

ATG Deutschland GmbH General Terms and Conditions

Unless otherwise agreed, the sale and delivery of our goods shall solely ensue in accordance with the following conditions.

1. Scope of application

The seller in the terms of these sales conditions is the company ATG Deutschland GmbH or another company, to whom the seller has transferred the commercial contract, and who shall deliver the products more exactly specified in the seller's order confirmation ("products") to the purchaser. These conditions shall apply to all contracts concluded between the purchaser and the seller regarding the delivery of goods. They shall also apply to all future business relations, even if they are not again expressly agreed. Any differing terms and conditions on the part of the purchaser not expressly recognised by the seller shall not be binding for the seller, even if he does not expressly contradict them. The seller's terms and conditions shall also then apply if the seller executes the delivery without reservation and is aware of the purchaser's contradictory conditions or conditions differing from the seller's terms and conditions.

2. Conclusion of contract

The offers of the seller shall be subject to change and non-binding. Orders on the part of the purchaser shall not be binding for the seller, even if they ensue as a result of an offer on the part of the seller. The contract shall only become effective, once the seller has accepted the purchaser's order in writing or in the form of electronic data transfer (order confirmation). Any differences in the order confirmation to the order shall be deemed insignificant, unless the purchaser objects to them without delay, but at the latest within 10 days following receipt of the order confirmation. Brochures, catalogues, manuals or advertising sheets of the seller shall be deemed non-binding.

3. Performance of delivery

3.1. Periods and dates of delivery

The seller shall undertake of his best to deliver his products by the period specified in the order confirmation, without, however, guaranteeing the delivery time. Delivery dates or periods that have not been expressly agreed as binding shall be deemed as non-binding information.

Liability on the part of the seller for costs, expenses, damage or other detriments arising from a delay in delivery shall only come enter into force if the delay is caused by the seller due to gross negligence or wilful misconduct on his part. In any case, liability shall be limited to the foreseeable damage typically occurring. If the seller has expressly undertaken in writing to deliver the product to a specific date, then the seller shall only be obligated to provide compensation in the event of a delay, if this has been separately agreed. The purchaser shall not be entitled to any other compensation arising from a delay.

The right of the purchaser to withdraw from the contract due to delay in delivery shall assume that - after the default has occurred - the purchaser has set the seller a suitable grace period in which to perform the delivery and that said grace period has fruitlessly elapsed.

3.2. Delivery terms

Deliveries shall ensue according to the delivery terms agreed in the order confirmation. Unless otherwise agreed in the order confirmation, the delivery shall apply ex works named site of the seller (INCOTERMS 2000 as most recently amended). The seller shall notify the purchaser concerning the readiness for acceptance of the goods at the agreed site. The purchaser shall undertake to collect the goods reported ready for acceptance without delay. If the purchaser has not taken delivery of the goods, the seller shall - at his own discretion - be entitled to despatch or put into storage the goods at the purchaser's expense and risk. The risk shall pass to the purchaser, and the seller shall be entitled to render accounts as soon as the seller has made available the good for the purchaser. At his own discretion, the seller shall be entitled to part-deliveries and invoicing - with each delivery to be treated as a separate contract, whereby the remaining terms and condition of these general terms and conditions shall remain unaffected. Following proper notification, the seller shall be entitled to deliver or make available the goods ordered (or parts thereof) up to three weeks earlier than agreed. An earlier delivery in this sense, however, shall be invoiced on the basis of the originally agreed delivery date. Any objections on the part of the purchaser concerning already delivered goods shall not release the purchaser from his acceptance obligation with regard to goods ordered.

4. Payment

4.1. Prices

The prices and payment terms specified in the order confirmation shall apply. Unless otherwise agreed in the order confirmation, payments by the purchaser shall be made without deduction within 14 days following the invoice date. A

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payment shall be deemed as settled when the amount (with no deduction) specified in the invoice is irrevocably freely available in the specified currency to the seller. The purchaser shall not be entitled to suspend the payment (or part thereof) due to a set-off or counterclaim unless the counterclaim underlying the set-off (or other counterclaim) is undisputed or has been legally determined.

4.2. Default in payment

In the event that the purchaser does not fulfil his agreed payment obligations according to contract:

- (i) the seller shall be entitled - following written notification - to withhold the deliveries arising from all contracts existing between the seller and the purchaser until complete payment of all arrears, or deliver said only under the conditions determined by the seller at his own discretion.
- (ii) the seller shall be entitled to request payment of all invoices resulting from the purchase contracts concluded with the purchaser.
- (iii) the seller shall be entitled to charge interest at the statutory rate of default interest in the sense of Section 4.1 in accordance with § 288 Para.2 of the German Civil Code (BGB), starting from the due date of the invoice until the actual payment date.

4.3. Defence of uncertainty and withdrawal

The seller can refuse his performance if:

- (i) it becomes evident after conclusion of the contract that his claim for counterperformance on the part of purchaser is endangered by the lack of solvency by the purchaser. Insofar as goods are already released for delivery, the seller shall in this case be entitled to prevent the transfer of the goods to the purchaser, even if the purchaser is already in possession of documents authorising their acceptance. The right to refuse performance shall not apply when payment of the purchase price is made. The seller can set a suitable time period, within which the purchaser shall pay the purchase price step by step against delivery. On unsuccessful expiration of the period, the seller can withdraw from the contract.
- (ii) Deliveries to projects or construction projects are interrupted for longer than 3 months, or the beginning is delayed for more than 3 months. On expiration of said period, the seller can withdraw from the contract.

4.4. Fixed prices

Insofar as fixed prices are agreed on, an adjustment of the material delivery prices can ensue, notwithstanding, if said prices have increased by exceptional amounts in relation to the purchase price existing at completion of contract. For such exceptional increase, recourse shall be made to the Index of Producer Prices of Commercial Products (domestic sales) determined by the Federal Statistical Office, Technical Series 17, Series 2, Prices - Prices and Indices for Commercial Products (Producer Prices), serial number = 272, Product Classification for Production Statistics Systematic No. = 24 10 02 410 (reinforced steel [rods], hot rolled [incl. cut to length, of wire rod], made of unalloyed steel. Should this index increase by more than 80% from the date of contract completion, an adjustment of the fixed price can be demanded in the same percentage ratio.

5. Title retention

5.1. Scope of title retention

The goods shall remain the property of the seller until all claims, particularly including claims relating to the relevant current account balance, to which the seller is entitled as part of the business relationship. This shall also apply to future and conditional claims. Processing or modification shall invariably ensue for the seller as manufacturer, but without obligation for him. Should the seller's title lapse by combination, then it shall be agreed now that the purchaser's title of the uniform product be transferred to the seller in the ratio of the invoice value of the goods to the invoice value of the other goods used. The purchaser shall gratuitously hold the property of the seller. Goods remaining in the ownership of the seller are hereinafter referred to as reserved goods.

5.2. Processing and reselling

The purchaser shall be entitled to process the reserved goods in the course of orderly business practices as well as reselling them, as long as he is not in default. If the reserved goods are processed on the part of the purchaser as part of a work contract, the purchaser shall assign the labour costs to the seller in the ratio of the invoice value of the goods to the invoice value of the other goods used. Pledging or security transfers are not permitted. For security, the purchaser shall already assign the claims resulting from reselling or other legal bases (insurance, tort) concerning the reserved goods (including all balance

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debts on current accounts) to the seller in their entirety. The seller shall revocably authorise him to collect, on his own behalf, the claims assigned to the seller for the seller's account. This collection authorisation can only be revoked if the purchaser does not properly fulfil his payment obligations.

5.3. Protection of the reserved goods

In the event of any access to the reserved goods by third-parties, the purchaser shall refer to the ownership of the seller and inform him without delay.

5.4. Taking back the reserved goods

In the event of default of payment by the purchaser, the seller shall be entitled to take back the reserved goods or, where appropriate, demand assignment of the purchaser's rights of surrender against third-parties. The purchaser shall undertake to permit the seller access to his business and storage premises as well as the removal of the reserved goods in question. The removal as well as the distraint of the reserved goods shall not constitute withdrawal on the part of the seller.

5.5. Assignment

The seller shall be entitled to assign his claims resulting from the title retention to third-parties.

5.6. Releasing securities

If the value of the existing securities should exceed the total of secured debts by more than 10%, then on request by the purchaser the seller shall undertake to release the securities due at seller's option.

6. Dimensions, weights, quantities

The dimensions, weights or quantities described in the order confirmation may on delivery deviate by up to 10% upwards or downwards. In this case, the purchase price shall be determined by the amount actually delivered. The delivery dimensions, weights or quantities specified in the seller's despatch note shall be deemed as recognised and correct, unless the purchaser has notified the seller of a deviation within seven days following the arrival of the goods and has given the seller a suitable possibility to check the processing or sales of the goods before use. Insofar as the deviations exceed the tolerance limit described in Paragraph 1, then this shall not constitute a breach of contract. The purchaser shall not thereby be released from his obligation to accept the goods in compliance with the contract. In the event of under-delivery, then at seller's option the purchaser shall be entitled to either reimbursement or compensation delivery.

7. Quality

7.1. Checking

In regard to the quality, condition, dimensions and all other specific characteristics, the goods delivered shall be deemed as accepted by the purchaser, unless the purchaser specifically notifies the seller of any defects in writing within seven days following the receipt of the goods, and has granted the seller a suitable possibility to check the defect. Any defects not identifiable within this period - even with due diligence or a reasonable level of checking shall be notified in writing to the seller immediately on discovery, but under no circumstances later than 12 months after acceptance. The written notification must list the defects claimed in detail. A precondition for all the obligations on the part of the seller is that the claimed defects be listed in detail in the report, and that the seller be given a suitable opportunity to inspect and test the goods. The purchaser shall not be released from his obligation to grant the seller the possibility to inspect and test the goods by the goods being combined, mixed or processed at the premises of or by third-parties, or being at any location in the possession of a third-party.

7.2. Declassified goods

Goods, which are sold as declassified goods, or which have been agreed as declassified material between the seller and the purchaser, are sold in their "as is" condition, including any deficiencies and without warranty. Any details, specifications or other descriptions provided by the seller in relation to declassified goods have been made in good faith and without responsibility for their correctness. The seller shall not be liable to the purchaser or third-parties for the quality or condition of declassified goods.

7.3. Suitability of the goods

The purpose of application of the goods and the resultant demands on the nature of same shall lie within the competence and responsibility of the purchaser. The seller shall not be liable for the merchantability, fitness or usability for a particular purpose, unless he has expressly assumed said liability.

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7.4. Compensation claims in respect of defective goods

Insofar as the purchaser has described and verified defects in the goods delivered in the manner described under 7.1, and unless the parties are able to agree on an appropriate reduction in the purchase price, then the seller shall - at his own discretion and to the exclusion of other warranty rights - be entitled either to:

- (i) rectify the defects as quickly as reasonably possible, or
- (ii) replace the goods by delivering new goods to the agreed delivery location as quickly as possible, or
- (iii) reimburse the purchaser with the purchase price as well as the purchaser's reasonable transport costs for the transport of the defective goods.

In cases (ii) and (iii), the defective goods shall remain the property of the seller.

Insofar as the seller chooses the subsequent performance according to (i) or (ii) and the subsequent performance fails, or unless the seller does not exercise his right to choose, then the purchaser shall have the right to withdraw from the contract or reduce the purchase price accordingly. Any claims by the purchaser for compensation shall be determined by Item 8.

8. Limitation of liability

Unless expressly otherwise agreed in the purchase contract between the parties, any claims by the purchaser shall be limited to compensation for damages arising from loss of life, bodily injury or damage to health, or otherwise for damage caused by wilful or grossly negligent dereliction of duty by the seller. In such cases, the liability shall also be limited to the losses to be expected that are typically incurred in transactions of this kind.

Insofar as a substituted liability exceeding the aforementioned liability is agreed between the parties, then in the absence of an explicit agreement to the contrary, liability shall be limited to losses typically expected in transactions of this kind under exclusion of indirect damages or consequential damages, and the total of the individual compensation claims and all asserted compensation claims, for which the seller is liable arising out of or related to the contract, shall not exceed the purchase price for the goods delivered.

9. Force majeure

If the manufacture, processing or delivery of the goods (or a part of the goods) is beyond the appropriate control of the seller due to events, such as (but not limited to) war (declared or undeclared), threat of war, civil strife, sabotage, fire, storm; navigational disturbances due to ice or other obstacles in the harbour; explosions, the forces of nature; measures, provisions or rules by order of state authorities; European Union resolutions or directives; strike, lockout or other actions on the part of the workforce; shortage of raw material, fuel, means of transport or energy; a complete or partial breakdown of machines or the manufacturing plant; subcontractor delay; breakage or damage during transport or storage; export and/or import ban or any other reason outside the appropriate control of the seller and the companies associated with him in regard to the manufacture, processing or delivery of the goods, then the delivery period for the goods shall be extended for the period of the impediment due to force majeure. If the impediment due to force majeure is expected to continue for such a length of time that the purchaser has to acquire the goods from a third-party in order to avoid serious loss to himself, and he declares such in appropriate form to the seller, then - on request by the purchaser - the seller can agree to the cancellation of the contract. Neither the seller nor the purchaser shall be able to assert compensation claims due to default of performance or non-performance of contract arising from force majeure.

10. Declarations

All the declarations required in accordance with these sales terms shall ensue by post, by telefax or by electronic data transmission. Any declarations not complying with this formal requirement shall not be effective unless they are confirmed in writing.

11. Waiver

Insofar as the seller omits to demand that the purchaser fulfil his contractual obligations, then in no circumstances shall this affect the right of the seller to demand said fulfilment at a later date. Furthermore, such omission by the seller shall under no circumstances be understood as a waiver of any contractual provision.

12. Invalidity of clauses

In the event that one or more of the provisions or conditions in the contract or these general terms and conditions (or a part thereof) are or become repealed, unenforceable or otherwise invalid, then the remainder of the contract shall remain compulsory for both parties. The parties shall then undertake to replace the invalid provision by such valid provision, which comes as close as possible in its economic effect to the invalid provision.

13. Place of jurisdiction

If the purchaser is a Kaufmann (i.e. has a business registered in the German Commercial Register), then Mülheim an der

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Ruhr shall be the exclusive place of jurisdiction. The same place of jurisdiction shall apply, if the purchaser does not have a general place of jurisdiction in the Federal Republic of Germany at the time of instigation of legal proceedings. The purchaser shall, however, be entitled to seize any statutory relevant court.

14. Applicable laws

The laws of the Federal Republic of Germany shall apply. The Hague Convention from 01.07.1964 relating to a Uniform law on the International Sale of Goods and the United Nations Convention from 11.04.1980 on Contracts for the International Sales of Goods (CISG) shall not apply.

15. Amendments and supplements

All amendments and supplements of the terms and conditions of the contract shall require the written form, confirmed by both parties, in order to become effective.