

I. General

1. Only ATE's Purchasing Conditions shall apply for the legal relationship with the Supplier insofar as ATE does not acknowledge deviations or the Supplier's conditions in writing.
2. They shall also apply where ATE accepts Supplier's or third-party's delivery without reservation, while having knowledge of their conditions conflicting or diverging from ATE's Purchasing Conditions. Even where we make reference to a letter containing terms and conditions of the Supplier or a third party or referring to them, this shall constitute no agreement to such terms and conditions.
3. The Purchasing Conditions shall also apply for all future transactions
1. between ATE and the Supplier without this requiring any reference to these Conditions.

II. Orders, acceptance of order, compensation

1. Supplier's offers shall be submitted in writing and free of charge for ATE. The Supplier shall explicitly point out to ATE any deviations from their inquiry.
2. Only orders in writing shall be legally binding, Agreements by telephone or verbal shall require written confirmation by ATE. To comply with the written form, transmission by means of telecommunication shall suffice, in particular, by fax or by e-mail, provided that the copy of the signed statement is submitted. The order is to be confirmed in writing to ATE immediately, but no later than 10 working days after the date of the order. Insofar as our offer comprises no explicit period of commitment, we shall be bound thereto for 10 days after the date of the offer. The deciding factor for timely acceptance is our receipt of the statement of acceptance.
3. Unless expressly specified otherwise, prices offered to ATE are understood to include "free delivery", packing, insurance, VAT as well as all duties and taxes. The prices agreed upon are fixed prices. Unless otherwise agreed upon in our orders, payment shall be effected within 60 days net after the delivery date agreed upon. The choice of payment method shall be at the discretion of ATE.
4. Invoices are to be submitted stating the order number, article number and item number.
5. The Supplier shall warrant that he has respected and properly complied with all customs regulations. He shall in particular warrant that all preference certificates and certificates of origin as well as supplier declarations have been properly issued. The Supplier shall indemnify ATE against any damage claims for breach of the aforementioned obligations.
6. The Supplier shall only with the express written permission by ATE be entitled to assign amounts owed by ATE or to have them collected by third parties. The provisions of § 354a of the HGB (German Commercial Code) shall remain unaffected.
7. Defaulting on payment without reminder shall be excluded.
8. If ATE can no longer make use of the ordered products in their business operations due to circumstances that arose after the conclusion of the contract, then ATE shall be entitled to terminate the contract at any time by written notice stating grounds. ATE shall in this event compensate the Supplier for the partial performance provided by him.

III. Scope of performance, execution, changes

1. The scope of performance arises from the respective individual order. Documents, reports, ideas, drafts, models, samples, and all other results arising during performance shall be part of the order. The performance results shall be described in detail, where appropriate by means of a product book, description of performance, time schedule, and other attachments. Attachments specified in the order are a part thereof.
2. The Supplier shall ensure that all data and circumstances that are of significance for his contractual duties and for ATE's intended use of the deliveries are known in due time. He shall ensure that his deliveries comprise the performance necessary for safe and economical use according to regulations, that they are suitable for the intended use, and comply with current state of science and technology. The Supplier shall during performance observe all applicable standards, laws, and statutory provisions, in particular the applicable environmental protection, hazardous material, dangerous goods and accident prevention regulations, as well as the generally recognized regulations in terms of technical safety and occupational medicine.
1. The Supplier shall inform ATE about the required official approvals and reporting duties for importing and operating the supplied objects.
2. ATE shall within the scope of reasonableness be entitled to demand from the Supplier changes to the design and construction of the supplied objects. The Supplier shall implement the changes within a reasonable time period. Appropriate provisions regarding the effects, in particular in terms of higher or lower costs and the delivery dates, shall be mutually agreed upon.

3. The Supplier shall ensure that he can also for a period of 10 years after termination of the supply relationship provide ATE at reasonable conditions with the supplied objects or parts thereof as spares.
4. Partial performance shall not be permitted unless explicitly agreed upon to the contrary. ATE shall be entitled to cancel the remaining quantity.
5. Should the Supplier after expiry of the period mentioned in Item 4 terminate the supply of spare parts or during this period terminate the delivery of the supplied objects, then ATE shall be given the opportunity to place a final order.

IV. Times for performance

1. The dates and deadlines specified in the order and in the order confirmation of the Supplier shall be binding. The delivery period shall commence with the date of the order. Advance deliveries shall only be permitted with the written consent by ATE. The deciding factor for observing the date of delivery shall be reception of the goods on the premises of ATE or their timely and successful acceptance, respectively. If "free delivery" or "free delivery to the place of use" is not agreed upon, then the Supplier shall deliver the performance while observing the common time for transport and shipping.
2. Should the Supplier realize that the dates agreed upon cannot be adhered to, then he shall inform ATE thereof immediately in writing specifying the reasons and the duration of the delay. ATE's statutory rights shall remain unaffected.
3. Circumstances of force majeure shall release the Supplier only where he has informed ATE thereof in writing immediately after he has become aware thereof, specifying the precise circumstances and probable duration by which the deadline is exceeded, and where there is no reasonable possibility for the Supplier to provide replacement.
4. Should the Supplier fail to meet the delivery date despite a first extension of time, then ATE shall without further extension of time at their discretion be entitled to demand replacement delivery or compensation for damages in lieu of performance due to failure to provide the service or to provide it as owed or to cancel the order. In the event of delay of delivery, a contractual penalty in the amount to 0.5 % of the order value per week of delay or part thereof shall apply. The maximum contractual penalty shall be limited to 5% of the order value. Assertion of further claims shall remain unaffected. The delay penalty is to be deducted from any damage caused by undue delay in the amount actually incurred or claimed. The right to demand payment of the contractual penalty agreed upon shall not be forfeited if the contractual penalty is not expressly reserved on acceptance of the delayed delivery.

V. Provided materials

1. Provided materials shall remain the property of ATE and must be stored separately free of charge, be marked and managed by the Supplier. Their use is permitted only for the respective individual order. In the event of reduction in value or loss, the Supplier shall pay compensation and shall for this purpose contract insurance at his own expenses. This shall also apply to order-bound material provided against charges. The Supplier shall upon request of ATE surrender all confidential documents and objects to ATE. Any rights of retention shall be excluded.
2. When processing, mixing and transforming the material, ATE shall already with the creation of the new or mixed or transformed thing become its owner. The Supplier shall keep safe the new or mixed or transformed thing for ATE with the diligence of a prudent businessman
3. The ownership regarding models, tools, forms, etc. (hereinafter referred to as tools) that are required for rendering the contractual performance and are part of the contract shall pass to ATE as it arises. Tools shall therefore be regarded as materials provided by ATE. ATE shall be entitled to request at their own discretion to have the tools delivered or to have them scrapped by the Supplier at no expenses for ATE. Scrapping tools shall require the written consent by ATE.
4. ATE shall retain the ownership or copyright regarding orders submitted, contracts as well as drawings, diagrams, calculations, descriptions and other documents made available to the Supplier. The Supplier shall without the express consent by ATE neither make them available to third parties nor use or copy them themselves or have it done by third parties.
1. He shall upon request of ATE completely return the documents to ATE when they are no longer needed by him in the ordinary course of business or when negotiations do not lead to the conclusion of a contract. Copies thereof produced by the Supplier must in this case be destroyed; excluded from this is only keeping them in accordance with the legal obligation to preserve documents and the storage of data for backup purposes within the normal framework of data backup.
5. Tools, devices and models that are made available to the Supplier by ATE or manufactured for contractual purposes and charged to ATE separately by the Supplier shall remain the property of ATE

or become the property of ATE. They shall be marked by the Supplier as being the property of ATE, are to be stored diligently, safeguarded against damage of any kind and to be used only for contractual purposes. The costs of their maintenance and repair shall in the absence of any agreement to the contrary be borne by the Contractual Partners at equal shares. The costs shall be borne solely by the Supplier, however, to the extent that they arose due to defects of such objects manufactured by the Supplier or to the improper use by the Supplier, his employees, or other agents. The Supplier shall notify ATE immediately about any not only insignificant damages to such objects. He shall upon request be obliged to hand over the objects in good condition to ATE when they are no longer needed by him for the fulfillment of the contracts concluded with ATE.

6. Any retention of title on the part of the Supplier shall apply only to the extent that it relates to the payment obligation of ATE for the respective products to which the Supplier retains title. In particular expanded or extended retention of title shall not be permitted.

VI. Subcontracting

1. Subcontracting of orders to third parties shall only be permitted with written permission by ATE.

VII. Secrecy

1. The Supplier shall be obliged to treat all nonpublic, commercial or technical details that become known to him during the business relationship as being trade secrets and to protect them against unauthorized inspection, use or loss. Drawings, templates, samples, models or similar objects made available to ATE or created at ATE's expenses shall remain the property of ATE and may not be made accessible or available to third parties without written permission by ATE. Duplicating such objects shall only be permitted within the framework of business requirements and copyright provisions. The documents and objects made available to the Supplier shall be returned to ATE without prior request after completion of work while observing the secrecy provision or be destroyed safely in consultation with ATE. The Supplier shall not retain or keep any duplicates, copies, etc. unless he is obliged to do so under statutory provisions for archiving. Whilst reserving further rights, ATE can demand their being surrendered once the Supplier is in breach of his obligations.
2. The BDSG (German Federal Data Protection Act) shall be applicable for the handling of data. The Supplier shall be obliged to bindingly comply with applicable laws. Where data is processed, a separate data usage agreement shall be concluded with ATE.
3. Employees and subcontractors shall be obliged accordingly.
4. Unless otherwise agreed upon, the obligation to secrecy shall continue five years after delivery and performance.
5. The Supplier shall for reference purposes or for other publications be entitled to use the company name or trademarks of ATE only where the latter has explicitly consented in writing. Any exhibition of objects manufactured for ATE, also in image form, shall be permitted only with the express prior written consent by ATE.

VIII. Liability for defects

1. If the period of limitation for claims for defects is not agreed upon separately, then the Supplier shall warrant that his performance will be without defect for a period of 24 months from the date of acceptance of the entire performance by ATE or the end customer, but in any event no longer than 36 months from delivery of the entire performance to ATE. The period of limitation for any notice regarding material defects shall apply regardless of the operational service life. Defects are to be notified by ATE without delay once they are discovered in the course of normal business operations. The Supplier to this end waives his right to objection due to the delayed notification of defects. The notification of defects shall interrupt the period of limitation for claims for material defects with respect to the defective portion of the delivery pending the rectification of the defect. Legal defects shall fall under the statute of limitations according to the statutory limitation period.
2. The Supplier shall also be liable within the context of his liability for defects even where he is not himself the manufacturer of the objects supplied or parts thereof.
3. ATE shall at their own discretion be entitled to assert statutory liability claims for defect, demand replacement delivery or rectification of defects. In the case of a replacement delivery or rectification of defects, the Supplier shall be obliged to rectify the defects at his expenses at the place of destination or to again provide performance. He shall bear all costs incurred with the rectification of defects or the replacement, including any necessary transportation and travel expenses.
4. In urgent cases, e.g. in the event of imminent danger or in cases where a performance obligation on the part of ATE requires immediate rectification of the defect, ATE shall following prior consultation with the Supplier be entitled to themselves perform rectification of the defect at Supplier's costs or have that done by third parties without giving notice. The same shall apply if the Supplier has delivered after occurrence of the delay.

5. For the replaced parts, the period of limitation shall commence anew. If more than 10% of the goods in a delivery are defective, then ATE shall be entitled to reject the entire delivery at Supplier's expenses without inspecting the remaining goods. Acceptance and payment by ATE shall not mean that ATE has accepted the goods as being free of defects.
6. For the rest, the statutory rights shall apply.

IX. Property rights

1. The Supplier shall be responsible for the objects or the performance he has supplied not infringing domestic or foreign industrial property rights. The Supplier shall be obliged to indemnify the Supplier [sic] and/or his customers in the event that they are out of court or by way of a legal dispute held liable for infringement of property rights. In the event of a legal dispute, the Supplier shall upon request provide legal counsel. Furthermore, the Supplier shall compensate any damages incurred by ATE and / or their customers where they have trusted in the unrestricted usability of the objects or performance. The damage of a customer of ATE is to be compensated by the Supplier only to the extent that ATE is to this end held liable by the customer.
2. The Supplier shall not be liable to the extent he has produced the provided objects or performance exclusively according to drawings and models from ATE and he did not know or could not have known that producing the objects or rendering the performance constitutes violation of the law within the aforementioned meaning.
3. The Supplier shall upon request name all patent registrations that he uses in connection with delivering the objects or performance. If the Supplier becomes aware of infringement of property rights or property right applications, then he shall immediately inform ATE of this without prior request.
4. Further statutory rights of ATE due to legal defects of the products delivered to ATE shall remain unaffected.

X. Product Liability, indemnification, third party liability insurance coverage

1. To the extent that the Supplier is responsible for a product defect, he shall be obliged to indemnify ATE against third-party damage claims at first request to the extent that the cause lies within his domain and organization and he himself is liable in relation to third parties. To the extent that recall measures are required due to such a product defect, the Supplier shall be obliged accordingly to reimburse the expenses required for this. The Supplier shall be obliged to maintain product liability insurance with blanket coverage of EUR 5 million for personal injury/property damage. The Supplier shall at any time upon request send ATE a copy of the liability insurance policy. Further rights of ATE shall remain unaffected.

XI. Other provisions

1. If the Supplier terminates supply activities or if insolvency proceedings over his assets or judicial or extrajudicial composition proceedings have been filed, then ATE shall be entitled to cancel the contract. Insofar as no cancellation occurs, ATE shall be entitled to retain an amount of at least 10% of the compensation as security for the contractual claims up to the expiration of the contractual limitation period for claims for defects.
2. Place of fulfillment for deliveries and performance shall be ATE's company headquarters, unless contractually stipulated otherwise.
3. Place of jurisdiction shall be ATE's company headquarters. However, ATE shall also be entitled to apply to any other legally competent court.
4. In addition to these provisions, the law of the Federal Republic of Germany shall apply exclusively. Application of the UN Sales Convention shall be excluded.
5. Should any provision be invalid, then the validity of the remaining provisions shall not be affected.

ATE Antriebstechnik und Entwicklungs GmbH & Co. KG
Brandenburger Straße 10
D-88299 Leutkirch