

1. Validity

1.1 All deliveries, services and quotations made by ATLAS to the respective purchasers, inasmuch as the latter should be entrepreneurs within the meaning of Section 14 BGB (German Civil Code), a legal entity under public law or a public law special assets fund within the meaning of Section 310 Paragraph 1 BGB shall be effected exclusively on the basis of these General Terms and Conditions. These form a component part of all contracts that ATLAS concludes with its contractual partner(s) (hereinafter also referred to as "Client") pertaining to the deliveries or services offered by ATLAS. They shall also apply to all future deliveries, services or quotations to the Client, even if they should not be agreed separately once again.

1.2 General terms and conditions of the Client or of any third parties shall not apply, even if ATLAS should not separately object to their application in an individual case even if ATLAS should make reference to a letter that contains general terms and conditions of the Client or of any third party of points to any such, this shall not constitute consent to the application of said terms and conditions.

2. Quotation and Conclusion of a Contract

2.1 All quotations issued by ATLAS are subject to change and non-binding inasmuch as they are not explicitly labelled binding or contain a specific deadline for acceptance. ATLAS may accept orders or commissions within fourteen days of receiving the same.

2.2 Contracts shall only come into being after ATLAS has confirmed any written orders or declarations of acceptance received by way of an order confirmation from ATLAS or has delivered the items or performed the services ordered by the Client. This shall apply analogously to supplements or amendments to contracts.

2.3 Supplements and amendments to the agreements concluded including to these General Terms and Conditions of Delivery shall require the written form in order to attain validity. With the exception of managing directors or holders of powers of attorney, employees of ATLAS are not authorised to conclude any oral agreements that deviated from these.

In order for the written form condition to be satisfied transmission by telecommunications, in particular by telefax or by e-mail, shall suffice, inasmuch as the copy of the signed declaration is transmitted.

2.4 Information provided by ATLAS pertaining to the object of the delivery or service (e.g. weights, measurements, values in use, load-bearing capacities, tolerances and technical data) and our depictions of the same (e.g. drawings, illustrations, samples, models, films, etc.) are merely approximations according to the standards customary within the industry inasmuch as the usability for the intended contractual purpose should not presuppose exact conformity. They are not guaranteed features but descriptions or identifications of the supplies or services. Standard deviations and such deviations that occur due to legal provisions or which represent technical improvements as well as the replacement of component parts by equivalent parts are permissible inasmuch as they do not impair the usability for the intended contractual purpose. In the case of standardised goods the tolerances permitted on the standard sheets shall apply.

2.5 ATLAS reserves the right of ownership or copyright to all quotations and cost estimates it may have submitted as well as to any drawings, illustrations, calculations, prospectuses, catalogues, models, tools, films and other documents and aids supplied to the Client. Without the explicit consent of ATLAS the Client may not place these items themselves or their contents at the disposal of third parties, publicise them, use them either itself or through the agency of third parties or duplicate them. At the demand of ATLAS it shall be required to return these items to ATLAS in their entirety and to destroy any copies it may have made inasmuch as it should no longer require them in the ordinary course of its business or should negotiations not have resulted in the conclusion of a contract.

3. Prices and Payment

3.1 The prices are to be understood as being EURO prices ex works ATLAS plus packaging and the statutory rate of VAT.

3.2 Inasmuch as the prices agreed are based upon the list prices of ATLAS and the delivery should not take until more than four months have

expired subsequent to the conclusion of the contact, ATLAS' list prices valid upon delivery shall apply (minus in each case any percentage or fixed discount that may have been agreed). In the event of an increase of more than 10% above the agreed prices the Client shall be entitled to rescind the contract in question.

3.3 Invoices are to be paid within a period of thirty days without any deductions, inasmuch as nothing to the contrary should have been agreed in writing. The decisive criterion for the date of the payment is its receipt by ATLAS. Cheques shall only be regarded as payment after their redemption. Should the Client fail to pay upon maturity the outstanding amounts shall be subject to interest of 5% p. a. from the date of maturity onwards; the assertion of higher interest and other losses in the event of default shall remain unaffected.

3.4 Offsetting against counterclaims held by the Client or the withholding of payments on the grounds of any such claims shall only be permissible inasmuch as said counterclaims are undisputed or have been legally established.

3.5 ATLAS shall be entitled to effect or perform any outstanding deliveries or services only against cash in advance or the provision of collateral should, subject to the conclusion of the contract, circumstances come to its attention that are likely to significantly diminish the creditworthiness of the Client and through which the settlement of the outstanding receivables of ATLAS by the Client from the respective contractual relationship) including other individual contracts to which the same framework contract applies) is endangered.

3.6 Inasmuch as the assembly and/or start of operations should be carried out by ATLAS, ATLAS shall charge the defined hourly rates for assembly wages, travel times and travel expenses and the defined daily flat rates for catering and appropriate accommodation according to expenditure inasmuch as nothing to the contrary has been agreed.

4. Delivery and Delivery Period

4.1 Deliveries shall be effected ex works ATLAS.

4.2 Deadlines and dates for supplies and services promised by ATLAS shall always apply only approximate-

ly, unless it should be the case that a fixed period or a fixed date has been promised or agreed. Inasmuch as shipment should have been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarding agent, carrier or any other third party commissioned with the transport.

4.3 ATLAS may – without prejudicing its rights resulting from default on the part of the Client – demand from the Client an extension of periods allowed for supplies and services or a postponement of deadlines for supplies and services by that period of time during which the Client fails to comply with its contractual obligations towards ATLAS.

4.4 ATLAS shall not be liable for impossibility of delivery or for delivery delays inasmuch as these have been caused by Force Majeure or any other occurrences that could not have been foreseen at the time of the conclusion of the contract (e.g. disruptions to operations of all kinds, difficulties in the procurement of materials or energy, delays to transportation, strikes, legal lockouts, a shortage of manpower, energy or raw materials, difficulties in obtaining necessary official permits, measures taken by officialdom or missing, incorrect or non-timely delivery or on the part of suppliers) for which ATLAS does not bear the responsibility. Inasmuch as such occurrences render it significantly more difficult or impossible for ATLAS to render the delivery or service and the obstacle thereto is of a not merely temporary nature, ATLAS shall be entitled to rescind the contract. In the case of hindrances of a temporary nature the delivery or service periods shall be prolonged or the deadlines for delivery or service shall be postponed for the duration of the hindrance plus a reasonable lead time. Inasmuch as it cannot be reasonably expected of the Client that it, as a consequence of the delay, should accept the delivery or service it may rescind the contract by way of an immediate written declaration to ATLAS.

4.5 ATLAS shall only be entitled to effect partial deliveries should the partial delivery be useful to the Client in the context of the contractually determined purpose, the supply of the remainder of the goods ordered be ensured and the Client does not incur any significant extra expenditure or additional costs (unless it should be

the case that ATLAS declares its readiness to assume said costs).

4.6 Should ATLAS be in default regarding a delivery or service or be unable to render a delivery or service, irrespective of the grounds for this, the liability on the part of ATLAS to pay compensation shall be restricted to the criteria of Point 8 of these General Terms and Conditions of Delivery.

5. Place of Fulfilment, Shipment, Packaging, Transfer of Risk, Acceptance

5.1 The place of fulfilment for all obligations resulting from this contractual relationship is the business domicile of ATLAS, inasmuch as nothing to the contrary has been agreed. Should ATLAS also owe the installation, the place of fulfilment for that shall be the location at which the installation is to take place.

5.2 The type of shipment and the packaging shall be at the conscientious discretion of ATLAS.

5.3 The risk shall be transferred to the Client at the very latest at the time of the handing over of the item of delivery (whereby the commencement of the loading process is the decisive criterion) to the forwarding agent, carrier or any other third party charged with the task of undertaking the shipment. This shall also apply should partial deliveries be effected or ATLAS should have assumed other services (e.g. shipment, transportation, installation, assembly, repairs). Should the shipment or handover be delayed as a consequence of a circumstance the cause of which lies with the Client, the risk shall be transferred to the Client as from the day on which the object of delivery is ready for shipment and ATLAS has notified the Client of that fact.

5.4 Storage costs incurred after the transfer of risk shall be borne by the Client. In the event of storage by ATLAS these storage costs shall amount to 0.25% of the invoice value of the delivery objects being stored for each full week. The assertion and evidencing of further or lower storage costs remains reserved.

5.5 The shipment shall only be insured by ATLAS at the explicit wish of the Client and at the latter's expense against theft, damage through break-

age, transport, fire and water or other insurable risks.

5.6 Inasmuch as a final acceptance has to take place, the item being purchased shall be deemed accepted if

- the delivery and, inasmuch as ATLAS should also owe the installation, the installation have been concluded,
- ATLAS has notified the Client hereof thereby drawing attention to fictitious acceptance in accordance with this Point 5.6 and called upon it to declare acceptance,
- twelve working days have expired subsequent to the installation or the Client has commenced usage of the purchased item (e.g. has commissioned the plant delivered) and in this case six working days have expired subsequent to the delivery or installation and
- the Client has failed to declare acceptance within this period for reasons other than a defect notified to ATLAS that renders the usage of the purchased item impossible or impairs it to a significant extent.

6. Warranty, Material Defects

6.1 The warranty period is one year from the time of delivery or, inasmuch as a final acceptance should be necessary, from the time of said acceptance. Point 8.7 Sentence 3 remains unaffected by this.

6.2 The items delivered are to be carefully inspected immediately subsequent to delivery to the Client or a third party determined by the latter. They shall be deemed to have been accepted by the Client with regard to evident defects or other defects that could have been detected in the event of an immediate, careful inspection should ATLAS not have received a written complaint about defects within seven working days of delivery. Regarding other defects the items of delivery shall be deemed to have been accepted by the Client should the complaint about defects not have been received by ATLAS within seven working days subsequent to that point in time at which the defect had revealed itself; should it have been possible for the Client to have detected the defect at an earlier point in time in the event of normal usage, however, this earlier point in time shall be decisive for the commencement of the time allowed for a complaint. At the request of ATLAS a delivered item that has been complained about is to be returned to ATLAS carriage paid. In the event of

a justified complaint about defects ATLAS shall pay the costs of the most favourable shipment route; this shall not apply inasmuch as the costs should increase because the delivered item is located at a place other than that of its intended use.

6.3 In the event of material defects to the items delivered ATLAS is, at its own discretion to be exercised within a reasonable period of time, initially obliged and entitled to effect either subsequent improvement or a replacement delivery. In the event of failure, i.e. the impossibility, unreasonableness, refusal or inappropriate delays to the subsequent improvement or replacement delivery the Client shall be entitled to rescind the contract or reduce the purchasing price by an appropriate amount.

6.4 Should a defect be due to culpability on the part of ATLAS, the Client, subject to the prerequisites stipulated in Point 8, may demand compensation.

6.5 In the event of defects in component parts of other manufacturers that ATLAS, whether due to licensing laws or factual reasons, is unable to rectify itself, ATLAS shall be entitled, at its own discretion, to assert its warranty claims against the manufacturers and suppliers for the account of the Client or assign said claims to the Client. Warranty claims against ATLAS shall only be given in the event of defects of this kind subject to the other prerequisites and according to the criteria of these General Terms and Conditions of Delivery only if the attempt to assert the aforementioned claims against the manufacturers and suppliers in a court of law has been unsuccessful or, for example due to a case of insolvency, has no prospect of success. For the duration of the legal dispute the statute of limitations regarding the warranty claims held by the Client against ATLAS shall be suspended.

6.6 Warranty shall be forfeited should the Client, without the consent of ATLAS, modify the delivered item or cause it to be modified by any third parties and the rectification of the defect should be rendered impossible or unreasonably more difficult. In any event the Client shall be required the extra costs of the rectification incurred as a result of the modification.

6.7 In the case of defects and the lack of guaranteed characteristics of products of other manufacturers

supplied to ATLAS ATLAS shall, at its own discretion, either assert its claims against the manufacturers or pre-suppliers for the account of the Client or assign said claims to the Client. Claims against ATLAS in such cases shall only be given according to the criteria of this Point 6.7 should the attempt to assert the aforementioned claims against the manufacturers and suppliers in a court of law have been unsuccessful or, for example due to a case of insolvency, have no prospect of success.

6.8 Any delivery of second-hand items that may have been agreed with the Client in an individual case shall be effected under exclusion of any liability whatsoever for material defects.

6.9 Any transportation/travel costs incurred in connection with subsequent improvements or subsequent deliveries shall only be borne by ATLAS inasmuch as these should be extraordinary transportation costs (e.g. air travel) and/or the total distance to be covered in the respective case should exceed 300 km.

7. Protected Rights

7.1 ATLAS, according to the criteria of this Point 7, guarantees that the item of delivery is free of intellectual property rights or rights of authorship of third parties. Each contractual partner shall inform the other contractual partner without delay in writing should any claims be asserted against it due to the violation of any such rights.

7.2 In the event that the item of delivery should violate any intellectual property right or right of authorship of any third party ATLAS, at its own choice and its own costs, shall alter or substitute the item of delivery in such a manner that third party rights are no longer violated but the delivered item nonetheless continues to fulfil its contractually agreed functions, or procure the right of usage for the Client by concluding a licensing agreement. Should it fail to do so within a reasonable period of time the Client shall be entitled to rescind the contract or reduce the purchasing price by a reasonable amount. Any compensation claims on the part of the Client shall be subject to the restrictions according to Point 8 of these General Terms and Conditions for Deliveries.

7.3 In the event of legal violations due to products of other manufacturers supplied by ATLAS ATLAS shall, at its own discretion, either assert its claims against the manufacturers or pre-suppliers for the account of the Client or assign said claims to the Client. Claims against ATLAS in such cases shall only be given according to the criteria of this Point 7 should the attempt to assert the aforementioned claims against the manufacturers and suppliers in a court of law have been unsuccessful or, for example due to a case of insolvency, have no prospect of success.

8. Liability for Compensation due to Culpability

8.1 The liability on the part of ATLAS to pay compensation, irrespective of the legal grounds, in particular resulting from impossibility, default, deficient or false delivery, breach of contract, violation of duties in contractual negotiations and illegal activity is, inasmuch as there is a matter of culpability in the individual case, restricted to the criteria of this Point 8.

8.2 ATLAS shall not be liable in the event of simple negligence on the part of its organs, legal representatives, employees or other vicarious agents inasmuch as it is not a matter of a violation of essential contractual duties. Essential to the contract are the obligation to deliver punctually and install the item in of delivery, guarantee that said item should be free of any defects that would impair its functionality or usability to a more than negligible extent, as well as counselling, protective and custodial duties designed to enable the Client to use the item of delivery for its intended purpose or the purpose of which is the protection of life and limb of the Client's personnel or the protection of its property against significant losses.

8.3 Inasmuch as ATLAS should be liable to pay compensation on the merits of and in accordance with Point 8.2., said liability shall be restricted to such losses that, at the time of the conclusion of the contract, ATLAS had foreseen as a possible consequence of a breach of contract or which ATLAS should have been able to foresee had it taken due care and attention. Indirect losses and consequential losses that are caused by defects to the item of delivery are furthermore only eligible for compensation inasmuch as such losses are

typically to be expected when the item of delivery is used for its intended purpose.

8.4 In the event of liability due to simple negligence the obligation on the part of ATLAS to pay compensation for material defects and any further asset losses resulting therefrom shall be restricted to the amount of EUR 5,000,000.00 per case of loss (in accordance with the minimum available cover from its product liability or third party liability insurance) even if it should be a matter of a violation of essential contractual duties.

8.5 The above exclusions of and restrictions upon liability apply to the same extent in favour of the organs, legal representatives, employees and any other vicarious agents of ATLAS.

8.6 Inasmuch as ATLAS should provide technical information or be active in an advisory capacity and this information or advisory service should not be among those services owed by it and agreed under the terms of the contract, this shall be provided free of charge and under exclusion of any liability whatsoever.

8.7 The restrictions of this Point 8 do not apply to the liability of ATLAS due to intentional or grossly negligent conduct, for guaranteed properties, injury to life, the body or health or in accordance with the Product Liability Act. Compensation claims against ATLAS fall under the statute of limitations after a period of 12 months. In cases in which ATLAS is liable for compensation in accordance with Point 8.7 Sentence 1 the statute of limitations shall be subject to the statutory provisions.

9. Reservation of Proprietary Rights

9.1 The reservation of proprietary rights agreed in the following serves the purpose of safeguarding all existing current and future receivables held by ATLAS against the Client on the basis of the existing supply relationship between the contractual partners regarding the items of delivery (including outstanding balances with regard to a current account relationship restricted to this supply relationship).

9.2 The goods delivered by ATLAS to the Client shall remain the property of ATLAS until such time as all secured receivables have been settled in full.

These goods and those goods covered by the reservation of proprietary rights that replace them in accordance with the following provisions are referred to hereinafter as "Reserved Goods".

9.3 The Client shall store the Reserved Goods for ATLAS free of charge.

9.4 The Client shall be entitled, until such time as the case of enforcement (Point 9.9) should occur, to process and dispose of the Reserved Goods in the course of its normal business transaction. Mortgaging and assignment as collateral are not permitted.

9.5 Should the Reserved Goods be processed by the Client it is agreed that said processing shall take place on behalf and for the account of ATLAS as the manufacturer and that ATLAS shall directly acquire ownership or – should the processing involve materials belong to several proprietors or should the value of the processed item be higher than that of the Reserved Goods – co-ownership (fractional ownership) of the newly created item in proportion to the relationship of the value of the Reserved Goods to the value of the newly created item. For the event that no such acquisition of ownership should incur at ATLAS the Client hereby already assigns its future ownership or – in the proportion indicated in the above – co-ownership of the newly created item to ATLAS by way of collateral. Should the Reserved Goods be combined or inseparably mixed with other items to create a new item and should one of the other items be regarded as the main item, ATLAS, inasmuch as the main item should belong to it, assigns proportionate co-ownership of the homogenous item to the Client according to the proportion defined in Sentence 1.

9.6 In the event of the further sale of the Reserved Goods the Client hereby already assigns its resulting receivables against the purchaser – in the case of co-ownership of ATLAS of the Reserved Goods proportionately in accordance with the share of co-ownership – to ATLAS as collateral. The same shall apply to any other receivables that replace the Reserved Goods or arise in any other manner in connection with the Reserved Goods, such as insurance claims or claims resulting from illegal actions in the event of loss or destruction. ATLAS authorises the Client, subject to revocation, to collect the receivables

assigned to ATLAS in its own name. ATLAS may only revoke this collection authorisation in the event of enforcement.

9.7 Should third parties access the Reserved Goods, in particular by way of attachment, the Client shall immediately draw their attentions to the ownership of ATLAS and inform ATLAS hereof in order to enable the latter to enforce its proprietary rights. Inasmuch as the third party should not be in the position to refund to ATLAS any court or out-of-court expenses incurred in this connection the Client shall be liable to ATLAS for these expenses.

9.8 ATLAS shall release the Reserved Goods or those items or receivables replacing them inasmuch as their value should exceed the amount of the secured receivables by more than 50 %. The selection of the items to be released in this connection shall lie with ATLAS.

9.9 Should ATLAS rescind the contract due to conduct on the part of the Client in breach of said contract – in particular in the event of payment default (case of enforcement), it shall be entitled to demand the return of the Reserved Goods.

10. Final Provisions

10.1 Should the Client be a businessman, a legal entity under public law or a public law special assets fund or should it not have a general court of jurisdiction in the Federal Republic of Germany the court of jurisdiction for any disputes that may arise from the business relationship between ATLAS and the Client shall, at the discretion of ATLAS be either the domicile of ATLAS or that of the Client. However, regarding suits filed against ATLAS, the domicile of ATLAS shall be the exclusive court of jurisdiction under such circumstances. Mandatory statutory regulations pursuant to exclusive courts of jurisdiction shall not be affected by this regulation.

10.2 The relations between ATLAS and the Client shall be subject solely to the laws of the Federal Republic of Germany. The United Nations convention governing contracts for the international sale of goods dated April 11th 1980 (CISG) shall not apply.

10.3 Inasmuch as the contract or these General Terms and Conditions of Delivery should contain regulatory

loopholes those legally effective stipulations shall be deemed agreed for the purpose of closing said loopholes that the contractual partners, in accordance with the target settings of the contract and the purpose of these General Terms and Conditions of Delivery would have agreed had they been aware of the loophole.

10.4 Tip:

The Client takes note of the fact that ATLAS shall store data connected with the contractual relationship in accordance with Section 28 of the Federal Data Protection Act and reserves the right to transmit the data to third parties (e.g. insurance companies) inasmuch as this should be necessary for the fulfilment of the contract.