

Terms and Conditions of Purchase - Germany

1. General Terms and Conditions of Purchase

1.1 The following terms and conditions apply to all orders for purchase of goods (the Goods) by Atlas Maschinen GmbH (Buyer) from the supplier named on the respective purchase order (Supplier) and shall be binding on both parties.

1.2 This purchase order, including these terms and conditions, is referred to as the Contract, and may only be modified by the Buyer in writing. In the event of any inconsistency between these terms and conditions and the text of the purchase order as written by the Buyer on the face of this purchase order, the text of the purchase order as written by Buyer shall prevail. Buyer shall not be bound by any terms and conditions deviating from these terms and conditions or from the provisions of the law or by any other terms and conditions, unless such terms and conditions are expressly agreed to by Buyer in writing. These terms and conditions of purchase shall apply even if Buyer is aware of adverse or contradicting terms submitted by Supplier and unconditionally accepts the delivery of the Goods described in the purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face of the purchase order and these terms and conditions of purchase.

1.3 Any and all agreements between the Buyer and the Supplier for the purpose of performing the obligations under this Contract shall be established in writing in the Contract. The Contract may not be modified except in writing signed by both parties.

2. Orders

2.1 Orders shall only be binding if effected in writing by Buyer or confirmed by Buyer in writing. Any oral order or orders received by telephone as well as any supplements to any purchase order must be confirmed in writing by Buyer.

2.2 Buyer shall have the right to make reasonable changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation by delivering written notice of same to Supplier. If any such changes cause an increase or decrease in the price contained in the Contract, or the time required for the performance, an equitable adjustment shall be made and this Contract shall be modified in writing accordingly.

2.3 Buyer reserves the right to terminate the Contract or any part hereof, upon written notice to Supplier. In the event of such termination, Supplier shall immediately stop all work hereunder, and shall immediately cause its suppliers and any subcontractors to cease such work. Buyer will reimburse Supplier for reasonable expenses including a proportionate profit reasonably acceptable to Buyer resulting directly from any such termination. Supplier shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Supplier's subcontractors or suppliers which Supplier could reasonably have avoided. Supplier shall not unreasonably anticipate the requirements of the Contract.

2.4 Buyer may also terminate the Contract or any part hereof for cause in the event of any material default by the Supplier, any delay in deliveries, deliveries of Goods which are materially defective. If it should be determined that Buyer has improperly terminated this contract for cause, such termination shall be considered a termination for convenience.

3. Prices

3.1 The agreed prices contained in the Contract shall be fixed and binding – plus the respectively valid value added tax – and include free delivery to the place of use as well as packaging and freight charges.

3.2 The Supplier shall assume any and all costs incurred for transit and insurance until delivery of the Goods to Buyer, including unloading at Buyer's location.

4. Assignment; Subcontractors

4.1 Supplier may not assign or pledge its rights or obligations under the Contract without the prior written approval of Buyer.

4.2 The sub-contracting of any obligation under the Contract, or any aspect of the design, manufacture or delivery of the Goods, by Supplier shall not relieve Supplier of its obligations under the Contract.

5. Delivery

5.1 Supplier acknowledges that orders will be placed by Buyer in accordance with its own schedule and planning, and therefore it is an essential and material condition of each Contract that the delivery dates agreed upon between the parties will be met by the Supplier. Partial and early deliveries are only allowed to the extent agreed in advance in writing between the parties, and shall be marked as such by the Supplier. Buyer reserves the right to refuse excess or short deliveries.

5.2 Supplier agrees to inform Buyer in writing about any circumstance that occurs or which Supplier has been informed of, that leads or might lead to a delay in delivery. If Buyer requires that Goods be sent by express transit due to Supplier's fault, any additional costs incurred by Buyer in connection therewith will be paid by Supplier. In case of an early delivery — unless otherwise agreed upon — payment will be made in accordance with the originally designated delivery date.

5.3 Unless otherwise agreed upon in advance and in writing, delivery of all orders shall be carried out DDP (delivered duty paid) according to Incoterms 2000. Title and risk of loss will pass to Buyer upon delivery and unloading at the Buyer facility specified in each Contract.

5.4 Without prejudice to any other legal or contractual rights of Buyer, and notwithstanding the acceptance of delivery of an order, a contractual penalty for delay in delivery may be imposed by Buyer in an amount of 0.5% of the net price of the delivery for each inchoate week of delay, however, no more than 5% of the net price of the delivery. Buyer may assert the contractual penalty also if no reservation occurs when the delivery is accepted. Buyer may, however, demand the contractual penalty beyond the final payment of the delivery only, if we reserve the right to do so at the time of the final payment. Any contractual penalties may be demanded as the minimum amount of damages owed due to the same breach of duty. We will, however, credit any contractual penalties paid.

5.5 Force majeure, legal strikes, operational breakdowns or other hindrances that are beyond the control of Buyer will discharge Buyer from its obligation to take delivery or accept the Goods for the time they occur and allow Buyer to reschedule delivery dates. The same applies to unavoidable delays or alterations of Buyer production schedules. In the event of such a delay, Supplier shall hold Goods subject to such delay at the direction of the Buyer and shall deliver them when the causes affecting the delay have been removed.

6. Invoice and Payment

6.1 Invoices are to be sent to the attention of Buyer at the address set forth on the face of this purchase order. Improper invoices will only be accepted from the date they have been corrected.

6.2 All prices are subject to DDP regulation (delivery duty paid) according to Incoterms 2000. Invoicing shall take place in accordance with the weight and/or amount of pieces actually delivered. No payment will be made for any weight and/or amounts delivered that exceed the maximum weight and/or maximum amount contained in the order, unless the exceeding part has been approved by Buyer.

6.3 Payments made basically based on the agreed payment terms after receipt of an invoice. Unless otherwise indicated by Buyer on the face of the purchase order, payment will be made within 14 days minus 5% cash discount or 60 days net after delivery and receipt of a proper invoice.

6.4 All claims for money due or to become due from Buyer to Supplier shall be subject to deduction or set-off by the Buyer by reason of any counterclaim arising out of this or any other transaction between Buyer and Supplier.

7. Inspection and Acceptance

7.1 Buyer shall have the right to inspect and accept the Goods at the Supplier's premises during regular business hours. Any such inspection does not relieve Supplier of its warranty obligations. The Supplier shall carry out continuous quality testing and shall establish and maintain procedures to ensure a high quality standard in all Goods sold to Buyer. For the purpose of such inspection, the Supplier will provide Buyer with free and safe access to its facilities.

7.2 Upon delivery at Buyer's premises, Buyer shall conduct a final inspection to verify whether the Goods are in conformity with agreed upon quality standards set forth in the Contract and may refuse the Goods in case of defects, deficiencies, noncompliance with the Contract and/or damages occurring during transit. Upon request, the Supplier will provide control and/or test reports. Buyer will check the Goods after delivery only in respect to its type (identification check), quantity, and obvious transport damages as well as other obvious defects. Buyer is not obliged to carry out any further inspection. Insofar, the Supplier waives the objection of violation of the inspection duty and delayed notice of defects pursuant to Section 377 of the German Commercial Code (HGB). Defects which later become known to the Buyer will be reported to the Supplier without undue delay; and Buyer reserves its right to refuse any such defective Goods.

8. Documentary Evidence of Origin, Proofs for Turnover Tax Purposes, Export Restrictions

8.1 Supplier shall provide all documentary evidence of origin (e.g. certificates of origin, suppliers' declarations, movement certificates, regarding EC and/or EFTA regulations concerning the origin) containing all necessary information with each delivery of Goods and shall ensure that all such evidence is properly signed by an authorized representative of Supplier.

8.2 All Goods subject to CE regulation or certification must bear appropriate certifications by Supplier and must be accompanied by all required covering documents associated with such certification.

8.3 In the event that any Goods are, in part or in full, subject to export restrictions pursuant to the European Community, German or other foreign trade and payment legislation (e.g. United States of America legislation), the Supplier shall inform Buyer immediately.

9. Deadlines, Delays

9.1 Time is of the essence of the Contract and the delivery time established in the Contract shall be binding.

9.2 Supplier shall be obliged to inform Buyer in writing without any delay if any circumstances occur or become evident which result in the fact that the required delivery time cannot be fulfilled.

9.3 In the event of a default of delivery, Buyer shall be entitled to all available legal claims and remedies including without limitation, the right to claim damages for Supplier's non-performance and to cancel the Contract and obtain replacement Goods from a third party.

10. Quality; Warranty

10.1 The Supplier warrants proper construction of the Goods and that the materials used are of best quality and these materials are fit for the purpose indicated in the Contract. The Supplier also warrants proper performance in accordance with any drawings and specifications agreed upon between the parties as well as faultless assembly, unobjectionable performance and effect etc., and that the Goods do not infringe any intellectual property rights.

10.2 Supplier warrants that the Goods shall correspond to any and all applicable technical and safety provisions and comply with any and all applicable laws, regulations, directives and standards including but not limited to those concerning labour and health protection, environmental protection and fire protection.

10.3 Supplier guarantees to Buyer that the quality of the Goods delivered shall be state of the art. Supplier shall inform the Buyer about any improvement and technical variation opportunities.

10.4 The warranty period for all Goods purchased from Supplier unless otherwise agreed shall be 24 months from the delivery to Buyer's customer, but in no case longer than 36 months from the time the risk of loss or damage is transferred to Buyer. During the warranty period the Supplier will correct any warranty defect free of charge through repair or exchange at Buyer's discretion at the location of the defective item. Any costs and expenses incurred in connection with remedying the defect, e.g. assembling and disassembling costs, travel expenses and carriage, will be paid by the Supplier.

10.5 Buyer shall be entitled to remedy any defect at the Supplier's cost and without prejudice to the Supplier's liability for defects, if a delay would entail risks or if a particular need for urgency exists. In this case, Buyer will, to the extent reasonably possible, notify Supplier of such defect in advance of Buyer's remediation of such defect. In addition to other cases, particular urgency exists in cases when it is particularly necessary to avoid an equipment standstill suffered by a customer of the Buyer, which may incur extra costs. The Supplier is hereby informed about the special cost risk resulting from the fact that the Buyer delivers equipment to its customers on a world-wide basis.

10.6 The limitation period for claims based on defects shall be 3 years following the delivery of the Goods. In the event that a longer limitation period is legally required, this longer period shall apply. A complaint lodged by the Buyer within the limitation period suspends the limitation period until the parties have come to an agreement about the remedy of the defect and possible consequences. The suspension ends, however, 6 months after the Supplier has finally rejected the complaint of the Buyer.

11. Supplier's Employees, Sub-Contractors, Insurance

11.1 In the event that Supplier's obligations hereunder require or contemplate performance of services by Supplier's employees, or persons under contract to Supplier, to be performed on Buyer's property, or the property of Buyer's customers, Supplier agrees that all such work shall be performed on an independent contractor basis and that the persons doing such work shall not be considered employees of the Buyer.

11.2 Supplier and/or independent/sub contractor, if applicable, shall maintain all necessary insurance coverage, including public, product and auto liabilities and worker's compensation insurance. The liability policies shall contain minimum limits of EUR2 million per occurrence with an aggregate of EUR5 million and, with respect to worker's compensation insurance, shall contain the limits required by applicable law. Supplier shall provide a certificate to Buyer evidencing such insurance coverage.

11.3 Supplier authorizes Buyer to pursue all compensation claims under the abovementioned insurances.

12. Indemnification; Limitation of Liability

12.1 Supplier shall indemnify, defend and hold harmless Buyer, its directors, officers, parents, affiliates, subsidiaries, employees, agents, successors, and assigns against any suits, actions or proceedings at law or in equity (including costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) and all claims, losses, damages, judgments, obligations, liabilities and expenses arising out of or resulting in any way from any defects in the Goods purchased hereunder or any related services or work to be performed, or from any acts or omissions of Supplier, its agents, employees or subcontractors. If Supplier fails to fulfill any of its obligations under this paragraph or this Contract, Supplier agrees to pay Buyer all costs, expenses and attorney's fees incurred by Buyer to establish or enforce Buyer's rights under this paragraph or this Contract. This indemnification shall be in addition to the warranty obligations of Supplier.

12.2 In no event shall Buyer be liable for anticipated or lost profits or for indirect, incidental or consequential damages, regardless of whether or not Buyer was advised of the possibility of such damage. This restriction of liability shall not apply insofar as mandatory law provides otherwise.

13. Drawings, Execution Documents, Tools

13.1 If the Buyer deposits any item on the Supplier's premises, the Buyer shall remain the owner of such item. Any processing or retooling work by the Supplier will be done for the Buyer. In the event that the Buyer's Goods are processed with other items which are not owned by the Buyer, the Buyer shall acquire co-ownership of the new item in the proportion of the value of its Goods (purchase price plus turnover tax) with the other processed goods at the time of processing.

13.2 If the items deposited by the Buyer are inseparably integrated with items which are not owned by the Buyer, the Buyer shall acquire co-ownership of the new item in the proportion of the value of Buyer's Goods (purchase price plus turnover tax) with the other integrated goods at the time of integration.

13.3 Buyer retains the ownership of all tools and other production means or parts which are left with the Supplier for repair. Supplier shall insure such items at their new value at Supplier's cost against fire, water damage and theft. The Supplier authorizes the Buyer to pursue all compensation claims under such insurance. Supplier shall be obliged to exclusively use the tools as well as all other production means for the production of the goods ordered by the Buyer. The Supplier undertakes to carry out all necessary maintenance, inspection and repair work for the tools and other production means of the Buyer at Supplier's own costs and on time. Supplier must inform Buyer immediately about any disruptions in the repair or maintenance of Buyer's tools. All Buyer's tools, parts, drawings and other property shall be surrendered by Supplier to the Buyer on demand in good and serviceable condition, together with any materials added thereto by the Supplier and the Supplier shall have no lien on such tools, drawings or materials either for any sum payable under this Order or for any other monies or obligations.

13.4 All technical information, drawings, design and other data, commercial know-how, specifications, inventions, processes or other information supplied by the Buyer to Supplier are confidential and remain the property of the Buyer. Such information is disclosed to the Supplier solely for the purpose of the Order, and will not, without the prior consent of the Buyer, be disclosed to any third party. Supplier undertakes to use no less than the degree of care and means that it uses to protect its own confidential information, but in any event not less than reasonable care, to maintain the confidentiality of Buyer's information, which obligation extends to Supplier's employees, agents or permitted subcontractors. Supplier shall be responsible to the Buyer for any failure by any employee, agent or subcontractor to comply with such obligations whether or not such employee, agent or subcontractor was aware of such obligations. This obligation of confidentiality shall survive until such time as the knowledge and/or information contained in Buyer's information becomes generally known to the public through no fault of Supplier.

13.5 The Supplier will not, without the prior written consent of the Buyer, advertise, publicly announce or provide to any other person information relating to the existence or details of the Order or use the Buyer's name in any format for any promotion, publicity, marketing or advertising purpose.

14. Industrial Property Rights

14.1 Supplier warrants that no rights of any third party, including but not limited to intellectual property rights, will be violated by the Supplier's design, manufacture or delivery of the Goods.

14.2 In the event that any third-party asserts any claim of infringement (including patent, trademark, copyright, industrial design right, or other proprietary right, or misuse or misappropriation of trade secret) arising out of the purchase, sale or use of the Goods covered by this order whether such Goods were provided alone or in combination with other products, software or processes, the Supplier shall be obliged to indemnify Buyer against these claims. Supplier expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's specifications.

14.3 Supplier's indemnity obligation includes all expenditures which the Buyer incurs (including but not limited to attorneys' fees), as part of or in connection with any actions brought by a third party.

14.4 Buyer retains any and all property, utility model, registered design, patent and brand rights, copyrights and all personality and other protection rights, in particular, to the Buyer's pictures, drawings and other documents, designs, design proposals, templates, workshop documents, forms, copyrights as well as to the know-how and the calculations. This reservation of rights includes, in particular, any and all written documents of the Buyer which are identified as "confidential".

15. Confidentiality

15.1 Supplier shall consider all information furnished by Buyer (hereinafter referred to as "Information") to be confidential and shall not disclose any such Information to any other person, or use such Information itself for any purpose other than performing this agreement, unless Supplier obtains written permission from Buyer to do so. Information shall include without limitation, any customer, prospect and price lists, plans, photographs, designs, component designs, drawings, blueprints, specifications, inventions, technical data, trade secrets, and any other materials relating to this order or to the business of Buyer. All Buyer Information is and shall remain the property of Buyer. Upon Buyer's written request or the termination of this agreement, Supplier shall return to Buyer all Buyer Information. The obligation to maintain the confidentiality of the Information shall not apply if the Information was: (i) in Supplier's possession, free of any obligation of confidence, at the time of its communication to Supplier; (ii) publicly known at the time of its communication to Supplier; or (iii) becomes publicly known or if the Information is legitimately made public by third parties, through no fault of Supplier. The burden of proof for these circumstances shall be with Supplier.

15.2 In no event will Supplier use less than the degree of care and means that it uses to protect its own confidential information of like kind, but in any event not less than reasonable care to prevent the unauthorized disclosure or use of Buyer's Information.

15.3 Unless otherwise agreed in writing, no commercial, financial, or technical information disclosed in any manner or at any time by Supplier to Buyer shall be deemed secret or confidential and Supplier shall have no rights against Buyer with respect thereto except such rights as may exist under patent laws.

16. Place of Performance, Partial Invalidity, Jurisdiction and Applicable Law

16.1 Unless otherwise specified in the purchase order, the place of performance for deliveries and services as well as for payment shall be the registered office of the Buyer.

16.2 If any provision of this Contract shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

16.3 If the parties to the contract are businesspersons as defined by German Commercial Law, the place of business of the Buyer shall be the exclusive place of jurisdiction with respect to any legal disputes; the Buyer shall, however, at Buyer's option, be entitled to proceed against the Supplier at its general place of jurisdiction.

16.4 Any and all legal relationships between the Buyer and the Supplier shall be exclusively governed by the laws of the Federal Republic of Germany, applicable for the legal relationships between national parties; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be barred.