

## **I. General**

All of the goods and services provided by ATS Automation Tooling Systems GmbH and its affiliates and/or group companies ("ATS", "we", "us", "our") to businesses are subject exclusively to these general conditions of sale ("General Conditions of Sale"), combined with the specific terms included on the accompanying quote, order confirmation, or contract template provided by us. In the event that the terms on the accompanying document specifically conflict with these General Conditions of Sale, the terms of the accompanying document will supersede the conflicting terms contained herein. General terms and conditions of the customer do not apply even if we do not expressly object to them and nevertheless carry out the delivery or services. Variations and amendments are only binding with our expressed written confirmation and only apply to the business for which they were agreed upon. In the framework of on-going business relationships, the following conditions also apply to future contracts even if no specific reference is made to their applicability.

## **II. Offer, Conclusion of Contract**

1. Our offers are always subject to change and non-binding.
2. After the customer has ordered, the contract comes into effect upon our written confirmation. Any statements made prior to the order in the course of processing the request, especially those concerning performance, consumption or other specific data, are only to be considered binding if we confirm them as binding in the confirmation of contract or in separate written correspondence.

## **III. Customer's Cooperation**

1. The contractual performance is conditional upon the customer's timely performance of all of his obligations with regards to cooperation, information, consultation as well as custody and safety.
2. Without limiting the generality of the aforementioned, the customer is therefore obligated to, in a timely manner, answer all questions, ensure availability of all of his subject matter experts involved in the project, provide us with the required or requested drawings and documents, all necessary approvals and permits and to participate in design review meetings, as well as pre-acceptance and final acceptance tests.
3. The customer is furthermore obliged to provide us with specification compliant test material in sufficient quality and quantity. If the test materials have tolerances, the customer is obliged to provide us with test materials of the respective upper and lower tolerance range. Notwithstanding any agreed specifications, we are not required to warrant the proper function of the equipment except in respect of the parts provided to us. Unless otherwise agreed, adjustments or modifications to the product or test material after conclusion of the contract are not covered by this agreement. Should changes be necessary due to the special circumstances of the project, they need to be agreed within the framework of a change order.
4. If the customer does not comply with the aforementioned cooperation obligations, or if such subsequent changes have

been agreed or become necessary as part of a change order, Paragraph IV, Clause 4 shall apply by way of analogy.

## **IV. Prices**

1. Unless otherwise agreed, our prices do not include VAT and are based on delivery Ex Works, Incoterms 2020. Except where DDP is agreed, duties are to be paid by the customer.
2. To the extent that no other arrangements are made, all payments are due immediately.
3. If unforeseen increases in materials, labour or transport costs, taxes or levies, occur between the conclusion of contract and delivery, we are entitled to adjust our price to reflect these factors, under the condition that delivery is not planned within four months of conclusion of contract.
4. If, after conclusion of contract, the customer makes changes, we may at any time adjust the prices reflecting the added expenses and work caused by the change.

## **V. Terms of Payment, Offsetting**

1. If the customer is in delay with any contractually agreed payment deadlines, we are entitled to demand liquidated damages in the amount of 9 %-points above the current prime lending rate, based on the respective payment milestone amount, without any proof of loss. We reserve the right to claim damages for any additional losses. The customer is entitled to prove that we have incurred no loss, or that such loss was considerably lower than the amount owed as liquidated damages.
2. Payments are only deemed to be made on time if the amounts are credited in full on our accounts, free of charge and at our unrestricted disposal within the stated period.
3. The customer can only offset or withhold payments based on undisputed or legally established claims. In the event of a defect, customer may only withhold payments if such defect is material. For any payment retention, the claim must derive from the same contractual relationship.
4. In the case of intra-EU deliveries, the customer is obligated to provide its tax ID number to us along with the other information and documentation necessary to establish tax exemption. If the customer does not fulfil these obligations in a timely fashion, we will not treat the delivery as tax exempt.
5. In that case, we are entitled to bill and demand the applicable VAT. To the extent that a delivery is incorrectly treated as tax exempt on the basis of incorrect statements made by the customer, the customer must hold us harmless from the tax debt and bear any and all associated added costs.

## **VI. Delivery Dates and Deadlines**

1. We will honour the delivery dates and deadlines stated in the order confirmation by displaying all commercially reasonable efforts; however, any dates and schedules mentioned are only provisional and do not oblige us to perform to a fixed calendar date or within an agreed upon delivery time.

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2. Under no circumstances do delivery or other performance periods begin prior to the clarification of all details in connection of the requested performance. Any deliveries or performance by us is conditional upon the customer's timely performance of all cooperation obligations mentioned in Paragraph III above. If these conditions precedent are not fulfilled for reasons for which we are not solely responsible, the delivery deadline will be extended by a period of time equal to the time lost as of such delays.
  3. We are only obligated to perform our obligations, render the services, and/or deliver the goods if the customer has made all agreed-upon and/or due payments. If payments are rendered late, all deadlines will be extended correspondingly.
  4. The delivery deadline or date is deemed honoured if the shipment is readied for dispatch or pick-up before the deadline expires or by the agreed date.
  5. We point out that any resale of the delivered goods can be subject to export regulations. In addition, goods supplied by customer can also contain U.S. components (goods, software, technology), and this circumstance may require compliance with U.S. regulations. The customer undertakes to comply with all relevant national, European and U.S. export and re-export regulations.
  6. We are neither responsible nor liable for delays that result from legal or regulatory restrictions on exports or result from the fact that delivery cannot take place because of export restrictions. If a delivery cannot be carried out as foreseen in the contract, due to export regulations or requirements of the authorities the customer can withdraw from the contract. In such a case the customer is not obliged to indemnify us, unless the customer knew or gross negligently did not know that the supplied products were in conflict with law and/or export regulations, prior to placing the order.
  7. If a milestone has been agreed as binding and we are unable to meet such milestone for reasons for which we are not responsible ("Delay in Performance"), we shall inform the customer thereof without undue delay and, at the same time, inform the customer of the expected new date for performance. If performance is also not possible or complete within the new period, we shall be entitled to (i) notify the customer of another new performance date, (ii) rescind the contract in whole or in part, or (iii) terminate the contract, unless we or third parties for whom we are responsible are responsible for the additional default or delay of the performance. Delays in Performance shall in particular but without limitation include delays in deliveries by our suppliers if neither we nor our supplier are at fault, or cases where we are not obliged to carry out such procurement. If we rescind the contract, we shall reimburse any consideration already paid by the customer, reciprocally and simultaneously (*Zug um Zug*) with the return of any deliverables provided or services already rendered. In the event of termination, the customer shall be obliged to pay us the agreed price for the goods and/or services, less, however, (i) such costs and expenses which we have not incurred as a result of the termination and (ii) what we acquire or wilfully fail to acquire from other use of our labour.
  8. If failure to meet a deadline or delivery date is attributable to force majeure, mobilisation of armed forces, war, civil unrest, strikes, epidemics or pandemics, lock-outs or other unforeseeable events affecting our business, for which we are responsible and which either occurred or became known to us after the conclusion of the of the contract, the deadline or delivery date will be extended accordingly and the parties shall, acting reasonably and equitably, agree on amendments to the agreed compensation.
  9. Notwithstanding anything to the contrary, neither party shall be liable for delays or non-performance as a result of causes related to the COVID-19 virus and efforts being made to avoid or limit the spread of the virus and related diseases or health issues, including but not limited to, governmental directions, orders, guidelines or recommendations; unavailability or delay in receipt of third party materials or services, components or other required supplies; labour shortages and/or stoppages, or any effects or conditions resulting from such events or other reasonable measures taken by a party, to address such events ("COVID-19 Event"). The party suffering a COVID-19 Event shall promptly give written notice of such to the other party (provided that failure to provide prompt notice shall not disentitle the party claiming relief to such relief, except to the extent that such failure prejudices the other party), stating the period of time the occurrence is expected to continue (if reasonably known), and shall use commercially reasonable efforts to end the failure or delay and minimize its effects. COVID-19 Events shall be an Excusable Delay and any price consequences and/or impacts to schedule shall be reasonably determined by ATS.
  10. The conditions and requirements of a delay in our services shall be determined in accordance with the statutory provisions; in any event, a respective notice from the customer is required. If we have agreed to a contractual penalty or liquidated damages for a performance milestone, and if we are in arrears with our performance with respect to such milestone for reasons attributable to us, then such agreement shall be understood to mean that the customer may demand liquidated damages for the damage caused by the delay, irrespective of the terminology chosen. For each completed week of delay, the liquidated damages shall amount to 0.5% of the net price of the delayed delivery or performance, but not more than a total of 5% of the delayed delivery or performance. We reserve the right to prove that the customer has suffered no damage or losses at all or only a significantly lower damage or loss than the aforementioned liquidated damages.
- ### VII. Place of Fulfilment, Transfer of Risk, Insurance
1. Unless otherwise agreed, place of fulfilment for all obligations deriving from this contract, especially for the payment of the purchase price, is the facility address listed in our offer.
  2. Shipping of our products will be effected and transfer of risk shall take place Ex Works, Incoterms 2020, from our manufacturing facility, except where explicitly agreed otherwise. This also applies if we have committed ourselves to assembly and/or commissioning responsibilities.

3. We only conclude insurance policies at the expressed written request of the customer, who in such cases bears the costs.

#### **VIII. Reservation of Title**

1. The goods that we deliver remain our property until all claims deriving from the business relationship between us and the customer have been paid in full. This reservation of title also applies to bills of exchange.

2. Until payment is made in full, the customer is not entitled to resell the goods without our prior written consent; the customer is not permitted to pledge the goods or give them in security.

3. In the event that the good subject to reservation of title is combined with others not belonging to us (installation), we are entitled to a share of co-ownership of the new item thereby created in proportion to the order value of the object under reservation of title at the time it. If the customer obtains sole ownership of the new item, the contracting parties herewith agree that the customer will grant us co-ownership of the new good in proportion to the order value of the combined good under reservation of title to the value of the remaining goods. The customer is obligated, to allow us access to the documents required to determine our share of co-ownership on request. That the customer will hold the items in our co-ownership in safekeeping for us free of charge is agreed to here and now.

4. In case the customer is in breach of contract, especially in cases of payment default for claims resulting from the business relationship we can, without prejudice to our other rights and after setting a reasonable grace period, withdraw from the contract and demand the return of the goods or other services rendered.

5. The limit of coverage is placed at 120 %. We are obligated to release the securities owed to us to the extent that the realisable value of our securities exceeds the secured claims by more than 20 %. Our reservation of title on a delivered good however persists until our compensation for the delivery of this good has been paid in full.

#### **IX. Acceptance**

If a different place of fulfilment is agreed to, the following applies to deliveries that require acceptance under a contract of services:

1. The customer is obligated to participate in the preliminary acceptance of the machines in our works. A record of the pre-acceptance will be kept.

2. Acceptance must be completed without undue delay after delivery.

3. The customer is obligated to certify acceptance for us after commissioning is completed.

4. Insignificant defects do not entitle the customer to refuse acceptance.

5. Acceptance is deemed given, at the latest, once the customer or end customer begins to use the goods or services for production or other operational purposes.

6. On acceptance the risk is transferred to the customer to the extent that the customer does not already bear it. Risk also transfers if the customer comes into default of acceptance.

#### **X. Inspection of Incoming Goods and Complaints of Defects**

1. The customer is obligated to inspect the good immediately after receipt in order to establish that it conforms to the specifications named in the order and is free of defects (§§ 377, 381 Para. 2 of the German Commercial Code (Commercial Duties to Inspect and Report Defects)).

2. Such notice must be given in writing (e.g. letter, email, fax).

#### **XI. Warranty Rights**

1. The statutory provisions shall apply to the customer's rights in the event of defects (including incorrect and incomplete delivery as well as improper assembly or defective assembly instructions), unless otherwise provided below.

2. The warranty period is to be understood as a limitation period for defects or mistakes in performance and lasts

- a.) for purchase contracts 12 months starting from delivery,
- b.) for service contracts 12 months starting from when the service was provided,
- c.) for contracted work 12 months from acceptance, however at the latest 15 months from delivery/performance unless we are responsible for any delay in acceptance.

3. In the event that a notice of defect is issued in a timely manner, the customer may request remediation via, at our option, correction of the defect or delivery of an item free of the defect. If two attempts of remediation prove fruitless (failed remediation), or if we refuse to remedy the defect or if it proves unreasonable, the customer can terminate the contract, reduce the purchase price or demand compensation for damages according to the provisions of these terms. Subsequent performance shall not include the removal of the defective item or its reinstallation if we were not originally obliged to install it. We shall bear or reimburse the reasonable expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, in accordance with the statutory provisions, if a defect actually exists. Otherwise, we may demand reimbursement from the customer for the costs incurred as a result of the unjustified request to remedy the defect (in particular testing and transport costs), unless the non-defectiveness was not recognisable to the customer.

4. No warranty is granted for deterioration of the delivered good as a result of natural wear and tear, especially not for parts subject wear and tear, for damage that occur after transfer of risk or for improper handling (e.g. incorrect connection,

test material which dimensions exceed or fall short of the agreed upon tolerances).

5. A warranty for certain properties is only granted if it has been expressly confirmed in writing. We do not warrant that the delivered goods are suitable or fit for the customer's purposes.

6. Data concerning performance, consumption, etc., that we have confirmed in writing on conclusion of the contract are never to be seen as individual guarantees according to § 443 of the German Civil Code.

7. The customer is obligated to grant us the necessary time and opportunity to affect remedy in case of defects. In the case of malfunctions and failures we will send personnel within a reasonable period of time. We cannot however warrant that personnel will be available immediately at any time.

8. Our liability is excluded if the customer or a third party modifies or reworks the delivered good(s) without our prior approval.

## **XII. Liability, Termination**

1. Unless otherwise stated in the offer or these general conditions of sale including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

2. We shall be liable for damages or reimbursement of futile expenses - irrespective of the legal basis – as per the regulations of statutory law for wilful misconduct and gross negligence. In cases of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty), only a) for damages arising from injury to life, body or health, b) for damages arising from the breach of an essential contractual obligation (obligation the fulfilment of which is essential to the proper performance of the contract and the observance of which the contractual partner regularly may and does rely on); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage. In total, the maximum and aggregate amount of liability under clause b) shall be 100% of the agreed order value, and in this case our liability for all loss of profits, loss of production, loss of reputation, recalls, stoppage time or other economic loss or indirect, special, incidental, consequential, penal or other similar damages shall be excluded in cause and amount.

3. The limitations of liability resulting from section 2 above shall also apply in the event of breaches of duty by, and for the benefit of, employees, subcontractors or others if we are legally responsible under statutory law for their breaches. These limitations shall, however, not apply if we have fraudulently concealed a defect, if we have assumed a guarantee for the quality of the goods, and for claims of the customer under the Product Liability Act.

4. For breaches of contract that do not constitute a defect, the customer may only rescind or terminate the contract if we are responsible for such breach and provided such breach is to be regarded as material with regard to the total scope of

the order. Any right of the customer to terminate for convenience (in particular according to §§ 650, 648 of the German Civil Code) is excluded. For other cases not mentioned by these general conditions of sale, the statutory requirements and legal consequences shall apply.

## **XIII. Assembly, Commissioning, Instruction**

1. Assembly work and commissioning services as well as instructions given to the customer's operating personnel will be billed according to time and expense. Billing will be done at our regular rates. We will bill worked hours, waiting times, travel times, expenses for initiation, overnight costs as well as the necessary expenses for fares and haulage. The material used as well as other expenses for the consumption of materials will be billed at reasonable prices in absence of any agreement on prices.

2. If assigned assembly personal cannot commence work due to reasons for which we are not responsible, the waiting time will be billed as time worked. If, for reasons for which we are not responsible, we must complete the work at times or under conditions other than those specified in our contract, the customer must also compensate the added expenses we incur due to this. To the extent that the work must be completed at times or under conditions that require higher rates (including overtime), we are entitled to bill added charge on top of our hourly rates in the amount of the percentage rates applicable to us.

The instruction of operating personnel will also be billed if assembly is included in the price.

## **XIV. Documents, Plans, Safety Regulations**

1. For new equipment, an operator's manual and general plans according to the machinery directive (42/2006/EC) are included in the scope of delivery. More detailed plans are only provided on the basis of separate agreements and compensation; we are not obligated to conclude such agreements.

2. We can only provide operating instructions and documentation for purchased parts to the extent that we ourselves receive them from our sub-suppliers. To the extent that we are obligated to maintain confidentiality with respect to our sub-suppliers, we cannot be asked to provide such documentation.

3. In the construction of our products, deviations from safety norms, guidelines and recommendations are permitted to the extent that the same safety is guaranteed in some other manner.

## **XV. Confidentiality, No IP Transfer**

1. To the extent that nothing else is arranged, all technical or commercial information that we provide remains our exclusive property and must be kept confidential with respect to third parties, and may only be used to fulfil its contractual purpose.

2. We reserve all rights to such information (including copyrights and the right to register for commercial protected rights, such as patents, utility patents, etc.). A transfer of intellectual

property rights of any kind to the customer shall not take place unless this has been expressly agreed in writing.

#### **XVI. No Reproduction or Reverse Engineering**

The customer is obligated to refrain from reproducing machines provided by us or parts thereof and to refrain from contracting any third parties to reproduce such machines or parts. Should these obligations be breached, we can – without prejudice to our other claims and rights—demand the customer pay a reasonable licensing fee. In particular, the customer must also refrain from commercially exploiting or imitating the information outside the purpose in any way (in particular by way of reverse engineering).

#### **XVII. Court of Jurisdiction, Miscellaneous**

1. Changes and amendments to the contract must be made in writing to be valid. This also applies to any waiver of the written form requirement.
2. The parties herewith recognise the courts having jurisdiction over the respective ATS entity entering into the contract as the sole responsible courts for any and all legal disputes arising from or in connection with this contract.

However, we are also entitled to assert claims against the customer at its place of general jurisdiction.

3. Should individual provisions of these general conditions of sale or the contract concluded be or become void or legally unenforceable, this will not affect the remaining provisions. Should a partial clause prove unenforceable, the enforceability of the remaining clause will remain unaffected if it can be severed from the content of the partial clause, is comprehensible in its own right and results in a rule that remains logically sound in the framework of the contract as a whole. The parties are obligated to replace unenforceable clauses with provisions that most closely approximate the commercial purpose of the unenforceable clause. This applies analogously in the case of omissions as well.
4. The customer is instructed and also gives consent that all data concerning it, including personal data in the sense of the Data Protection Act, will be stored in the framework of our electronic data processing. The customer will ensure that any necessary consent forms from its employees will be available and provided to ATS upon request.
5. These General Conditions of Sale, their validity, as well as all contractual relationships between us and the customer are exclusively governed by the laws of the Federal Republic of Germany, excluding its provisions on conflicts of law as well as the UN Convention on Contracts for the International Sale of Goods (“CISG”).