



General Terms and Conditions of Delivery of ATN Hölzel GmbH

1. General Comments

1.1

The following terms and conditions of delivery apply to deliveries to business enterprises, legal entities under public law and special funds under public law.

1.2

Our general terms and conditions of purchasing and delivery shall apply exclusively. Any opposing general terms and conditions of the customer shall not apply.

1.3

Our offers are subject to change. The right to undertake amendments on the basis of technical progress or requirements of the legislator and alterations to form, colour and/or weight remains reserved within the framework of that which is reasonable.

1.4

We reserve our proprietary and copyright-protected rights of exploitation to cost estimates, drawings and other documents without any restrictions. Such documents may only be made available to third parties with our prior consent and are to be returned to us immediately upon demand.

1.5

The right to timely and correct self supply remains reserved. This applies only in the eventuality that the failure to deliver is not for reasons which are our responsibility, in particular when a congruent hedging transaction has been concluded with our upstream supplier. We shall inform the customer without delay of the non-availability of the object of delivery and, should the contract be rescinded, refund the corresponding counter service to the client without delay.

1.6

Partial deliveries are permissible, inasmuch as they are reasonable for the customer.

1.7

We shall be entitled to the unrestricted copyright on any unfinished constructions, drawings and similar documents that are supplied to us. This shall not be restricted either by payment of the agreed price for the goods or by the surrender of multiple copies for the construction documents. Without our explicit, written consent, our customers shall therefore not be entitled to manufacture items according to our construction documents, to cause them to be manufactured either wholly or partially elsewhere, to make or have made any copies of the multiple documents issued or to distribute the document and multiple copies issued, surrender them to third parties or disclose their contents to third parties. It is hereby of no consequence whether the constructions, drawings and other similar documents in question have been compiled by ourselves or by third parties acting on our behalf. Further reaching rights shall remain unaffected by this. The original documents shall at all times remain in our unrestricted ownership.



2. Order, Prices

2.1

The exclusive basis for the contract shall be our contract or order confirmation or – inasmuch as neither of the above should be available – our delivery note in conjunction with our invoice. Only the version issued in the German language shall be valid in each case. Any deviating agreements shall require our written confirmation.

2.2

Our prices shall apply ex works including loading in the plant but excluding packaging, freight, postage and insurance. The prices are to be understood as being net prices. VAT shall be charged additionally at the statutorily prescribed rate. Packaging shall be non-returnable.

3. Payment, Right of Retention, Off-settling

3.1

Unless any separate agreement has been reached, the agreed price is to be paid as follows:

- In the case of customers not resident in the Federal Republic of Germany: in full within one week of receipt of the order confirmation.
- In the case of customers resident in the Federal Republic of Germany: 1/3 within a week of receipt of the order confirmation and the remainder within a week following notification of the availability of the delivery.

Should the aforementioned deadlines be overstepped without fruition the customer shall be deemed to have defaulted without any further declarations on our part.

3.2

The customer shall not be entitled to a right of retention in the event of defects, as long as and inasmuch as this would be out of proportion to the defects and the probable costs of subsequent fulfilment.

3.3

The customer shall not be entitled to assert any claims and rights pursuant to defects should it not have effected due payments or should the due amount not be in a reasonable ratio to the value of the deficient performances.

3.4

The customer may only offset against claims that are undisputed or have been legally established.



4. Delivery, Default

4.1

Delivery periods shall only be deemed binding if they have been specifically declared to be so by us in writing.

4.2

The adherence to delivery periods presupposes the punctual receipt of all documents to be provided by the customer, where necessary approvals and clearances, in particular plans, as well as adherence to the agreed terms of payment and any other obligations on the part of the customer. Should these prerequisites not be fulfilled punctually, the periods shall be prolonged appropriately; this shall not apply should we bear the responsibility for the delay.

4.3

A delivery period shall be deemed to have been adhered to when, by the time of its expiry, notification of readiness for dispatch has been issued or the object of delivery has left the plant. Our obligation to deliver shall be deemed to have been fulfilled as soon as the goods have been duly handed over by us to the responsible forwarding agent. The same shall apply to loading onto either our vehicles or vehicles belonging to our customers. This shall apply analogously to partial deliveries. All deliveries to our customers shall be effected at the latter's risk. We shall take out transport insurance or other insurance policies only upon the explicit wish of the customer and at the latter's expense.

4.4

Should the failure to adhere to the periods be assignable to force majeure, e.g. mobilisation, war, insurrection or similar occurrences such as strikes or lockouts, the periods shall be prolonged appropriately.

4.5

The customer may only rescind the contract within the framework of the statutory stipulations inasmuch as the delay in delivery is for reasons for which we bear the responsibility. This shall not constitute an amendment to the burden of proof to the disadvantage of the customer.

4.7

The customer shall, at our request, be required to declare within a reasonable period of time whether it wishes to rescind the contract due to the delay in delivery or whether it insists upon the delivery.

4.8

Should the dispatch or delivery, subsequent to our notification of readiness for dispatch, be delayed by the customer, the customer may be charged storage fees for each month or part-month amounting to 0.3% of the price of the goods being stored, but up to a maximum of 5% in total. The contractual parties shall retain the right to prove higher or lower storage costs.

5. Contractual Penalty

5.1

Should the customer rescind an order granted without justification or should the contract not be implemented for reasons for which the customer bears the responsibility, we shall be entitled to demand 10% of the agreed price as a contractual penalty.

5.2

The option of asserting a higher, actually incurred amount of damage shall remain unaffected.



6. Warranty

6.1

Grounds for claims based upon defects shall not be given in the event of only marginal deviations from the agreed quality and/or only marginal impairment of serviceability. We reserve the right to separately charge the customer in cases of groundless complaints for all expenses incurred in connection with the inspection of the goods.

6.2

In cases of items of delivery having defects, we shall initially provide warranty at our own discretion by either subsequent improvement or substitute delivery.

6.3

The place of subsequent fulfilment shall be our company headquarters (Oppach, Federal Republic of Germany).

6.4

Should subsequent fulfilment fail twice, the customer may, as a general rule, at its own discretion demand either a reduction of the remuneration (reduction) or annulment of the contract (rescission). In the event of a merely marginal lack of contractual conformity, in particular of merely marginal defects, the customer shall not be entitled to rescind, however.

6.5

Evident defects must be reported in writing within a period of two weeks of receipt of the items delivered. Otherwise the assertion of any claim to warranty shall be excluded. The customer shall bear the full burden of proof for all eligibility criteria, in particular for the defect itself, the point in time at which the defect is discovered and the punctuality of the notification of the defect.

6.6

Should the customer choose to rescind the contract due to a legal or material defect after an unsuccessful attempt at subsequent fulfilment it shall not be additionally entitled to any claims for compensation in connection with the defect.

6.7

As a basic principle, only our contractual product description shall be deemed to have been agreed as representing the quality of the goods. Public statements, praises or advertisements shall not constitute contractual assurances as to the quality of the goods. Information and data to be found in data sheets, brochures and any other such advertising and information material serve only as guidelines and shall only then become a binding part of the contract should we have explicitly agreed to that in writing.

6.8

Should the customer receive deficient assembly instructions we shall only be obliged to supply non-deficient assembly instructions and that only should the deficiencies in the assembly instructions prevent proper assembly.

6.9

Quality and durability assurances shall only be deemed warranties if we have explicitly declared them to be so in writing. The same shall apply to the assumption of a procurement risk.

6.10

Should, in connection with any manufacturing performed by us at the order of the customer, any of the latter's construction documents, patterns, drawings or other information be used, the customer shall bear the sole responsibility towards third parties that this shall not violate the rights of any third parties. It shall also bear the responsibility for the correctness of the information and for the suitability of the manufactured goods for the purpose to which it intends to put them.



7. Restrictions upon Liability

7.1

In cases of wilfully intentional or grossly negligent violations of duty or in the event of the culpable violation of life, body or health we shall be liable without restriction for all damage that is to be attributable thereto inasmuch as nothing to the contrary has been stipulated by law.

7.2

In the event of gross negligence on the part of our non-executive employees our liability shall be restricted to asset losses based on the types of damage typically foreseeable for this kind of contract.

7.3

In cases of slight negligence we shall be liable for material and financial damage only in the event of the violation of cardinal contractual duties. Our liability in such cases shall also be restricted to the types of damage typically foreseeable for this kind of contract.

7.4

Further reaching liability and liability for such damage that has not been suffered by the supplied goods themselves and for goods already used is excluded outside the boundaries of the above Sections 7.1 to 7.3 – regardless of the legal nature of the claim being asserted. Any eventual unrestricted liability according to the provisions of the German Product Liability Act shall remain unaffected by this.

8. Statute of Limitations

8.1

The statute of limitations for claims and rights due to defects shall be one year from the time of delivery.

8.2

The statute of limitations in accordance with the above Section 8.1 shall apply – regardless of the legal basis of the claim – also for any claims for compensation against us, irrespective of whether these are connected with the defect.

This shall not apply:

- a) in cases of wilful intent,
- b) should we have deceitfully concealed the defect,
- c) in cases of violation of life, body, health or freedom, of claims under the Product Liability Act, a grossly negligent violation of duty or the violation of cardinal contractual obligations.

The statutory periods of limitation shall apply in such cases.



9. Retention of Proprietary Rights

9.1

We reserve our proprietary rights to the goods delivered until such time as all our demands from an ongoing business relationship have been settled. Inasmuch as the value of all the security rights should exceed the value of all collateralised claims by more than 20% we shall, at the customer's request, realise a corresponding part of our security rights.

9.2

The customer shall be obliged to handle the goods with care. Inasmuch as maintenance and inspection work should be necessary, the customer shall be required to undertake these regularly at its own expense.

9.3

The customer shall be obliged to inform us without delay of any access by third parties to the goods, in particular in the event of seizure, as well as of any damage to or destruction of the goods. The customer shall be obliged to notify us without delay of any change in the possession of the goods or the relocation of its own business headquarters.

9.4

We shall be entitled, in the event of behaviour on the part of the customer that is in breach of this contract, in particular default on payment or violation of a duty under Sections 9.2 and 9.3 of these terms and conditions, to rescind the contract and demand the return of the goods.

9.5

The customer shall be entitled to resell the goods in the ordinary course of its business activities. It cedes to us at this time already all claims up to the amount of the invoice that it may acquire towards a third party as a result of the reselling. We accept this cession. Following the cession, the customer shall be entitled to collect the receivable. We reserve the right to collect the receivable ourselves as soon as the customer should fail to comply with its payment obligations in an orderly fashion and run into default on payment.

9.6

The treatment and further processing of the goods on the part of the customer shall always be performed in our name and at our order. Should processing take place with items that do not belong to us, we shall acquire co-ownership of the new item in proportion to the value of the goods delivered by us to the other items processed. The same shall apply should the goods be merged with other items that do not belong to us.

10. Data Protection Notice

Those personal data necessary for contractual relationships shall, in accordance with the prescriptions of the Federal Data Protection Act (BDSG), only be collected, processed and used for the contractually agreed purpose.

**11. Final Stipulations**

11.1

The valid laws of the Federal Republic of Germany applicable to the legal relationships between domestic contractual partners shall apply without exception. Application of the United Nations Convention on the International Sale of Goods is excluded.

11.2

The place of fulfilment is our company headquarters (Oppach, Federal Republic of Germany).

11.3

The exclusive court of jurisdiction for all disputes arising from this contract is Görlitz, Federal Republic of Germany. This shall also apply should the customer not have any general court of jurisdiction in Germany or its headquarters or normal place of residence should not be known at the time of the filing of the suit. We shall, however, also be entitled to file a suit at the customer's headquarters.

11.4

Should any individual stipulations of these terms and conditions be invalid or impracticable or should they become so in the course of implementing the contract, all other stipulations shall nonetheless retain their validity at all times, Any invalid and impracticable stipulation is to be regarded as being replaced by that valid and practicable stipulation that comes closest to the economic purpose being pursued by the parties in the context of the legally possible.