

Terms and Conditions of Sale

AT-Automation Technology GmbH

1. General, Scope

- 1.1 These General Terms and Conditions of Sale (hereinafter referred to as "GTC") shall apply to any and all offers, declarations of acceptance and contracts made by AT-Automation Technology GmbH (hereinafter referred to as "Seller") regarding the delivery and shipment of products, including any other ancillary services (hereinafter referred to as "Delivery" or "Deliveries") in relationships with entrepreneurs within the meaning of sec. 310 para. (1) of the German Civil Code (hereinafter referred to as "Purchaser").
- 1.2 Within an ongoing business relationship, these GTC shall also apply to any and all future contracts regarding Deliveries entered into with Purchaser.
- 1.3 These GTC shall apply exclusively. Deviating, contradicting or supplementary general terms and conditions of the Purchaser shall not become an integral part of the business relationship between Seller and Purchaser unless expressly approved by Seller in writing. This approval requirement shall apply in any case, for example even if Seller unconditionally performs a service despite its knowledge of Purchaser's general terms and conditions.

2. Contract, Prices

- 2.1 The offers made by Seller are non-binding, unless otherwise determined by Seller.
- 2.2 Seller may accept orders made by Purchaser within two weeks after the order was issued, unless Purchaser determines an extended term of acceptance. Seller is not obligated to accept orders made by Purchaser.
- 2.3 Any formation of a contract requires a written contractual declaration of Seller. However, Seller may accept any order made by Purchaser also by executing the Delivery. Oral agreements made prior to a formation of a contract shall only be binding if Seller confirms them in writing.
- 2.4 All prices are in Euro and calculated net plus statutory value added tax, if applicable, and exclusive of any and all other taxes, tariffs, contributions and insurances. Purchaser shall bear any and all taxes, tariffs, and contributions in connection with the Delivery or shall reimburse them to Seller.

3. Obligations of Purchaser

- 3.1 The Purchaser may not refuse acceptance of Delivery because of minor defects.
- 3.2 Should Purchaser be in default with the acceptance of the Delivery, Seller shall be entitled to rescind the contract after having granted an appropriate grace period. Should Purchaser be at fault for the default of acceptance, Seller shall be entitled to claim liquidated damages for damage caused by Purchaser's default of acceptance (also after Seller's rescission) in the amount of 10% of the agreed net order value of the part of the Delivery that has not been accepted. Any further claims for damages and other rights shall remain unaffected.
- 3.3 It is Purchaser's responsibility to examine the Delivery with respect to its suitability for the objectives pursued by him. This shall also apply if the Delivery is generally recommended for a particular purpose; in this case Purchaser is also held to examine the Delivery with respect to its suitability for the specific objectives pursued by him. Seller shall not be liable, irrespective of the legal basis, to the extent that damage is caused by an infringement of the aforementioned obligation of Purchaser to examine the Delivery.
- 3.4 Purchaser undertakes to comply with any and all eventual property rights of third parties, such as patents or utility patents, as well as any statutory provisions in the course of the processing of the Delivery.

4. Payment, Remedies

- 4.1 Unless otherwise agreed upon, all payments shall be made within thirty (30) days of the date of invoice. If Purchaser is in default with payment, Purchaser is obliged to pay interest at the rate of 1.5% per month (18% per year) or, if such rate is in excess of the rate allowed by law, then the Purchaser agrees to pay the highest rate allowed by law. In addition, Purchaser agrees to pay all costs of collection, including costs of litigation and reasonable attorney's fees.
- 4.2 Purchaser may only assert a right of retention if his counterclaim against Seller has been established by a final and non-appealable decision or is undisputed. Purchaser may only assert a set off right if his counterclaim against Seller is owed in the same currency and has been established by a final and non-appealable decision or is undisputed.
- 4.3 In the event Purchaser fails to pay any sum when due, fails to accept any delivery of conforming goods, returns product without advance authorization of Seller, or otherwise fails to abide by these GTC, in addition to any other remedies allowed by law, Seller may suspend Deliveries while Purchaser is in breach, or cancel all further Deliveries, and Purchaser shall remain liable for, as damages, the difference between the stated price of this sale and the market price at the time of Delivery. Market price shall be the average selling price obtained by Seller for products of like kind and quality for sales at or about the time of scheduled delivery.
- 4.4 Seller may request from Purchaser to provide security prior to Delivery at any time, notably, if, after the formation of the contract, a significant deterioration of Purchaser's solvency or creditworthiness becomes apparent which jeopardizes a claim of Seller, in particular in case of a suspension of payments, a petition to open insolvency proceedings against Purchaser's assets. If Purchaser refuses to provide security within a reasonable period granted to him, Seller may entirely or partially rescind the contract. Any other rights of Seller remain unaffected.

5. Delivery, Transfer of Risk, Force Majeure

- 5.1 Unless otherwise agreed upon, all Deliveries shall be EXW (Bad Oldesloe) Incoterms 2020.
- 5.2 Seller shall be entitled to partial shipments to the extent that this is reasonably acceptable to Purchaser.
- 5.3 The agreed delivery time, if any, shall begin on the date of the order confirmation but not before the supply of the documents, authorizations or approvals to be furnished by Purchaser and the fulfillment of any payment duties of Purchaser.
- 5.4 Seller's duty to deliver shall be subject to his own complete self-supply by his sub suppliers in due time. Seller's duty to deliver shall also be subject to availability.
- 5.5 Should Seller be at fault for a delay, Purchaser's claim for damages due to the delay of Seller shall be limited to 0.5% of the net value of the order regarding the delayed part of the Delivery, but the total amount shall not exceed 5% of such net value. This limitation shall not

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apply in case of intent or gross negligence.

- 5.6 If Seller exceeds a delivery date, Purchaser shall be entitled to set Seller a grace period of at least two weeks including a warning of refusal. Should Seller fail to fulfill his delivery obligation within the grace period, Purchaser shall have the right to rescind the contract provided that Seller is at fault for the exceeding of the delivery date. The rescission of the contract must be declared in writing at the latest within two weeks following the expiration of the granted grace period. Following the expiration of the aforementioned period for the rescission, Purchaser shall only be entitled to rescind the contract after the expiration of an additional, adequate grace period granted by him provided that Seller is at fault for the exceeding of the delivery date.
- 5.7 Unless otherwise agreed upon, the risk shall be transferred to Purchaser when the Delivery leaves Seller's facility, but at the latest upon handing over to the carrier. Furthermore, the risk shall be transferred to Purchaser in the moment when the dispatch or the Delivery is delayed out of reasons Purchaser is at fault for or if the Purchaser is in default of acceptance.
- 5.8 Purchaser shall bear the risk during the return transport of the Delivery regardless of whether the Delivery is returned in connection with the cure of a defect, following a rescission, if the Delivery is being taken back out of goodwill or out of any other reasons.
- 5.9 Any events of force majeure entitle Seller to postpone the Delivery by the duration of the hindrance effected by the force majeure event as well as an adequate starting time. Any and all unavoidable events for which Seller is not at fault shall be equal to force majeure events; such events equal to force majeure events are, in particular, acts of God, fire, flood, accident, riot, war, government intervention, embargoes, strikes, lockouts, labor difficulties, significant business disruptions (such as fire, machinery breakage, lack of raw materials or energy), measures in terms of monetary policy, trade policy and other sovereign measures, late delivery by suppliers or other difficulties of Seller as may occur in spite of Seller's best efforts, as well as obstruction of routes unless they are, in each case, only of a short-term duration, which significantly impede the Delivery or make it impossible. Seller must inform Purchaser about any events of force majeure and any equated events. Should the obstruction take longer than three months, both parties shall be entitled to rescind the contract. If partial delivery has already been made, Purchaser shall only be entitled to rescind the contract under the aforementioned conditions with respect to such part of the Delivery that has not been executed. On the grounds of an unexecuted part of the Delivery Purchaser may not refuse the payment of a partial Delivery which has already been executed. In the event of production difficulties or product shortages, Seller may allocate sales and deliveries at its sole discretion.

6. Product Returns

No products may be returned by Purchaser for any reason without prior approval of Seller. All returns shall be in original packaging or equivalent. Any product returned to Seller without prior authorization for its return or proper packaging may be refused.

7. Critical Components

Seller's products are not authorized for use as critical components in life support devices or systems without the express written approval of Seller. Life support devices or systems are those which are intended to support or sustain life and whose failure to perform can be reasonably expected to result in a significant injury to Purchaser. Critical components are those whose failure to perform can be reasonably expected to cause failure of a life support device or system or affect its safety or effectiveness.

8. IP Rights

The design, development or manufacture by Seller of a product for Purchaser shall not be deemed to produce a work made for hire and shall not give Purchaser any copyright interest in the product or any interest in all or any portion of the mask works relating to such product. Any intellectual property rights whether existing prior or arising within the performance of the Delivery shall remain and vest to the Seller. No license, express or implied, with regard to any trademark of Seller or its affiliated companies is granted to Purchaser under these GTC. Sale of products or any part thereof does not convey to Purchaser any license, express or by implication, estoppel or otherwise, under any patent or patent claim with respect to which Seller can grant licenses covering completed equipment, or any assembly, circuit, combination, method or process in which any such products are used as components (notwithstanding the fact that such products may have been designed for use in or may only be useful in such patented equipment, assembly, circuit, combination, method or process, and that such products may have been purchased and sold for such use.). Seller expressly reserves all rights under such patent or patent claim.

9. Warranty Claims of Purchaser

- 9.1 Purchaser shall give written notice of apparent material defects without undue delay, but at the latest within eight days following the reception of the Delivery at the place of destination. Purchaser shall give written notice of hidden material defects without undue delay, but at the latest within eight days following the discovery. Otherwise the Delivery shall be deemed as approved in regard of the material defect.
- 9.2 It does not constitute a defect if property rights of third parties, such as patents or utility patents, have been infringed, to the extent that the infringement of the property right was caused by an application which was not foreseeable for Seller, or by a modification of the Delivery carried out by Purchaser or by an application of them together with products which were not delivered by Seller.
- 9.3 If the defect exists upon transfer of risk, Seller shall provide the cure, at its own discretion, either by remedy of the defect or subsequent delivery. Should the cure fail, the Purchaser shall have the right to reduce the purchase price or to rescind the contract, in each case in accordance with the statutory prerequisites. Purchaser's claims for damages or for compensation of expenses shall be governed by Section 10.
- 9.4 In the event of an unjustified claim for cure, Purchaser shall be obligated to pay Seller any damages caused by Purchaser's unjustified claim for cure, if Purchaser was aware of the fact that his claim for cure was unjustified or if he was not aware of it out of negligence.

10. Limitation of Liability

- 10.1 Any claims for damages and claims for compensation of expenses of Purchaser, irrespective of their legal basis (infringement of obligations, contract, tort, etc.) shall be excluded.
- 10.2 The exclusion of liability pursuant to Section 10.1 shall not apply
- in case of liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*),
 - in case of intent or gross negligence,
 - in case Seller has maliciously concealed a defect (*arglistiges Verschweigen*),

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- d) in case Seller has issued a separate guarantee on the quality (*Beschaffenheitsgarantie*) for the products pursuant to Section 311 of the German Civil Code,
 - e) in case of death, injury or detriment of health the Seller is at fault for, or
 - f) in case of an infringement of essential contractual obligations the Seller is at fault for. Essential contractual obligations are those obligations which must be fulfilled in order to duly execute the contract and on the performance of which the Purchaser generally relies and may duly rely on. However, the Seller's liability for an infringement of essential contractual obligations shall be limited to a reimbursement of foreseeable, contractually typical damages, unless the Seller is liable due to intent or gross negligence, for death, injury or detriment of health, or pursuant to the German Product Liability Act (*Produkthaftungsgesetz*).
- 10.3 To the extent that the liability of the Seller is excluded or limited, this shall also apply to the benefit of any statutory representatives, employees, sub-suppliers and auxiliary agents of the Seller in case the Purchaser asserts claims directly against them.
- 10.4 The preceding provisions do not constitute a modification of the burden of proof to the disadvantage of the Purchaser.
- 11. Limitation Period**
- 11.1 The general limitation period for any claims due to a defect as to quality and title is 12 months upon the transfer of risk in the products from Seller to Purchaser.
- 11.2 The aforementioned limitation period shall also apply to any contractual as well as non-contractual claims for damages of Purchaser resulting from defects, unless the application of the regular statutory limitation period (sec. 195, 199 BGB) would – in the particular case – result in a shorter limitation period. In any case, the limitation period set forth in the German Product Liability Act remain unaffected.
- 12. Retention of Title**
- 12.1 Seller retains title to the products until receipt of all payments in full. In case of breach of contract by Purchaser including, without limitation, default in payment, Seller is entitled to take possession of the products.
- 12.2 Purchaser shall handle the products with due care, maintain suitable insurance for the products and, to the extent necessary, service and maintain the products.
- 12.3 As long as the purchase price has not been completely paid, Purchaser shall immediately inform Seller in writing if the products become subject to rights of third persons or other encumbrances.
- 12.3 In case any applicable law does not acknowledge a retention of title, Purchaser shall cooperate in order to establish a comparable security right for Seller's claims and support Seller in order to establish such comparable security right. In case any applicable law provides for additional requirements for a retention of title, such as without limitation registration requirements, Purchaser shall cooperate in order to fulfill such requirements and support Seller in order to fulfill such requirements.
- 12.4 Seller is obligated to release security interest upon request by Purchaser, to the extent that the realizable value of the securities granted to Seller exceeds the relevant total claim of Seller to be secured by 10 %.
- 13. Foreign Trade and Customs Requirements, Export Control Regulations**
- 13.1 The Purchaser is aware that products might be classified as dual use products or products related to war materials and thus might be subject to export control regulations.
- 13.2 Seller's obligation to fulfil a purchase order of Purchaser shall be subject to the condition that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions. Any suspension, rejection or non-delivery of required approvals and foreign official authorizations shall be considered as a *Fore Majeure* event. Seller shall in no case be liable for any consequences and damages suffered by the Purchaser arising out of the Seller's impossibility to deliver the products accordingly.
- 13.3 If the Purchaser re-sells the products in whole or in part to a third party, the Purchaser shall comply with all applicable national and international export control regulations.
- 13.4 The Purchaser shall indemnify and hold harmless the Seller from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by the Purchaser, and the Purchaser shall compensate the Seller for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the Purchaser. This provision does not imply a change in burden of proof.
- 14. Final Provisions**
- 14.1 These GTC as well as all legal relationships between the Seller und Purchaser are governed by the laws of the Federal Republic of Germany under exclusion of the German conflict of laws as well as the international uniform law, in particular the UN Sales Convention (CISG).
- 14.2 Place of performance for any and all obligations of Seller and Purchaser arising out of the contract, including Seller's obligation to cure a defect shall be Bad Oldesloe, Germany. The exclusive – and also international – place of jurisdiction for all disputes directly or indirectly arising from a contract between Seller and Purchaser is Lübeck, Germany. Seller is, however, also entitled to take action before court at the registered place of business of Purchaser.
- 14.3 To the extent that these GTC require written form, text form (letter, fax, email, etc.) shall be sufficient for the written form requirement.
- 14.4 Purchaser may not assign its right or obligations under a contract with Seller without the express prior written consent of Seller.
- 14.5 If any provision of these GTC, in whole or in part, has not become an integral part of the contract or becomes invalid, the remaining provisions shall not be affected thereby. The parties are aware of the ruling of the German Federal Supreme Court (*Bundesgerichtshof*) that a severability clause merely reverses the burden of proof. It is, however, the express wish of the parties to maintain the validity of the other provisions under all circumstances and thus to waive section 139 of the German Civil Code (*Bürgerliches Gesetzbuch*) in its entirety. The invalid, impractical or void provision shall be deemed replaced by that valid provision coming closest to what the parties had intended.