated with ATLAS in advance and released by ATLAS in writing.
- 2.11. The Supplier shall securely store its working documents/routings, all production documents, acceptance and test protocols and other documents relevant to processes for a time period of at least 10 (ten) years from the last production and send copies thereof to ATLAS upon request.

## 3. Value / cost reduction analysis / change in technology

If the Supplier manufactures Products according to production documents / specifications of ATLAS, the following shall apply:

- 3.1. The Supplier undertakes to assist in a value analysis of parts/assembly groups stipulated by ATLAS together with ATLAS at reasonable time intervals. The aim of such an analysis is a reduction in price.
- 3.2. The Supplier shall inform ATLAS about the type and the scope of a change in technology and/or improvement in processes in writing reasonable time in advance so that ATLAS can decide whether a new initial sample test is to be carried out. In this respect ATLAS shall also be entitled to view the corresponding business documents of the Supplier and to inspect the changes or improvements on site at Supplier's location. If a new initial sample test is to be carried out the Supplier may only commence the production after the written release of the new samples by ATLAS.

## 4. Quality management

The Supplier undertakes to maintain a quality management system. The provisions of DIN EN ISO 9001:2008 shall apply hereto. The Supplier shall ensure that all Products provided by it fully comply with the requirements according to the order, shall subject all Products to a careful factory test (incoming goods inspection, inspection during manufacture and final inspection) and remedy any defects and errors determined hereby. The Supplier grants ATLAS and the representative of ATLAS' customer the right to observe the production and to take part in all tests and to perform quality audits.

## 5. Inspection for defects

ATLAS shall inspect the Products for deviations in quality and quantity within a reasonable period of time after delivery. The time period and the scope of inspection depend on the specific Product. ATLAS shall report discovered apparent defects as well as subsequently discovered latent defects within 3 working days after discovery.

## 6. Packaging / shipment

- 6.1. The Supplier has to pack the Products in customary manner for the trade and so that these will not be damaged during transport. If a delivery consists of several production batches, these are to be packed separately from each other and marked accordingly. The Supplier has to take packaging material back at the request of ATLAS and dispose of it at its own costs.
- 6.2. The Supplier shall deliver the Products at the agreed delivery date during the customary business hours at the agreed place of use.
- 6.3. The deliveries shall be made DDP place of use (Incoterms® 2010) if not explicitly agreed otherwise.
- 6.4. Place of performance is the place of delivery.

## 7. Delivery times and dates / delay

- 7.1. Agreed deadlines and dates are binding.
- 7.2. If the Supplier recognises that it cannot, presumably, adhere to deadlines or dates, the Supplier shall inform ATLAS immediately by giving the reasons which are decisive for the delay and take all measures at its own costs in order to avoid or minimise the impending delay. The latter shall not apply if and insofar as ATLAS is responsible for the delay.
- 7.3. ATLAS is not obliged to accept Products before the agreed delivery date. Possible premature deliveries are to be agreed upon with the purchasing department of ATLAS in writing in advance.
- 7.4. In the event of delay in delivery ATLAS is entitled to request liquidated damages for default in the amount of 0.5 % of the net price of the order value per started week, a maximum however of 5 (five) %. Further statutory claims (rescission and damages in-stead of performance) shall remain unaffected. The Supplier is entitled to prove to ATLAS that no or substantially less damages were suffered as a result of the delay.

## 8. Liability for defects

- 8.1. The Supplier warrants that the Products are free of defects as to quality and of title at the time of passing of the risk. If a defect as to quality occurs within 6 (six) months after the passing of the risk it will be presumed that the defect existed at the time of the passing of the risk.
- 8.2. ATLAS shall be entitled to the statutory claims for defects to its full extent. ATLAS is, at its choice, entitled to request remedy of the defects or new delivery from the Supplier. ATLAS' claims for damages, in particular instead of performance, explicitly remain reserved.
- 8.3. If the Supplier is in default with the remedy of defects ATLAS is entitled to remedy the defects itself at the costs and risk of the Supplier whereby the costs must be reasonable. In case of imminent danger, or if special circumstances require immediate subsequent improvement, ATLAS shall be entitled to request from the Supplier that the defects are remedied within 24 (twenty four) hours. After the unsuccessful expiry of the deadline ATLAS shall be entitled to have the defects remedied at the costs and risk of the Supplier.
- 8.4. The period of limitation for the liability for defects is 36 (thirty six) months beginning with the delivery of the Products or material provisions. The statute-of-limitations will be inhibited for the duration of the remedy of the defects from the receipt of the notice of defects by the Supplier.

## 9. Acceptance

In the event of a contract for work and labor (Werkvertrag) the following will apply:

- 9.1. The Supplier shall receive a total remuneration which will include all costs (including travel and documentation costs) and all work that is functionally required for the production and the usability of the works. The remuneration shall be due for payment after the written acceptance of the Features by ATLAS.
- 9.2. The acceptance of the works by ATLAS shall ensue at the latest on the agreed acceptance date, based on an acceptance protocol which is to be signed by both parties.
- 9.3. The Supplier shall notify the ability for acceptance to ATLAS in writing, at least one week before to the Acceptance Date. If the Supplier does not notify the ability for acceptance of the works by the aforementioned date or if ATLAS refuses acceptance e.g. because the acceptance criteria of the acceptance protocol have not been satisfied, the Supplier shall revise the works within a reasonable period of time determined by ATLAS and notify the (renewed) ability for acceptance to ATLAS within this time period (1st attempt at improvement). If the acceptance is not carried out within the frame-work of the 1st attempt at improvement within the aforementioned deadline, the Supplier shall have a 2nd attempt at improvement. If the acceptance is not carried out within the framework of the 2nd attempt at improvement within the aforementioned deadline, ATLAS shall be entitled, at its choice, to either reduce the remuneration adequately or to claim for damages instead of the works. The Supplier is not entitled to claims for reimbursements and damages.
- 9.4. ATLAS shall not be entitled to refuse the acceptance owing to insignificant defects, may in this case, however, retain a reasonable part of the agreed remuneration. Defects shall be deemed as insignificant which have no or only an irrelevant influence on the functionality or availability of the works. The Supplier shall sustainably remedy insignificant defects within a reasonable period of time determined by ATLAS, otherwise ATLAS is entitled to have

the defect remedied at the costs and risk of the Supplier, whereby the costs must be reasonable.

- 9.5. The deadline for the liability for defects is 36 (thirty six) months beginning with acceptance. The statute-of-limitation will be inhibited from the receipt of the notice of defects by the Supplier.

## 10. Prices / invoicing / terms of payment

- 10.1. The remunerations to be paid by ATLAS under this Agreement are to be understood plus the respective applicable rate of value added tax. VAT is to be shown separately.
- 10.2. ATLAS only accepts invoices which conform to the value added tax system. The reason for a possible tax exemption as well as the possible transfer of the tax liability is to be stated in the invoice (Art. 226 (11) VAT Directive).
- 10.3. Invoices must include the following details: purchase order number, purchase order date, copy of the delivery note, value added tax identification number (UID) and tax number of the Supplier as notified by the tax authority. If these details are missing or if they are incomplete, the payment claim of the Supplier will not be due and payable. The invoices of the Supplier are to be sent to the following address:

ATLAS ELEKTRONIK GmbH  
Rechnungsprüfung  
Sebaldsbrücker Heerstr. 235  
28309 Bremen.

- 10.4. ATLAS shall pay after the receipt of the item of delivery and service and the verifiable invoice within 30 (thirty) days with 3 (three) % cash discount, within 45 (forty five) day with 2 (two) % cash discount and within 60 (sixty) days without deduction. The invoicing can be carried out no earlier than upon the delivery of the Products.
- 10.5. Contrary to other statutory provisions ATLAS will only be in default if ATLAS has been requested to pay by the Supplier in writing after the due date (reminder). If and insofar as the Supplier does not prove any higher damages the annual default interest rate will be 3 (three) percentage points above the base interest rate of the European Central Bank.

## 11. Insurances

- 11.1. The Supplier undertakes to maintain a business and product liability insurance with a minimum amount covered of EUR 5,000,000 (in words: five million Euros) for physical injuries and property damages per damaging event, a max. of EUR 10,000,000 (in words: ten million Euros) per annum as well as an extended product liability insurance with a minimum amount covered of EUR 1,000,000 (in words: one million Euros) per annum for financial losses.
- 11.2. The Supplier has to send the relevant confirmation of insurance to ATLAS upon request.

## 12. Force majeure

Events, which are unforeseeable and unavoidable upon conclusion of this Agreement and which are beyond the control of the Party obliged to perform and for which the Party is not responsible such as e.g. war, official orders, rioting, embargos, natural disasters or labor disputes shall release this Party from the obligation for timely delivery for the duration of the event. Delivery and service deadlines or dates shall be extended or postponed for the duration of the interference. The Party obliged to perform shall inform the other Party in a reasonable manner about the occurrence of the interference. If the interference occurs outside of the Federal Republic of Germany the Party concerned moreover has to send to the other Party a written confirmation of the local Chamber of Commerce about the existence of the interference. Otherwise the Party concerned cannot refer to the interference. Directly after the occurrence of the event the Parties shall meet and deliberate how the delivery of the Products can be ensured by conversion or relocation of the production. If the Parties cannot reach an agreement ATLAS shall be entitled to terminate this Agreement with immediate effect. In the event of a termination ATLAS shall be entitled but not obliged to purchase semi-processed Products to standard market prices.

## 13. Compliance

- 13.1. The Supplier is contractually obliged to fully comply with the national and international statutory requirements which apply to it, in particular with regard to economic criminal law, competition law, health and safety as well as environmental protection. The Supplier shall pass this obligation on to its subcontractors and sub-suppliers, which are involved in the provision of deliveries and services under this Agreement.
- 13.2. The Supplier assures that it is not aware of any preliminary investigation proceedings against it or a company affiliated with it within the meaning of Section 2 (4) above at the time when this Agreement is concluded. If Supplier becomes aware of such proceedings after this Agreement has come into force the Supplier shall inform ATLAS thereof immediately.
- 13.3. If one of the aforementioned obligations of this Section 13 is infringed ATLAS shall be entitled to terminate this Agreement extraordinarily with immediate effect.
- 13.4. The assertion of claims for damages by the Supplier in the event of an extraordinary termination is excluded. ATLAS reserves the right to assert claims for damages.

## 14. Property rights

- 14.1. The Supplier is aware that ATLAS operates worldwide. It shall therefore ensure that the global marketing and use of the Products do not infringe any property rights.
- 14.2. If a claim is asserted against ATLAS by a third party in connection with the Products owing to the infringement of the rights of the

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third party, the Supplier undertakes to indemnify ATLAS from these claims at the first written request. In case of claims for damages of the third party the Supplier reserves the right to prove that it is not re-sponsible for the infringement of the rights of the third party.

- 14.3. ATLAS is not entitled to enter into agreements with the third party without the consent of the Supplier, in particular to enter into a settlement.
- 14.4. The indemnification obligation of the Supplier refers to all expenses, necessarily in-curred to ATLAS from or in connection with the assertion of the claim by a third party including the assertion of a claim by authorities and costs for the legal prosecution.
- 14.5. The Supplier shall support ATLAS in the defence of third party claims in a reasonable manner at its own expense.
- 14.6. If the use as per contract is impaired by property rights of third parties the Supplier is entitled to an extent reasonable for ATLAS, at its choice, either to change the Products to the extent that they no longer fall under the protective range, however nevertheless comply with the contractual provisions, or to obtain the authorization that the Products can be used as per contract to an unlimited extent and without additional costs for ATLAS. If the Supplier does not succeed in doing so within a reasonable deadline set by ATLAS, ATLAS shall be entitled to reduce the remuneration or to rescind from this Agreement in full or in part.
- 14.7. The period of limitation is 36 (thirty six) months beginning at the time at which ATLAS has positive knowledge of the assertion of claims by third parties.

## 15. Product liability

As far as the Supplier is responsible for a product damage it undertakes to indemnify ATLAS to this extent from claims for damages by third parties at the first written request when the cause lies in Supplier's scope of control and organisation and Supplier itself is liable towards third parties.

## 16. Environmental / energy management

- 16.1. The Supplier undertakes to fully comply with all relevant provisions concerning environmental protection – including the Hazardous Substances Regulation, the Electrical and Electronic Equipment Act (Elektrogesetz) as well as the recommendations of the responsible bodies and associations. Supplier further undertakes to report to ATLAS without request and in due time in advance if it processes hazardous substances within the framework of deliveries and services for ATLAS.
- 16.2. ATLAS' Suppliers should beyond the requirements of the above para (1) above preferably also have a certified environmental management system DIN ISO 14001 and/or DIN EN ISO 50001 which the Supplier has – if available - to prove to ATLAS at ATLAS' request.
- 16.3. The Supplier undertakes to pay attention to energy efficiency with regard to its products, to avoid the unnecessary wasting of energy and to orientate itself as far as possible to state-of-the-art technology concerning energy efficiency.

## 17. Applicable law / arbitration

- 17.1. This Agreement is subject to the law of the Federal Republic of Germany under the exclusion of the Convention of the United Nations on Contracts for the International Sale of Goods.
- 17.2. All disputes arising out of or in connection with this Agreement or its validity, shall be finally settled by arbitration in accordance with the arbitration rules of the International Chamber of Commerce (ICC), Paris under exclusion of the ordinary courts of law. The location of the arbitration proceedings is Bremen. The language of the arbitration proceedings is English.

## 18. Final provisions

- 18.1. ATLAS will store and process the data received from Supplier including personal data in order to execute this Agreement. It cannot be excluded that these data will be transmitted to companies affiliated with ATLAS within the global ATLAS Group for the execution of this Agreement or a project. The Supplier agrees to this transmission and ensures that the written consent of its employees, who are involved in the conclusion and the execution of this Agreement and the Individual Agreements, is at hand.
- 18.2. The Supplier is only entitled to assign claims against ATLAS or have receivables collected by third parties with the prior explicit written consent of ATLAS. In the event of the sale of business divisions the Supplier undertakes, at the request of ATLAS, to arrange for the assignment of the contractual agreements to the legal successor and to indicate this to ATLAS in writing immediately after the assignment will have become effective.
- 18.3. The Supplier is only entitled to offsetting and to assert a right of retention insofar as its counter-claim is undisputed or has been declared final and legally binding.
- 18.4. There are no side agreements to this Agreement. Amendments and addendums as well as declarations of termination and rescission require the written form in order to be valid. The same applies to the revocation of this written form requirement. Agreements and declarations under this Section 18 (4) are exclusively to be agreed upon with the purchasing department of ATLAS and to be sent thereto.
- 18.5. Each naming of ATLAS as a reference customer requires the prior written consent of ATLAS for the respective individual case.
- 18.6. If one or several provisions of this Agreement is or becomes invalid, non-enforceable or incomplete in full or in part this will have no effect on the validity of the other provisions of this Agreement. The Parties undertake for this case to agree upon a valid and enforceable provision, which shall take the commercial contents and the legal provisions of the agreement into account.

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