



General Purchasing Terms and Conditions of ATN Hölzel GmbH

1. General Comments

1.1

The conclusion of contracts and the execution thereof shall be effected exclusively in accordance with these terms and conditions. The supplier recognises these as binding for this present contract, at the latest from the time of the commencement of its implementation. Any deviating terms and conditions of the seller shall not be recognised.

1.2

The exclusive basis of the contract is our order. The version issued in the German language shall be the only authoritative one. Amendments and supplements to the contract shall require the written form; any other agreements immediate written confirmation.

1.3

We shall be entitled to revoke our order without incurring any costs to ourselves inasmuch as we should not have received within two weeks of receipt of the order by the supplier either the confirmed second copy of the order or a separate order confirmation.

2. Details provided by the Supplier

2.1

The supplier shall be required to provide us with the following details pursuant to the goods in writing:

- Existence of an obligation to obtain an export licence according to German law and index number,
- Registration according to US-CCL and corresponding reference number,
- Existence of an obligation to obtain an export licence according to the EC-Dual-Use Ordinance and index number,
- Statistical goods number and
- Country of origin of the goods.

2.2

We explicitly reserve the right to rescind the contract in the event that the necessary export licence should not be granted to us.

2.3

The supplier shall be obliged to declare the substances contained in its products (thereby quoting the relevant CAS-Reference numbers and weight proportions in the homogeneous basic material), inasmuch as said substances are listed in any of the following legal norms or any norms replacing these ones:

- Chemicals Prohibition Ordinance "ChemVerbotsV" (Realisation of Guideline 76/769/EEC and relevant amendments thereto)
- Old Vehicles Ordinance "AltfahrzeugV" (Realisation of Guideline 2000/53/EC)
- Electrical and Electronic Articles Act "ElektroG" (Realisation of Guideline 2002/95/EC and Guideline 2002/96/EC)
- CFC-Halogen Prohibition Ordinance "FCKWHalonVerbV" (Realisation of Guideline (EG) 2037/2000)
- Ceramic Fibre Ordinance (Status Feb. 2005: in preparation)



2.4

The Supplier shall be required to confirm to us in an appropriate manner the origin / source of the goods thereby paying attention to the statutory requirements, e.g. by way of a supplier's confirmation or declaration of origin or Movement of Goods Certificate EUR.1. In its supplier's declaration the supplier must inform us of the origin of its goods in accordance with the valid rules of origin of the country of destination specified by us.

3. Technical Documentation

3.1

The supply of the technical documentation and all protocols necessary for this shall be an integral part of the main delivery.

3.2

The supply of the technical documentation shall be effected in paper form and as a CD.

3.3

The technical documentation must be compiled in accordance with the EC-Machinery Directive and comply with all recognised state-of-the-art technical rules.

3.4

The operating instructions are to be compiled according to DIN ISO 62079 or a norm replacing that one.

4. Software

4.1

Software shall be handed over to us on standard data carriers in machine-readable code together with the user documentation.

4.2

In the case of any software individually developed for us, the source code together with the producer's documentation is also to be surrendered to us. Copies of the source code and producer's documentation are to be surrendered to us upon acceptance and must correspond to the programme status at the end of the test phase.

4.3

Any measures implemented with regard to the software in the context of liability for defects are to be incorporated by the supplier into the source code and producer's documentation without delay; a copy of the respective updated status is to be made available to us at once.

4.4

We shall acquire irrevocably an exclusive, unrestricted by time or space, right of usage to any software especially developed for us or parts thereof as well as any performance results for any known type of usage including the rights of adaptation, replication, alteration, extension and of granting simple rights of usage to third parties, inasmuch as nothing to the contrary results from the following sections.

4.5

Should the acquisition of a right of usage in accordance with the previous section be opposed by any rights held by third parties to any external programmes that may have been incorporated in the performance or by any other external performance results, the extent of our right of usage is to be agreed upon accordingly in the contract.

**4.6**

The supplier shall retain its entitlement to use any standard programmes, programme modules, tools and know-how it has contributed itself that have been used in producing the performance results, also for third party orders. The supplier shall not be permitted to replicate, process or exploit in any other way performance results and solutions that have been elaborated for us, neither wholly nor in part.

4.7

The supplier shall be permitted to publish any performance results including extracts thereof that have been compiled for us only with our written consent.

5. Dispatch and Transfer of Risk**5.1**

The delivery is to be effected to the destination specified by us.

5.2

Inasmuch as nothing to the contrary has been agreed upon, the costs of dispatch and packaging shall be borne by the supplier. In the case of prices ex works or ex warehouse of the supplier, dispatch is to be effected in the most cost effective manner in each case, should we not have specified a particular mode of dispatch. Any extra costs resulting from the failure to adhere to a dispatch or packaging instruction are to be borne by the supplier. Extra costs for an accelerated form of dispatch that might be necessary in order to adhere to a delivery deadline shall also be borne by the supplier.

5.3

The goods supplied are to be supplied packaged, inasmuch as the nature thereof requires them to be packaged for dispatch. The packaging must be safe for transportation and comply with those dispatch regulations that apply to the method of transportation chosen and any packaging prescriptions referred to by us in the order.

Packaging material shall only be returned by us if it has been clearly labelled as rental material by way of owner's imprints.

5.4

Types of packaging that form a part of the invoice may, by way of mutual consent, be returned against a fee and carriage paid.

5.5

The goods shall travel at the supplier's risk until the time of their arrival at their destination, unless it should be the case that the transport should be effected using our vehicles or by a transportation company specified by us. Should the dispatch arrive at its destination in damaged packaging or should it be supplied in damaged packaging to our driver or the transportation company specified by us, we shall be entitled to refuse to accept the dispatch without needing to review its contents. The costs of any return dispatch shall be borne by the supplier.

5.6

A delivery note quoting the product designation specified by us in our order and the order and product reference numbers is to be enclosed with each delivery.

5.7

The delivery time quoted in the order shall be binding.

5.8

In the event of a delay in delivery for which the supplier bears the responsibility we shall be entitled to demand a contractual penalty amounting to 0.3% of the price of the goods to be delivered for each day or part-day of the delay, but restricted to a maximum of 5% of the agreed price. The option of asserting a claim for any higher damage actually incurred and any other statutory rights shall not be affected by this.



6. Acceptance

6.1

Acceptance shall always be effected subject to the reservation of all rights, in particular rights arising from defective or delayed deliveries.

6.2

Should acceptance be prevented or made considerably more difficult by circumstances beyond our sphere of influence, we shall be entitled to postpone acceptance for the duration of these circumstances. Circumstances of the kind being referred to here shall be deemed to be all instances of Force Majeure that disturb our business operations or the processing, selling or any other use of the goods such as import and export restrictions, natural disasters such as damage by fire or water, the scarcity of raw materials or means of transport, company disturbances such as strikes and work stoppages, suspensions or restrictions to the energy supply and any other circumstances that may lead to the cessation or considerable restriction of our production process. Should these circumstances persist for a period in excess of four weeks, the supplier shall be entitled to rescind the contract inasmuch as we should continue to refuse acceptance of the goods. Further reaching claims are excluded.

7. Payment and Warranty

7.1

On the day of dispatch the invoice is to be sent to us in duplicate quoting the order or material number, as well as an exact statement of the contents and weight and also declaring the amount of VAT. The issuing of an invoice that does not comply with these requirements or that deviates from our order shall cause any period allowed for the availment of any discounts for early payment not to begin.

7.2

Unless agreed otherwise payment shall be effected within fourteen days thereby deducting a 2% discount for early payment or thirty days net following receipt of goods and invoice. Any offsetting shall be deemed equivalent to a payment.

Under no circumstances shall the period allowed for payment begin before the agreed delivery date.

7.3

The receivables from any contracts concluded with us may only be ceded with our written consent.

7.4

The supplier shall guarantee that its delivery shall have the properties contractually provided for, conform to the relevant statutory stipulations and recognised rules and not have any defects. The supplier further guarantees that the goods supplied have not been altered in terms of their quality from earlier, non-defective deliveries, inasmuch as such alterations had not been agreed upon with us prior to the conclusion of the contract.

7.5

The objection of delayed notification of defects shall be excluded in the cases of notifications of defects, including those affecting excess or short deliveries, that are raised within four weeks of the arrival of the goods at their destination. The punctual sending of the notification of defects shall suffice in order to uphold our rights.

7.6

In the event of a defective delivery we shall have the right to choose between the options of subsequent fulfilment and substitute delivery. In urgent cases we shall be entitled to, at the expense of the supplier in each case, rectify the defect ourselves, cause it to be rectified by a third party or purchase our requirements from a third party.



7.7

Following a failed attempt at subsequent fulfilment on the part of the supplier we shall be entitled to rescind the contract and/or demand compensation in lieu of performance; the supplier shall not have any entitlement to a further attempt at subsequent fulfilment. The right to rescind and/or demand compensation in lieu of performance shall, should the supplier's delivery be only partially defective, be available to us at our option either with respect to this part or to the contract as a whole.

7.8

For the purpose of subsequent fulfilment the defective goods shall, at our discretion, be made available to the supplier at that location where they had been when the defect had been discovered or at the destination determined in accordance with Section 2. The supplier shall be obliged to collect the goods from that place, should subsequent performance not be possible in situ and to subsequently send them back to there.

7.9

Should a material defect reveal itself within six months of the transfer of risk it shall be assumed that the item had already been defective at the time of the transfer of risk, unless it should be the case that such a supposition would be irreconcilable with the nature of either the item or the defect.

7.10

The costs of any subsequent fulfilment shall be borne by the supplier. The term of the warranty periods shall be suspended for the duration of subsequent fulfilment.

7.11

The warranty period shall be three years, unless longer periods have been stipulated by law.

7.12

The above provisions shall apply analogously in the event of a delayed delivery. Should an overstepping of the agreed delivery period or the agreed delivery date be foreseeable, the supplier shall be required to inform us immediately of the probable duration of the delay notwithstanding any of its other obligations. For the determination of the punctuality of deliveries the arrival of the goods at our specified destination shall be decisive.

8. Means of Production

8.1

All means of production such as drafts, drawings, models, patterns, measurement and test instructions, printing templates and suchlike plus any tools that we have surrendered to the supplier so that it might be able to carry out the order shall remain our property.

8.2

Those means of production that have been made by and billed by the supplier by way of fulfilling the order shall become our property at the time of manufacture. They shall be kept by the supplier on our behalf until the time of handing over.

8.3

The aforementioned means of production and the items manufactured using them may not, without our written consent, be used for any other purposes, replicated or surrendered to any third parties. They are to be safeguarded against unauthorised inspection and usage. They are to be returned to us by the supplier without being asked should the supplier no longer require them for the further fulfilment of delivery or service and if we do not explicitly permit the supplier to retain them.

We shall have the exclusive right to exploit the developments and any resultant further developments that may arise from the order.



9. Industrial Property Rights

The supplier guarantees that the goods supplied or the usage thereof do not violate the industrial property rights or any other rights held by third parties. Inasmuch as any such rights do indeed exist, it shall be obliged to compensate us for any damage suffered as a result regardless of its own or our knowledge. The supplier shall furthermore be obliged to indemnify us against any third party claims occasioned by third party industrial property rights.

10. Retention of Proprietary Rights

The retention of any proprietary rights on the part of the supplier is excluded inasmuch as it should not be covered by our explicit written consent.

11. Data Protection Notice

Those personal data necessary for contractual relationships shall, in accordance with the prescriptions of the Federal Data Protection Act (BDSG), only be collected, processed and used for the contractually agreed purpose.

12. Final Stipulations

12.1

The valid laws of the Federal Republic of Germany applicable to the legal relationships between domestic contractual partners shall apply without exception. Application of the United Nations Convention on the International Sale of Goods is excluded.

12.2

The place of fulfilment is our company headquarters (Oppach, Federal Republic of Germany).

12.3

The exclusive court of jurisdiction for all disputes arising from this contract is Görlitz, Federal Republic of Germany. This shall also apply should the customer not have any general court of jurisdiction in Germany or its headquarters or normal place of residence should not be known at the time of the filing of the suit. We shall, however, also be entitled to file a suit at the customer's headquarters.

12.4

Should any individual stipulations of these terms and conditions be invalid or impracticable or should they become so in the course of implementing the contract, all other stipulations shall nonetheless retain their validity at all times. Any invalid and impracticable stipulation is to be regarded as being replaced by that valid and practicable stipulation that comes closest to the economic purpose being pursued by the parties in the context of the legally possible.