

General Terms and Conditions of Antenna Technology Center (Europe) ATC GmbH

- 1 Scope of application
- 1.1 The General Terms and Conditions of Antenna Technology Center (Europe) ATC GmbH (hereinafter referred to as "ATC GmbH" or "we") shall only apply to companies within the meaning of § 14 BGB (German Civil Code), legal entities under public law and public law special funds.
- 1.2 The following conditions apply to the supply of goods of any kind by ATC GmbH to the Client (hereinafter uniformly referred to as "delivery") as well as to the provision of other services - such as development orders pursuant to Section 9 or measurement/test orders Section 10 - by ATC GmbH for the Client (hereinafter uniformly referred to as the "service").
- 1.3 Our terms and conditions shall apply exclusively; we shall not recognise any terms and conditions of the Buyer or any other customer (hereinafter collectively referred to as "Buyer") contrary to or deviating from our terms and conditions, unless we have expressly agreed to their validity in writing. Our terms and conditions shall also apply if we carry out the delivery to the Buyer without reservations in awareness of contradictory or diverging terms or contractual offers of the Buyer.
- 1.4 No oral collateral agreements have been concluded.
- 1.5 Our terms and conditions also apply to all future transactions entered into with the Buyer.
- 2 Offer and conclusion of agreement – Offer documents
- 2.1 Our offers are not binding, unless the binding force is expressly stated in the offer. Unless by way of exception our offer is binding, a contract shall only come about upon our written confirmation of the legally binding order.
- 2.2 If the order is to be considered an offer within the meaning of § 145 BGB, we may accept it within four weeks.
- 2.3 Our employees are not authorised to make any oral collateral agreements or give verbal assurances that go beyond the content of the written contract.
- 2.4 We reserve the right to make technical changes to the offer documents, even after confirming the order. We reserve title and copyright to illustrations, drawings, calculations and other documents. This shall also apply to those written documents designated as "confidential". The Buyer is to obtain our express, written, approval prior to forwarding such documents to third parties. Any technical drawings or other documents must be returned immediately upon request if the order is not awarded to us.
- 3 Prices - Terms of payment - Default
- 3.1 Unless otherwise stated, we shall adhere to the prices quoted in our binding offers for a period of four weeks from the date of the offer. Otherwise, the prices stated in our confirmation of order shall be decisive. Additional goods and services shall be billed separately.
- 3.2 Unless otherwise agreed, all our prices are quoted "ex works" including packaging.
- 3.3 Statutory VAT is not included in our prices, and is shown separately in the invoice in the legal amount on the day of invoicing.
- 3.4 Unless otherwise agreed, the delivery price is payable net (without deductions) within 30 days from the invoice date.
- 3.5 The deduction of cash discounts must be agreed separately in writing.
- 3.6 A payment obligation shall only be deemed to have been met once we can dispose of the amount. In the case of acceptance of cheques or bills of exchange, the payment obligation shall only be deemed to have been met once the cheque or bill of exchange is cashed. Bills of exchange will only be accepted by us subject to prior written agreement. Upon discounting of bills of exchange, the bank discount and collection charges shall be billed.
- 3.7 If the Buyer owes us payment from several contractual obligations and if a payment made by the Buyer is not sufficient to discharge all debts, we shall be entitled to offset any payment against older debts of his despite terms and conditions of the Buyer to the contrary. We will inform the Buyer about the kind of set-off. If the Buyer is required to pay interest and costs in addition to the principal claim, we shall be entitled to offset any payment that is insufficient to discharge the entire debt firstly against the costs, then against interest and finally against the principal claim.
- 3.8 If the Buyer is in default of payment, we are entitled to demand default interest at the rate of eight per cent per annum above the base rate, without prejudice to the assertion of further claims for damages arising from default.
- 3.9 We reserve the right to amend our prices accordingly if, once the contract is entered into, cost reductions or increases occur in particular due to collective agreements or material price changes. We will provide proof of such at the Buyer's request.
- 4 Set-off - Retention – Denial of service - Assignment
- 4.1 The Buyer shall only be entitled to a right of offset if its counterclaims have been finally established by court of law, are undisputed, or acknowledged by us. Furthermore, the Buyer may only assert a right of retention for counterclaims based upon the same contractual relationship.
- 4.2 If we are obliged to make advance delivery and if after conclusion of the agreement the financial circumstances of the Buyer should deteriorate significantly, jeopardising our claim to payment of the delivery price, we can refuse performance until the delivery price is paid or collateral has been provided for it.
- 4.3 The Buyer shall only be entitled to assign claims against us to third parties with our prior consent.
- 5 Delivery and performance periods
- 5.1 Delivery dates or deadlines must be confirmed by us in writing if they are to be binding. In all other cases, delivery dates or deadlines are not binding.
- 5.2 If we are unable to render the contractual services on time owing to force majeure occurring or becoming known to us at no fault of our own following conclusion of the agreement or other events for which we are not responsible - for example, late or incorrect delivery by our suppliers which we were unable to foresee and for which we are not at fault - the delivery period and/or delivery date shall be extended for the duration of the hindrance. This also applies if subcontractors are affected by such circumstances. We cannot be held responsible for the aforesaid circumstances even if they occur during a delay that has already occurred. We will give the Buyer earliest possible notice of the start and end of such hindrances.
- 5.3 If the hindrance pursuant to Subsection 5.2 lasts longer than three months, the parties shall be entitled to withdraw from the contract regarding the part of the delivery or performance not yet rendered.
- 5.4 If delivery is delayed or we are released from our contractual obligations this shall not entitle the Buyer to a claim for damages.
- 5.5 Partial deliveries and partial services are permitted within the delivery times specified by us, as long as this does not result in disadvantages in respect of use.
- 5.6 Compliance with our delivery and performance obligations shall require the timely and proper fulfilment of the obligations of the Buyer.
- 5.7 If the Buyer is in default of acceptance, we are entitled to demand compensation for any resulting additional expenses; upon commencement of default of acceptance, the risk of accidental deterioration and accidental loss of the delivery item shall pass to the Buyer.
- 6 Transfer of risks
- 6.1 Unless stated otherwise in the order confirmation, delivery "ex works" shall be agreed.
- 6.2 At the Buyer's request we shall take out transport insurance for the delivery.
- 7 Installation
- 7.1 Unless otherwise agreed, installation and commissioning shall be billed to the Buyer on a time and materials basis.
- 7.2 In the event of installation, the Buyer shall ensure the following requirements at its own expense: To enable prompt installation, the Buyer must complete the preliminary work required to commence the installation, before the installation can start. The Buyer shall provide all necessary facilities, assist with the operation of all connected external devices and if necessary permit work outside of the regular working hours.
- 7.3 If the installation or commissioning is delayed through no fault of our own, then the Buyer has to bear the costs incurred for idle times and any additional travelling of our employees to a reasonable extent.
- 8 Acceptance
- 8.1 Acceptance takes place immediately after contractual delivery or performance.
- 8.2 An acceptance report shall be prepared, which shall be signed by the Buyer.
- 8.3 Any defects recorded in the acceptance report shall be eliminated.
- 8.4 If the Buyer refuses acceptance without cause, the delivery shall be deemed accepted.
- 8.5 Acceptance is also deemed to have occurred if the delivery/service has been unreservedly put to use - if necessary after completion of an agreed test phase.
- 9 Development orders
- The specifications agreed by both parties as an integral part of the agreement are decisive for the services to be provided in the context of development orders. Changes or amendments to the specifications shall always require the written agreement between the parties. Following the acceptance of the development, a phasing-in period shall apply, the duration of which shall depend on the scope and technical complexity of the respective development, which serves to detect and correct errors that occur only under real running conditions.
- 10 Measurement/test orders
- 10.1 We shall provide our services with the due care in accordance with the specific instructions of the Buyer, as confirmed by us. In the absence of such instructions, we shall observe the provisions of our order form or our standard specification sheet and/or the relevant trade customs, traditions or practices and/or such procedures that we consider appropriate for technical, organisational and/or economic reasons.
- 10.2 All information in our inspection reports is derived from the results of measurement/test procedures that were used by us in accordance with the instructions of the Buyer and/or the evaluation of such results on the basis of existing technical standards, trade customs or practices, or other circumstances that must be taken into consideration in our opinion.

- 10.3 Our inspection reports only reflect the facts identified at the time of inspection within the scope of the instructions provided by the Buyer, or in the absence thereof, within the scope of the test parameters specified in Section 10.1. We are not obliged to make reference to values or facts or to report thereon, which are outside of specific instructions provided by the Buyer or the alternative test parameters in accordance with Section 10.1.
- 10.4 We will generally provide the Buyer the test or inspection reports (where necessary with an electronic signature) via the Internet. We do not accept any liability for any computer viruses and resulting possible technical damage incurred by the Buyer, occurring in connection with the electronic transmission of data.
- 10.5 We shall render the services within the customary periods. Dates and deadlines for the provision of services are only binding if and to the extent that they are confirmed by us in writing beforehand.
- 10.6 The Buyer shall be obliged to ensure that the information, instructions and documents necessary to perform the contract are provided to ATC GmbH in good time (at least 48 hours before the commencement of the agreed service), so that we can provide the services in accordance in the contract.
- 10.7 If upon placement of the order or at the time of the contractual negotiations no price arrangements were agreed between us and the Buyer, the prices to be paid by the Buyer shall be determined in accordance with the applicable standard rates of ATC GmbH (which may change from time to time). All prices are quoted exclusive of the applicable statutory VAT as amended from time to time.
- 10.8 ATC GmbH is neither an insurer nor a guarantor and therefore rejects the assumption of the associated responsibilities. Buyers seeking a guarantee against loss or damage must conclude a corresponding separate insurance policy.
- 10.9 The inspection reports of ATC GmbH are prepared on the basis of the information and objects of inspection provided by the Buyer or on its behalf and are exclusively for the benefit of the Buyer. The latter shall draw the necessary conclusions from the inspection reports on their own responsibility. Neither ATC GmbH nor its officers, employees or subcontractors shall accept any responsibility towards the Buyer or any third party for actions of any kind that have been taken or omitted on the basis of such inspection reports, or for incorrect tests based on unclear, incorrect, incomplete or misleading information provided by the Buyer.
- 10.10 ATC GmbH shall not accept any responsibility for delayed, partial or incomplete provision of services, provided that this results directly or indirectly from events that are beyond the control of ATC GmbH.
- 10.11 ATC GmbH shall not be liable for late, partial or non-provided measuring performance due to the non-feasibility of measurements, caused by weather or environmental conditions. Weather and environmental condition within the meaning of non-feasibility is in every application thunderstorms/severe weather, due to the associated hazard potential. In addition this may be strong climatic changes, which ensure no constancy of the wave propagation conditions over the duration of a measurement campaign/measure. ATC GmbH has the right to interrupt according to expert evaluation measurements accordingly, cancel and move. ATC GmbH is also not liable for consequential costs incurred by the Client in this regard.
- 10.12 With regard to our scope of liability, Section 12 and in particular Section 12.4 shall apply. However, our liability in connection with measurement/test orders shall be limited to a maximum aggregate amount per occurrence of loss equal to five (5) times the remuneration for those services if performance has resulted in damage. However, the liability of ATC GmbH shall on no account exceed a maximum aggregate amount of € 50,000.00 per occurrence of loss.
- 10.13 ATC GmbH shall not accept any liability for indirect or consequential damages, including without limitation for lost profits, business interruption, loss of a business opportunity, reduction of goodwill and costs associated with a product recall. Moreover, ATC GmbH shall not accept any liability for any losses, damages or costs which may arise for the Buyer as a result of claims by third parties (especially in the event of the assertion of product liability claims).
- 11 Demonstration models and trial run
Devices provided by us to the Buyer for demonstration purposes, trials or on loan may not be resold to or otherwise placed at the disposal of third parties by the Buyer.
- 12 Warranty
- 12.1 Any warranty rights of the Buyer are conditional upon the Buyer's observance of his duties to inspect and issue notifications of defects in accordance with § 377 HGB.
- 12.2 In the event of a defect to the delivery goods for which we are responsible, we are entitled at our discretion to correct the defect or deliver a non-defective item (subsequent performance).
- 12.3 If subsequent performance should prove unsuccessful, the Buyer is entitled to legal rights; in particular, he is entitled to reduce the price or to withdraw from the contract.
- 12.4 We are liable according to the legal provisions for damage based on an intentional or grossly negligent breach of duty by us or an intentional or grossly negligent breach of duty on the part of our representatives or vicarious agents. Unless we are guilty of an intentional breach of contract, liability for damages shall be limited to foreseeable, typically occurring damage.
- 12.5 We shall be liable in accordance with the legal provisions if we culpably violate an essential contractual obligation. In such a case, however, the liability shall be limited to the foreseeable, typically occurring damage.
- 12.6 We shall be liable for defects according to the legal provisions if it we fraudulently conceal a defect or have assumed a guarantee for the quality of the delivery item.
- 12.7 Any further liability for damages is excluded. This shall not affect the mandatory provisions of the German Product Liability Act [Produkthaftungsgesetz].
- 12.8 Any liability for normal wear and tear is excluded.
- 12.9 We shall not accept any liability for defects to the delivery item, which were caused by incorrect operation of the delivery item by the Buyer. Nor shall we accept any warranty for defects caused by changes to our deliveries or services, or the replacement of parts.
- 12.10 The warranty period for contractual claims of the Buyer against us due to a defect to the delivery item is twelve months from the statutory limitation period, provided we are not liable for intent, in the cases of §§ 438 (1) No. 3 and 634a (1) No. 1 BGB. In the cases of Sections 12.4 to 12.6 and 13.2 of these terms and conditions, the warranty period is determined on the basis of the statutory provisions. This shall not affect any claims by the Buyer resulting from §§ 478, 479 BGB.
- 13 Joint and several liability
- 13.1 Any liability for damages on our part other than that provided for in Section 11 above is excluded, regardless of the legal nature of the claim asserted. This applies in particular to claims for damages arising from non-contractual liability.
- 13.2 However, we shall be liable according to the legal provisions for damages resulting from injury to life, body or health, based on an intentional or negligent breach of duty by us or by an intentional or negligent breach of duty of our representatives or vicarious agents.
- 13.3 The same applies if the liability is mandatory under the provisions of the German Product Liability Act.
- 13.4 Insofar as the liability for damages vis-à-vis us is excluded or limited, this shall also apply with respect to the personal liability for damage of our employees, workers, staff, representatives and vicarious agents.
- 14 Retention of title
- 14.1 We reserve title to the delivery items until settlement of all claims arising from the business relationship with the Buyer, irrespective of their legal basis. The retention of title also applies to claims from past and future legal transactions and balance claims from a possibly existing current account relationship.
- 14.2 The Buyer is entitled to resell the delivery item in the ordinary course of business. The Buyer shall not be entitled to pledge the conditional goods or transfer ownership by way of security. The Buyer shall already now assign to us all claims in the amount of the purchase price agreed between us and the Buyer (including VAT), incurred by the Buyer from the resale, irrespective of whether the delivery item is resold without or after processing. The claim assigned to us in advance by the Buyer relates also to the recognised balance and in the event of the insolvency of the Buyer to the then existing "causal" balance. The Buyer shall be authorised to collect these claims after their assignment. Our authority to collect the claims ourselves remains unaffected; however, we undertake not to collect the claims as long as the Buyer duly meets his payment obligations from the collected proceeds, does not fall into arrears and in particular no application to institute insolvency proceedings has been made or the Buyer is bankrupt. However, if this is the case, we may demand that the Buyer inform us of the assigned claims and the appertaining debtors, that it provide us with all the necessary details, surrender the pertinent documents and inform the debtors (third parties) of the assignment.
- 14.3 In the event of seizure or other interventions by third parties, the Buyer must notify us immediately in writing, so that we can take legal action pursuant to § 771 ZPO [Code of Civil Procedure]. Insofar as the third party is unable to reimburse us for the court and out-of-court costs of a lawsuit pursuant to § 771 ZPO, the Buyer shall be liable for any loss incurred by us.
- 14.4 In the case of breach of contract on the part of the Buyer, in particular default in payment, we are entitled to withdraw from the agreement pursuant to the statutory provisions and to take back the delivery items. The assertion of claims for damages shall remain unaffected.
- 14.5 We undertake to release the securities to which we are entitled on request of the Buyer if the realisable value of our securities exceeds the claims to be secured by more than 10%; we shall be responsible for the selection of the securities to be released.

- 15 Industrial property rights and copyright
- 15.1 We will indemnify the Buyer from claims arising from violations of copyrights and other industrial property rights unless we produced the goods on the basis of drawings, models or other equivalent specifications or instruction supplied by the Buyer and did not or could not know in the context of the products manufactured by us that intellectual property rights would be violated thereby.
- 15.2 The further prerequisite for indemnification is that the alleged infringement of the design of our delivery items is attributable without connection or use with other products and that all defensive measures and extrajudicial measures remain reserved.
- 15.3 In the event of the breach of one of the rights referred to in Section 15.1, we have at our option first the right either to obtain the necessary licences relating to the allegedly violated rights or to supply an amended delivery item or parts thereof to the Buyer, which in the case of exchange of the infringing delivery item or its part eliminate the alleged infringement with respect to the delivery item. If subsequent performance pursuant to sentence 1 above should fail, the Buyer shall be entitled to the statutory rights; in particular, he shall be entitled to reduce the purchase price or withdraw from the contract.
- 15.4 Otherwise, the provisions of Sections 12 and 13 these terms and conditions shall apply.
- 15.5 ATC GmbH reserves its rights to all test methods and/or procedures as well as to all devices and/or equipment that they developed or commonly use, unless these were exclusively developed for the Buyer within the framework of the provision of the services on the basis of a written agreement.
- 15.6 ATC GmbH shall retain the copyright to the services provided - if these are suitable for this purpose. The Buyer may use the inspection reports or opinions for the contractually intended purpose, including all tables, calculations and other details prepared in the context of the contractual relations, only after full payment of the remuneration. The Buyer is not permitted to change or edit the inspection reports or to use only excerpts thereof. Disclosure of inspection reports or opinions to authorities or other public bodies shall be admissible if and to the extent that this is necessary or legally required pursuant to the contractually intended purpose. Moreover, each publication or reproduction of the inspection results and/or expert opinions - including excerpts - in particular over the Internet or for promotional purposes, as well as any other disclosure to third parties is permitted only with prior written approval of ATC GmbH.
- 16 Confidentiality
The parties are obliged to keep all confidential documents and information as well as all business and technical details related to the business relationship strictly confidential. Said information may only be disclosed to third parties with the explicit approval of the other party. The obligation to maintain secrecy shall also apply following termination and settlement of this contractual relationship. It shall not apply if and to the extent that the knowledge or the commercial and technical details contained in the documents and information has become generally known or was already known to the other party, without this being the result of a breach of contract by the other party.
- 17 Place of performance - Jurisdiction - Applicable law - Severability clause
- 17.1 Unless otherwise agreed, the place of performance is our registered office.
- 17.2 If the Buyer is a merchant, a legal entity under public law or a public law special fund, our registered office shall be the exclusive place of jurisdiction. However, we are entitled to bring an action against the Buyer at the court with jurisdiction for its registered office.
- 17.3 These terms and conditions and all legal relations between us and the Buyer shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of international sales law, even if the Buyer has its registered office abroad.
- 17.4 Should any provision hereof be or become invalid, this shall not affect the validity of the remaining provisions.