

## I. General

All of our orders are based exclusively on the following terms and conditions. Any terms and conditions of the supplier do not apply even if we do not expressly object to them. Variations and amendments on the part of the supplier are only valid if we consented to them in writing and as such only apply to the transaction for which they were agreed upon. In the framework of on-going business relationships, these terms and conditions also for future contracts, even if no specific reference is made to their applicability.

## II. Bid, Order, Conclusion of Contract

1. The supplier is obliged to follow our request in its quotations; any variations from the request in the quotation - especially in the case that the supplier cannot fulfil our request in one or more point – must be stated clearly and explicitly.

2. We reserve all ownership rights and protected commercial rights to images, calculations and other commercial and technical documents. The supplier may not make these accessible to third parties without our prior written consent; they are to be used exclusively for the execution of the order and after the order has been completed, they must be returned to us unsolicited.

3. Orders are only valid if we issue them in written form. Preliminary orders that are placed orally or by telephone only become valid on issue of the written confirmation (including forms communicated by fax or telecopy). If the price is not yet mentioned in our order, it must be communicated to us with the confirmation of order at the latest. In this case the contract only comes into effect if we do not reject it within 5 working days of receipt of the order confirmation.

4. The supplier must confirm our order with us immediately and in writing, stating the price, delivery date and our order number. Written correspondence must proceed through our purchasing department placing the order. Employees of other departments do not have authorization to place orders or to modify orders or contracts. To be valid and binding, any arrangements with such employees must be expressly confirmed in writing by the purchase department placing the order unless such authorization derives from the Commercial Registry.

5. If the supplier confirms our order conditions with terms that vary from these and despite this conflict the contract is to be regarded as concluded only the statutory legal provisions apply.

6. Compensation for the costs of technical and commercial processing of the quotation including the costs of any technical tests, costs of assigning an engineer or costs of consultations can only be demanded if this has been expressly arranged with us in advance. This also applies if the supply contract does not take effect.

## III. Prices

1. All prices are fixed prices for the entire contractually specified execution time. The prices are net. The currently applicable VAT will be listed separately in the billing statement.

2. To the extent that no price is mentioned in our order and no expressed price agreement exists or is agreed to, the last billed price

for this or similar goods or services will apply in the framework of any on-going business relationship.

3. Furthermore, list prices only apply if an on-going business relationship exists and the price list was given to us within the last 3 months prior to the order. Otherwise average prices that are usual for the industry are deemed agreed upon.

4. If list prices apply, only the prices according to the last price list transmitted to us can be invoiced unless we have been expressly notified of a price change by the supplier in writing before we place our order.

5. In the absence of any written agreement to the contrary, the price includes freight, transport, packaging, customs, taxes and insurance to the delivery address that we state. If express shipping is provided at our request, the added costs of express shipping can be billed to us against the costs of normal freight. To the extent that, in exceptional cases, a price “ex works” or “ex stock” or something similar is arranged, we only accept the costs for the least expensive type of shipping and the least expensive route of shipping; all costs accrued through hand-over to the freight carrier including loading and cost of cartage will be borne in this case by the supplier.

6. We do not give consent to price adjustments or price increase clauses; we consent only to agreement with a price valid on day of delivery (current price clause) if the price for the object of delivery is usual and common for the industry and is dependent on a stock exchange listing (e.g. metals listed on a commodities market) or some other index.

7. We are entitled to rights of offset and rights of retention according to statutory legal provisions.

## IV. Issue of Billing Statement, Terms of Payment, Offset-ting

1. The billing statement must be sent with an enclosed and clearly labelled duplicate. It must have our reference number, our order number and date of order; all billing statements must comply with applicable provisions of law, especially the VAT Act. Billing statements that do not meet these conditions will be returned to the supplier for completion.

2. Insofar as nothing else is agreed upon, payment will be rendered, at our discretion, either within 14 days with a 3 % discount, within 90 days without any discount, in each case after receipt of the proper, auditable billing statement and fulfilment of all additional preconditions for payment (especially receipt of a complete billing statement).

3. The agreed-upon discount can still be deducted if we offset claims, exercise our rights of retention or our rights of reservation.

4. Our payments are always made under reservation to correct payments or demand a refund, if it should become apparent that there were inaccuracies in billing or there are legitimate objections, as well as under the precondition of proper receipt of goods. Payments rendered do not imply a recognition of the good or service as conforming to the conditions of the contract.

5. We are entitled to make all payments via cheque /bill of exchange.

6. We are entitled to offset the supplier's claims with our own or claims assigned us by an affiliated company, even if such a counter-claim is not yet due.

#### V. Delivery Dates and Deadlines

1. The delivery dates and deadlines specified in our order are binding. Delivery deadlines are timed from the date of our written order. The delivery date is the day on which we receive the goods at our business premises or at the delivery address we specified; in the case of services, the day on which they are received.

2. If no delivery deadline is agreed to, the service is to be completed immediately, insofar as nothing else is apparent from the circumstances.

3. The supplier is obligated to inform us immediately and in writing if conditions become apparent that make it clear that the specified delivery date or deadline cannot be met. This also applies if the supplier is not responsible for the delay. Our claims and rights in cases of delay of delivery are unaffected by this.

4. In the event of a delay of delivery we are entitled to impose a contractual penalty in the amount of 0.3% of the delivery value (without VAT) per commenced working day, to a maximum of 5% of the delivery value. We are entitled to assert this contractual penalty along with fulfilment. If we do not already retain the penalty with receipt of the good and/or acceptance, we can still assert the penalty up until when we issue final payment. We reserve the right to assert additional claims, especially claims to compensation for damages. The contractual penalty will be offset against any claims to compensation for damages.

5. In the case of default of delivery, the contractor is obligated to effect shipping of the ordered goods by the fastest possible means of transport. Any added costs accrued will be borne by the contractor.

6. If the delivery deadline cannot be met due to reasons for which the supplier is responsible, we are entitled to withdraw from the contract if the fulfilment of the contract becomes unacceptable to us as a result of the foreseeable duration of the delay or if we no longer have any interest in the delivery due to the uncertainty of the possible date of delivery.

7. Liability restrictions and disclaimers from the supplier in the case of default of delivery are herewith explicitly rejected.

#### VI. Transfer of Risk, Obligation of Own Performance, Partial Shipments, Packaging

1. Shipping must be reported to our ordering office at the latest on dispatch of the goods by sending a dispatch notice.

2. Risk transfers once the shipment has reached the destination specified on the order. If acceptance is carried out, risk only transfers upon acceptance of the good in the factory or at the specified point of receipt.

3. The supplier is obligated to execute the contract itself. The supplier is not entitled to assign the contract to a third party or to engage a sub-contractor without our prior written consent.

4. Every shipment must be accompanied by a delivery note in duplicate.

5. Our shipping address, our order number and the order date must always be clearly indicated on dispatch notices, delivery notes, waybills and package address labels.

6. The supplier must, at own cost, make sure that the shipping risk is covered in full scope by an insurance policy.

7. Partial shipments or partial fulfilment of services are only permitted with our express written consent. In the case partial shipments are agreed upon, the supplier must list the remaining residual portion of the shipment in each case.

8. The goods must be packaged properly. The packaging must comply with all technical, legal and official provisions. The contractor is obligated to recover the packaging materials including the transport packaging from the delivery site within the usual business hours and at own cost; furthermore, the obligation to recover packaging materials is subject to the applicable provisions of law.

9. If, in exceptional cases, we must pay for the packaging materials separately, we are entitled to return the shipping materials that are in good condition to the supplier carriage paid in return for compensation equal to 2/3 of the amount billed for the packaging materials.

10. We can return shipments that do not conform to the contract at cost and risk to the supplier.

#### VII. Reservation of Title

Ownership of the good is transferred to us upon delivery. Any reservation of title, especially expanded or extended reservation of title, is excluded.

#### VIII. Inspection of Outgoing Goods and Complaints of Defects

1. The supplier is obligated to inspect the good prior to dispatch in order to determine if it matches the specifications stated in the order and is free of defects. To the extent that the good is dispatched in violation of this obligation to inspect outgoing goods, the supplier cannot appeal to Paragraph 377 HGB [German Commercial Code]

2. At receipt of incoming goods, we are only obligated to inspect the good for recognizable deviations in identity and quantity, for damages incurred in transport.

3. Shipments that have larger piece numbers of the same part, especially smaller parts from sub-suppliers, we will inspect in a statistical random sampling procedure compliant with ISO 2859 and ISO 3951. To the extent that permissible quality values are deemed to be not met, we are entitled, at our discretion, to complete a full inspection of the entire shipment or to return the entire shipment without any additional inspection. The supplier will bear all costs for any additional inspection.

4. Obviously recognizable defects will be reported to the supplier within 10 workdays of receipt of the goods. In the case of all other defects, the complaint is made in a timely fashion if it is done within 10 work days of discovery of the defect.

5. In the framework of on-going business relationships, and in cases where an object of delivery has been inspected, tested and

released, the supplier is obligated to inform us in writing of any change to the product, unsolicited and in writing. In the case of continuous supply or supply after release of product, in the case of any change of production conditions in its operations, especially in the event of changes in tools, machines or the introduction of new manufacturing processes, the supplier is also obligated, to inspect the object of delivery for any variations or changes and to inform us of any such variations or changes unsolicited and in writing. The obligations stated above apply especially in the case of delivery of electronic components, complete control systems and supplying in the field of sensor components. Should the supplier fail to provide such communication in the cases mentioned above, Paragraph 377 HGB will not apply even if the change in the constitution of the object of delivery leads to a defect.

6. In the cases of delayed complaint of defect, we are still entitled to assert claims for compensation for damages according to the statutory provisions.

7. Should a defect make repeated or additional inspections necessary, the supplier will bear all material and personnel costs including the reservation of additional legal claims, unless the supplier is not responsible for the defect.

#### **IX. Standard of Quality and Quality Assurance**

1. All objects of delivery must conform to the specifications, drawings and other statements in the order as well as the provisions of law applicable at time of delivery, the rules of safety engineering, the applicable ordinances and guidelines of professional societies, the industrial inspectorate and TÜV as well as the most up-to-date guidelines of the VDI [Association of German Engineers] and its divisions, as well as the national and international Norms (e.g. DIN-, CEN or ISO-Norms) in their currently valid edition.

2. On our request the supplier is obligated to provide a specimen, a sample and/or data sheets and/or a certificate of origin. The properties of the specimen or sample as well as the statements in the data sheets are agreed upon as promised properties. The same applies to inspection certificates. The supplier is obligated to perform checks to guarantee reliability of production, the achievement of the promised quality, the promised properties and to provide evidence of them at our request. The supplier is prepared to conclude a quality assurance agreement with us on request.

3. Deviations from regulations, guidelines and applicable technical norms are only permitted with our prior written consent, even if the other type of execution should provide the same degree of safety. Our consent does not release the supplier from his sole responsibility for the regular and suitable fulfilment of performance.

4. Insofar as we request a particular type of execution, the supplier must inform us immediately and in writing of any concerns. If the supplier violates this obligation to inform, the supplier must bear full and complete responsibility for the regular and proper fulfilment of the goods and/or services. In the case of parts that we supplied as well as third-party parts that were delivered on our order, the supplier must likewise inspect them for suitability and communicate any concerns to us in writing. In the event that this

obligation is breached, the regulation above applies by way of analogy.

5. The supplier must inform us in writing, immediately but at least 6 months in advance, of any changes in the production processes, the production site and/or the materials used. At our request the supplier must provide us with any and all information that we need.

6. We are entitled, on prior notification and during the supplier's regular business and operations hours, to check and audit the compliance with the provisions of this section as well as the compliance with the ATS' Global Supplier Quality Manual. In this process we will show due consideration for the supplier's operational needs and any confidentiality requirements.

#### **X. Guarantees and Warranty**

1. The supplier guarantees in the form of an independent guarantee declaration and warrants that the goods are free of defects that compromise their suitability. Furthermore the supplier guarantees and warrants that goods comply with the agreed-upon specifications or the sample released to us, are fit for the customary use assumed by the contract, conform to the generally recognized rules of the trade, the regulations of public law applicable and in force at the time of delivery is and the requirements under safety engineering in effect at the time of delivery as well as conforming to the applicable occupational health and safety regulations.

2. If the goods provided by the supplier have a defect, we are entitled to all legal actions out of the guarantee declaration and under statutory provisions for defects without restriction, where-by we have the right to select the type of subsequent fulfilment. Along with this we are entitled, after allowing the supplier a suitable grace period, to have the defect remedied by a third party at cost and risk to the supplier if subsequent fulfilment is refused or fails. This will be assumed on the second unsuccessful attempt to obtain subsequent fulfilment.

3. Furthermore, the supplier is liable according to the statutory provisions. We do not consent to any restriction or limitation of our legal claims for compensation deriving from tort or contract, neither with respect to the degree of culpability nor with respect to the scope or amount of liability.

4. The contractor is liable for any fault of its sub-suppliers or sub-contractors.

5. The warranty period of the delivery of moveable items is 4 years, to the extent that a longer statute of limitations is not provided for under law a) if the goods are not intended for immediate processing, but are intended as stock for provisioning and this is known to the supplier, b) for complete aggregates, that typically can only be inspected and tested for proper operation through commissioning and test operation at the business premises of the end-customer.

6. The equipment, machines and plants that are intended for our production, the warranty period only begins after commissioning and acceptance and conclusion of the agreed upon test operation.

To the extent that nothing else is contractually agreed upon, a 2-month test operation period is agreed upon.

#### **XI. Product Liability, Exemption, Required Third-Party Liability Insurance**

1. To the extent that the supplier is responsible for a damage for which we are liable vis-à-vis third parties, regard-less of whether due to Paragraph 823 BGB [German Civil Code], the Product Liability Act or due to breach of the obligations mentioned above, especially that of quality assurance, the supplier is obligated on first request to indemnify us and hold us harmless from third party claims, if the cause lies in the supplier's manufacturing or organizational area. The supplier must inform us of the risks that proceed from its product in cases of improper use.

2. In this context and scope, the supplier is also obligated to compensate us for all expenditures that derive from or in association with any recall or exchange that we must perform. Other legal claims and rights remain unaffected by this. We will inform the supplier of the content and scope of the planned - to the extent that this is possible and reasonable – and give it the opportunity to respond.

3. The supplier is obligated to maintain a product liability insurance policy with a coverage amount of € 10 Mio. per person-/property damage- loss event and an acceptable coverage of financial loss.

4. Any other claims going beyond these remain unaffected.

#### **XII. Production Equipment, Drawings, Parts**

1. All production equipment, drawings and parts, especially tools, that we hand over to the supplier remain our property; the supplier is obligated to use these production equipment, drawings and parts exclusively for the manufacture of the goods that we ordered and to insure the production equipment and parts belonging to us at own cost against damages from fire, water and theft in the amount of their new value.

2. The contracting parties agree here and now that the ownership of all production equipment, especially tools, that the supplier makes or has made on our commission, are transferred to us, to the extent that we compensate the supplier for the manufacturing costs in accord with the agreement. To the extent that we only participate in a fraction of the tool costs, the supplier here and now grants us co-ownership of the tools in the scope of this fraction. Safekeeping of any production equipment manufactured on our commission for us is agreed to here and now.

3. Until the order is completely fulfilled, the supplier must hold the production equipment in safe keeping for us free of charge. Once it is completed, they must be surrendered to us free of charge.

4. Products that are manufactured following the documents or information that we provided or using our production techniques may not be used by the supplier itself nor offered or delivered to third parties.

5. The contracting parties herewith agree that drawings and documents that the supplier creates following our instructions will

become our property and that the supplier will hold the documents in safekeeping for us.

6. The supplier is liable for all losses that we suffer due to improper processing or machining of parts that we have provided to the supplier.

#### **XIII. Confidentiality**

1. 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 specific contractual purpose and must only be shared with those persons in the contractor's business premises who must necessarily consult them for the purposes of fulfilling contractual obligations and then only to the extent that these persons are likewise subject to confidentiality obligations.

2. We reserve all rights to such information (including copy-rights and the right to register for commercial protected rights such as patents, utility patents, etc.).

3. On our request, all information (possibly including any copies or drawings made) and any objects loaned to the supplier must be returned immediately and completely or on request are to be completely and thoroughly destroyed, insofar as there are no legal obligations to retain them. The contractor only has the right to retain in cases of undisputed or legally established claims.

4. To the extent that the supplier makes goods, tools or documents accessible to third parties such as sub-suppliers, with our permission, these parties must also be made subject to the obligations enumerated above.

5. The supplier is liable to all losses we suffer due to violation of any of the obligations enumerated above in this section.

#### **XIV. Protected Rights of Third Parties**

1. The supplier grants us all rights and licenses that we need for the use and operation of the products/services delivered and for the exercise of our rights in the framework of the order.

2. The contractor gives assurance that the good is encumbered by the protected rights – especially patent rights, copyrights, rights of personality and trademarks– of third parties that would restrict the usual and customary use assumed under this contract.

3. If third parties assert claims that hinder us or our customers from the contractual use of the good, we will inform the supplier. In this case the supplier shall, at its cost and our discretion, either (a) obtain the right to use the good for us and/or our customers, especially any licenses that are required; (b) construct the good delivered in such a way that it is freed of protected rights, to the extent that this does not compromise the contractually agreed upon properties; or (c) replace the delivered good with another that has the same properties but does not violate the protected rights of third parties.

4. On our first request, the supplier must indemnify us against any third-party claims based on existing protected rights of third parties. The obligation to indemnify especially encompasses all expenses that we incur from or in connection with claims asserted by a third party against us. The right to assert this obligation does not

exist if the supplier was unaware of any conflicting protected rights and the supplier could not have been expected to know of them even when exercising the due diligence of a conscientious businessman.

5. If third parties assert claims against us based on existing protected rights, the supplier must support us in defense against the claim and specifically must provide us with all documents and information necessary for the defense.

6. Warranty obligations under Clause X. as well as liability under Clause XI. are unaffected.

#### **XV. Conflicting Rights of Retention, Offset Prohibitions, Assignment**

1. In the case of deficient delivery or service, we are entitled to retain our payment in full amount, to the extent that nothing else can be arranged in good faith.

2. Assignment of claims against us is only legally binding with our written consent, insofar as the claim is not monetary.

3. We herewith reject any restriction of our legal options for offsetting and rights of retention.

#### **XVI. Place of Fulfilment, Court of Jurisdiction, Concluding Provisions**

1. Changes and amendments to the contract must affect in writing to be valid. This also applies to any waiver of the requirement of written form.

2. Place of fulfilment for all obligations deriving from this contract, especially for the payment, is our local office in each case as listed below.

3. The parties herewith recognize the courts at the legal domicile of our business offices 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 general courts.

4. Should individual provisions of these general terms of sale or the contract concluded on their basis be or become 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 loopholes as well.

5. 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 make sure that any necessary consent forms from its employees will be on-hand.

6. The laws of the Federal Republic of Germany apply exclusively to all legal relationships deriving from and in connection with this agreement, excluding the Referring Law and the provisions of the

UN Convention on Contracts for the International Sale of Goods ("CISG").

#### **sortimat Assembly & Feeder Technology**

a branch  
ATS Automation Tooling Systems GmbH

Birkenstr. 1-7  
71364 Winnenden

Tel: +49 (0) 7195 -702- 0  
Fax: +49 (0) 7195 -702- 22

#### **sortimat Handling Systems**

a branch of  
ATS Automation Tooling Systems GmbH

Am Tannwald 2  
78112 St. Georgen

Tel: +49 (0) 7725 91732- 0  
Fax: +49 (0) 7725 91732-10

E-mail: [info@sortimat.de](mailto:info@sortimat.de)  
[www.sortimat.de](http://www.sortimat.de)