

# Atollspeed GmbH ::: Terms and Conditions of Sale and Delivery

- 1. Scope**
  - 1.1 The following Terms and Conditions of Sale and Delivery apply to all sales, deliveries and other services including the advisory services of Atoll-speed GmbH (the User) provided to third parties (the "Customer").
  - 1.2 The Customer's general terms and conditions apply only if explicitly acknowledged in writing by the User. The User's Terms and Conditions continue to apply even if he does not expressly object to the Customer's contrary conditions or if he executes deliveries or services without reservation.
- 2. Offers**
  - 2.1 Unless expressly stated otherwise in the offer, the User's offers are not binding and remain without obligation up until the written confirmation of the order. Following an offer from the Customer, an agreement is established only through the User's written confirmation or the unconditional execution of the commissioned services. The amendment of binding deliveries and service specifications shall only be enforceable following the User's written confirmation. The Customer shall be bound by its contractual offer for 10 days. The User reserves the right to implement technically necessary minor deviations from the offer, even after the confirmation of the order, provided these do not jeopardise the contractual purpose.
  - 2.2 Price specifications shall apply to complete awards and performance of orders only. Colour images may vary from the actual article.
  - 2.3 The Customer shall ensure that the offer provided to him shall not be made available wholly or partially to third parties, including not in any edited form, unless it has the User's prior written consent. The plans and documents provided shall remain the property of the User. The User reserves the ownership rights, copyright, trademark rights and any other industrial property rights in work pieces, models, illustrations, documents and other such aids. These may be made available to third parties or used or reproduced directly or via third parties within the scope of the Customer's own business activity, only with the User's prior written consent.
  - 2.4 Technical details, including weight and dimension specifications as well as any other specifications stated in sales brochures are only approximately applicable, insofar as the fitness for the contractually designated purpose necessitates that these details correspond precisely. These details do not contain any guarantee commitments, and no quality or durability guarantees in particular.
  - 2.5 Assurances, subsidiary agreements, amendments and additions in connection with the User's supplies and services shall require the User's written confirmation in order to be enforceable.
- 3. Duties of cooperation of the Customer**
  - 3.1 The Customer must, in an accurate, complete and timely manner, make all documents and information required for the execution of the order available to the User. If the Customer does not provide the required details, the User shall formally request it to do so and provide it with a reasonable additional period of time in which to comply. Following the expiry of this period, the User shall be entitled to withdraw from the agreement. Any works already provided by the User must be remunerated.
  - 3.2 If deliveries are made according to drawings, samples or other specifications provided by the Customer and if any patent, design, trademark or similar third-party rights are infringed, the Customer shall indemnify the User in respect of all such third-party claims.
  - 3.3 If the User is obliged to carry out works on the Customer's premises, the Customer must ensure that the User's employees are granted access during normal business hours and that all conditions for the execution of the works within the Customer's operational sphere are fulfilled. The User shall notify the Customer of the deadline in good time. If the Customer fails to meet such a deadline, the Customer shall bear the additional costs incurred by the User. The duty to cooperate constitutes a primary obligation incumbent on the Customer.
- 4. Performance of the agreement**
  - 4.1 The User is entitled to render partial deliveries and services, provided these constitute self-contained parts of the contractual object, and are usable by the Customer.
  - 4.2 Any time limits and deadlines for supplies and services stipulated by the User shall only be regarded as approximate, unless a fixed time limit or a fixed deadline has been agreed expressly in writing. Delivery times and deadlines are satisfied, if, by the end of the delivery period, the goods have left the factory/warehouse or if their readiness for dispatch has been notified.
  - 4.3 Any delivery time agreed or promised shall be conditional on the User receiving accurate and scheduled deliveries from its own sub-suppliers. If, at the time of the written order confirmation, the User has ordered goods or materials from a supplier and if this delivery is to be used to make a forward delivery to or perform processing for the Customer, the User may withdraw from this agreement, if it itself does not receive correct or scheduled deliveries. This right of withdrawal shall not apply if the User is culpable in choosing the supplier
  - 4.4 Subsequent Customer requests for changes or additions to the services or supplies shall extend the delivery time to a reasonable extent. This likewise applies in the event of unforeseeable events outside the User's control, such as e.g. force majeure, bans on exports and imports, strikes and lockouts. This also applies if such circumstances are experienced by the User's sub-suppliers. The User shall notify the Customer immediately of the occurrence of any such delay. If the aforementioned circumstances mean that the supply or service becomes permanently impossible or untenable, the User shall be released from its duty to deliver subject to having notified the Customer immediately of this fact. Insofar as the Customer can no longer be reasonably expected to accept the supply or service in view of the delay, it may withdraw from the agreement by issuing an immediate declaration in writing to the User.
  - 4.5 If the agreed service cannot be rendered on an agreed date due to circumstances for which the Customer is responsible, the risk shall pass to the Customer from the date on which it received the notification regarding the readiness for delivery. The Customer shall bear any storage costs incurred.
  - 4.6 If an agreed service may not be rendered on the agreed date due to circumstances not described in Para. 4.4, and for which the User is responsible, the Customer may withdraw from the agreement only following the futile granting of an additional period of three weeks combined with a contingent letter of resignation.
  - 4.7 Loading and dispatching are made on a carriage forward basis, uninsured and at the Customer's risk ex works from the User's place of business. The User's obligation to deliver is suspended for the period that the Customer is in default with the fulfilment of any of its obligations arising from the business relationship. Delivery periods shall be calculated from the conclusion of the agreement.
  - 4.8 The User is entitled to perform supplies and services only in return for full advance payments or sureties, if the Customer is new, if a delivery abroad was agreed or if it becomes aware of circumstances that significantly undermine the Customer's creditworthiness. If the advance payments or sureties are not provided following the grace of a reasonable additional period, the User shall be entitled to withdraw from the agreement.
- 5. Prices and conditions of payment**
  - 5.1 The prices and the payment for the User's services and any possible incidental costs incurred, are net prices ex works, excluding shipment, customs, fees and packaging. International deliveries are made ex works (EXW as per Incoterms 2010), unless otherwise agreed. The applicable prices are those valid on the day of the conclusion of the agreement. The User expressly reserves the right to increase prices incurred due to design modifications that result in technical improvements.
- 6. Defects warranty**
  - 6.1 If the supplied items contain a defect that negates or diminishes their value for the standard use or that use specified in the agreement, and the cause of which existed at the time of the transfer of risk, any warranty claims in respect of third-party products must first be exercised against the manufacturer. Warranty claims for third-party products may be asserted against the User, only after the manufacturer has refused to fulfil the warranty, delays its fulfilment for an unreasonably long period of time, or if the manufacturer is unable to do so. In the case of proprietary products, the Customer may initially demand subsequent improvement only. Substitute delivery instead of subsequent improvement may be performed at the User's discretion. If the subsequent improvement or substitute delivery fails at least two times, the Customer may demand a reduction of the price (reduction of price) or withdraw from the agreement at its discretion. The Customer shall not incur any costs due to the subsequent improvement or substitute delivery. If the Customer submits an unjustified notice of defects, it must pay back to the User the costs incurred due to the User having to verify its warranty obligations.
  - 6.2 The warranty will not apply if the Customer modifies the contractual item, or arranges for it to be modified, without the User's consent and this makes it impossible or unreasonably difficult to remedy the defect. In any case, the Customer must itself bear the additional costs incurred in remedying the defect due to the modification.
  - 6.3 If there are no longer time limits prescribed by law, warranty claims shall lapse within twelve months from the transfer of risk, or from the time of acceptance insofar as formal acceptance is necessary. In the case of substitute deliveries and subsequent improvements, the User shall remain liable until the expiry of the limitation period to which the object of the delivery was originally subject. Negotiations regarding the existence or extent of the warranty claims shall not result in a suspension of the limitation period.
- 7. Delivery and payment**
  - 7.1 If a delivery time of 4 months or more from the day of the conclusion of the agreement has been agreed, the User reserves the right to increase its prices resulting from any increase to its own procurement prices and/or increases in labour costs and production costs. In the event of any such increase, the User shall itemise the price-inflating factors within the invoice.
  - 7.2 Para. 7.1 shall not apply within the terms of a continuous obligation arrangement.
  - 7.3 Unless agreed otherwise in writing, the User's invoices shall be payable immediately after the issue of the invoice, with payments to be made net without any early payment discount or other such deductions. The Customer must personally and fully bear any incidental bank charges for transfers and other payment transactions (OUR transfer: all transfer charges are charged to the sender).
  - 7.4 The Customer's payments shall be initially offset against any dunning costs and interest charges incurred, and only then against the longest outstanding debt. The User shall be entitled to demand advance payments or sureties, or to invoice the Customer immediately for all claims arising from the business relationship if there is a significant deterioration in the Customer's creditworthiness, or if the Customer is in arrears of payment. This does not apply to any payment arrears if the receivable in question is minor given the volume of the order existing with the relevant Customer.
  - 7.5 If the Customer is in arrears with payment, the User may charge interest amounting to 9 percentage points above the applicable base interest rate. The User reserves the right to claim actual higher losses caused by the delay in payment, and to assert its other entitlements.
  - 7.6 The Customer may offset its counter-claim or assert a right of retention in this connection, if the counter-claim is not in dispute or has been confirmed by a final court judgement (res judicata decision).

6.4 Any defects must be reported to the User immediately, but no later than 8 days following receipt of the goods. Hidden defects must be reported within 3 days of their discovery. If such a notification is not provided in time, the Customer may no longer assert any warranty rights in relation to the defect reported.

## 7. Retention of title

7.1 The User's deliveries are made subject to a retention of title. The transfer of ownership shall be take place with the fulfilment of the User's payment claims arising from the delivery.

7.2 The delivered goods shall remain the User's property until full payment of all claims arising from the business relationship with the Customer. This applies equally in the event that some or all of the User's invoices are assumed into a current account, and the balance is calculated or acknowledged. A surrender demand does not constitute withdrawal from the contract vis-à-vis the Customer.

7.3 Prior to the transfer of ownership, it is prohibited to pledge or to assign the delivered objects as security. Any resale is permitted within normal business dealings only. In the event of a resale, the Customer here and now assigns to the User the purchase price claim against the buyer, up to the amount of the purchase price agreed with the User. The User accepts this assignment. The Customer shall be entitled to collect the claim for the User's account until said permission is revoked by the User, or if it ceases making payments to the User. If goods subject to retention of title are resold together with goods or objects belonging to third parties, the receivable against the buyer shall be deemed assigned up to the amount of the purchase price as agreed between the User and the Customer. If items subject to a retention of title are pledged as security, the Customer must notify the User immediately of this fact, and it must also promptly inform the garnisher of the retention of title.

7.4 The retention of title also extends to the products created by processing, mixing or combining the User's goods. The treatment or processing of goods is always performed on behalf of the User, for its account, but without creating any obligation on its part in this respect. If, following the processing, mixing or combining with goods belonging to third parties, the property ownership rights of the latter endure, the User shall then acquire a joint ownership right equal to the ratio of the invoice value of the goods subject to retention of title compared to the invoice value of the remaining processed goods, valued at the time of processing. If the User's goods are combined with other articles that constitute the main article given their ratio to the User's goods, the Customer hereby assigns to the User joint ownership in the newly created object, insofar as it is the owner of it. The ownership rights established in accordance with this paragraph shall be deemed to be goods

subject to retention of title within the definition of these Terms and Conditions of Sale and Delivery.

7.5 If the Customer is in arrears with part or all of a payment, if it ceases making payment or if there is any other such justified doubt regarding its liquidity or creditworthiness, it shall no longer be entitled to dispose of the items, including not as part of its normal business dealings. The User shall then be entitled to demand information concerning the recipient of the goods, to notify that party of the assignment of the claim to the User, and to collect the Customer's receivable against the recipient of the goods.

## 8. Liability

8.1 Subject to the following provisions, the Customer claims for damages or reimbursement of expenses, on whatever legal basis, shall be excluded, especially as a result of impossibility, delay, defective or erroneous delivery, breach of contract, breach of obligations during contractual negotiations and claims in tort.

8.2 The preceding disclaimers set out in Paragraph 8.1 shall not apply,

a) if the cause of the damage was due to an intentional act or gross negligence on the part of the User or its representatives or vicarious agents,

whereby, in the event of gross negligence, the compensation for damages shall be limited to the foreseeable damage as is typical for this kind of agreement,

b) for culpable breaches of material contractual obligations, the fulfilment of which are essential to the orderly execution of the agreement and the fulfilment of which the Customer may rely on, whereby in this case, the compensation for damages shall likewise be limited to the foreseeable damage typical for this kind of agreement,

c) in cases where strict liability applies in accordance with the Product Liability Act as well as for death or personal injury,

d) if the defect was deceitfully concealed.

8.3 Compensation claims to which the Customer is entitled or in connection with the delivery of the goods, shall be subject to a limitation period of twelve months from the time it becomes aware, or should have become aware but for its gross negligence, of the damage and the identity of the liable party, or five years from the time the damage arose regardless of knowledge or grossly negligent ignorance thereof. The statutory time limits shall apply in those cases described in Paragraph 8.2.

## 9. Delivery of software

9.1 The provisions contained in this Paragraph 9 shall, by way of supplementing the other General Terms and Conditions of Sale and Delivery, for the delivery of software, whereby in the event of any conflicts the special provisions contained in the Paragraph 9 shall take precedence over any separate General Terms and Conditions of the User.

9.2 Subject to any contrary written agreements, software shall be leased to the Customer on the basis of a non-exclusive, non-assignable and non-sub-licensable User licence.

9.3 The rental charge and the prices for other software services shall be based on the current price and services list applicable at the time of the conclusion of the agreement. If no explicit agreement exists, the use of software shall in any case incur a rental charge of a standard reasonable amount.

9.4 Unless otherwise agreed, the software lease agreement shall be concluded for an indefinite period and may be terminated by either party with a notice period of six weeks to the end of the calendar quarter. The software may no longer be used following the end of the agreement; the Customer must delete all its installations of the software and return all existing data carriers to the User.

9.5 The Customer is obliged to notify the User of any software defects promptly following their discovery. The warranty shall be invalid insofar as a software error (i) is attributable to a defect reported out-of-time, or (ii) to culpability on the part of the Customer, such as its own installation errors, through its own software modifications or inadequate software or hardware equipment or (iii) the error arises during an interaction with other software deployed by the Customer, unless the User has explicitly agreed or assured such a functionality.

9.6 The fault elimination obligation applies indefinitely and shall take the form of a subsequent improvement or a subsequent delivery, the choice resting with the User. Unless there are urgent reasons dictating otherwise, the fault elimination may also be performed as part of the regular delivery of updates.

9.7 The liability of the User is governed by the provisions contained in Paragraph 8 of these T&Cs. The User shall not be strictly liable for errors pre-existing at the time of the conclusion of the agreement.

9.8 The Customer shall not be entitled to withhold the agreed lease payment in order to enforce any reduction in the lease charge. It is not possible to reduce the lease charge due to software defects existing from the outset.

9.9 Insofar as necessary in order to deliver maintenance, update, fault elimination or other such software services, the Customer shall be required to cooperate and enable full technical IT access to the software by way of remote maintenance.

## 10. Miscellaneous provisions

10.1 The Customer may only assign third parties any rights and duties resulting from this agreement, if it has the User's prior written consent.

10.2 Upon ceasing to use the object of the delivery, the Customer must dispose of it at its expense and in accordance with any legal provisions. To this end, the Customer hereby releases the User with respect to any legal obligations to take back the objects and from any associated third-party claims.

10.3 The User's release entitlements pursuant to Paragraph 9.2 shall not expire before 12 months following the conclusive cessation of the use of the equipment. The limitation period shall commence upon the receipt of a written notification sent to the User detailing the cessation of the use of the equipment. In the event that the possession of the object of delivery is transferred to a commercial third party, the Customer shall be obliged to enjoin this third party to an obligation to dispose of the equipment in an orderly manner following the cessation of use, to bear the costs arising in this respect, and, in the event that possession is then transferred to another party, to subject the latter party to the same obligations. Any breaches shall result in the Customer becoming obliged to take back and dispose of the object of the delivery, and to bear the costs incurred in this connection.

10.4 Amendments or additions to contractual relationships must be made in writing if based on these terms and conditions. This applies equally to any waiver or abrogation of this provision stipulating the written form.

10.5 All disputes that may arise out of or in connection with the performance of supplies and/or services by the User shall be subject to Austrian law, and its conflict-of-law provisions (including but not limited to the Austrian Statute on Private International Law [IPRG] and the Rome Regulations I and II) as amended from time to time shall be excluded. UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG as amended from time to time) shall be expressly excluded.

10.6 All disputes arising out of or in connection with the performance of supplies and/or services by the User shall be submitted to the exclusive jurisdiction of the competent court where the User has its registered business address. Furthermore, the User reserves the right to have any disputes arising out of or in connection with the performance of supplies and/or services finally settled under the Rules of Arbitration of the International Chamber of Commerce in Paris (ICC Rules) by three arbitrators appointed in accordance with the said rules. Such disputes are also subject to Austrian law, and its conflict-of-law provisions (including but not limited to the Austrian Statute on Private International Law [IPRG] and the Rome Regulations I and II) as amended from time to time shall be excluded. Applicability of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG as amended from time to time) shall be expressly excluded. The place of arbitration is Vienna, Austria. The language to be used in the arbitration proceedings is German.

10.7 Any agreement concluded on the basis of these terms and conditions shall remain binding, even if specific provisions contained within it are legally unenforceable. The contractual parties shall substitute any unenforceable provisions with enforceable new provisions that most closely fulfil the purpose intended by the originals. Any gaps in the agreement shall be resolved in a similar manner.

valid as of: May 2018