

General Terms and Conditions of Sale

of

ATOLL GmbH

with its statutory seat in Weingarten, Germany

Version: August 2006

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1. General Provisions

- 1.1 Our General Terms and Conditions apply exclusively. We do not recognize conditions of the customer that are contrary to or deviate from our General Terms and Conditions, unless we have given our express written consent to their applicability. Our General Terms and Conditions apply even if we, being aware of conditions of the customer that are contrary to or deviate from our General Terms and Conditions, carry out deliveries without reservations.
- 1.2 All agreements made between us and the customer for purposes of the performance of this contract are set forth in writing in this contract.
- 1.3 Our General Terms and Conditions apply vis-à-vis entrepreneurs within the meaning of § 14 BGB (German Civil Code) only if the contract belongs to the operation of the enterprise, as well as vis-à-vis legal persons under public law and special public funds within the meaning of § 310 para. 1 BGB.
- 1.4 Our General Terms and Conditions shall likewise apply to all future business transactions with the customer.

2. Offers, Offer Documents

- 2.1 Our offer becomes binding only after the order has been definitively confirmed.
- 2.2 The order signed by the customer constitutes a binding offer. We are entitled to accept this offer within two weeks by sending a confirmation of the order or by making the requested performance within this period of time.
- 2.3 Calculations, drafts and other documentation prepared by us will remain our absolute title and our sole intellectual property. Such documentation may be

made available to third parties only with our prior consent. The technical data (including weights and other measures) contained have been compiled with due care, errors excepted. The same applies with regard to all data that are included in our sales documents. Such data do not constitute promises of guarantee, however; promises of guarantee require in all cases our express confirmation.

- 2.4 We reserve the right to make all changes that serve technical development even after our confirmation of the order.

3. Prices, Conditions of Payment

- 3.1 Unless provided otherwise in the confirmation of the order, our prices are ex works including loading at our premises, but exclusive of packaging, cargo, transfer, insurance, customs clearance and the applicable VAT.
- 3.2 We reserve the right to increase prices correspondingly after expiration of 2 months since conclusion of the contract if costs increase, especially due to conclusion of a collective agreement or due to material price increases. We will provide evidence to the customer on request.
- 3.3 Unless provided otherwise in the confirmation of the order, the purchase price shall be due immediately without any discount. Deduction of cash discount requires a separate agreement in writing.
- 3.4 Unless otherwise agreed, default occurs after 14 days after issuing an invoice. Default interest will be calculated at 8% p.a. above the respective basic interest rate according to § 247 BGB. The assertion of further damages shall not be excluded hereby.
- 3.5 Bills of exchange and checks are accepted on account of performance only; the discounting and collection costs are to be borne by the customer. Upon acceptance of bills of exchange, we are entitled to return the same if acceptance is refused by the Federal State Central Bank (*Landeszentralbank*).
- 3.6 The customer shall be entitled to a set-off only if his counterclaims have been recognized by declaratory judgment, are uncontested or have been recognized by us. Furthermore, the customer shall be entitled to exercise a right of retention only to the extent that his counterclaim arises from the same contractual relationship. The customer has no right of retention because of partial performances according to § 320 para. 2 BGB.

- 3.7 If, after accepting the order, we obtain knowledge of facts that give rise to justified doubts about the customer's ability to pay, we shall be entitled to demand full payment or the provision of according security prior to delivery and/or to rescind the contract after setting a deadline for performance to no avail. Besides delays in payment that have already occurred, negative information provided in accordance with the due care of a prudent businessman by a bank, a credit agency (*Auskunftei*), a company maintaining business relations with the customer or a similar party shall be considered proof of a significant deterioration in the customer's financial situation. If delivery has already occurred, regardless what conditions of payment have been agreed, the entire purchase price becomes due for payment immediately as the case may be versus return of acceptance.

4. Delivery Periods, Delay in Delivery

- 4.1 Delivery periods begin with the date of the confirmation of the order, however not before the timely and proper performance of the customer's obligations, in particular not before the submission of all documents, licenses and releases to be obtained by customer as well as the receipt of any stipulated down payment.
- 4.2 Delivery periods and delivery dates shall be deemed to be on time if, before the expiration of the delivery period, the respective ordered item has either left our works or the distribution center or if notice of readiness for its shipment has been given. That does not apply if in the agreement an acceptance is provided or an obligation for an installation is agreed.
- 4.3 With regard to deadlines and delivery dates not expressly referred to as "fixed" in the confirmation of the order, the customer may set us a reasonable additional period of time for delivery and/or performance after the regular period has been exceeded. We may be deemed to be in delay only after the expiration of such additional period.
- 4.4 Correct and duly self-supply remain reserved.
- 4.5 Influences of force majeure and other unforeseeable, extraordinary events for which we are not responsible such as interruptions of operations, strikes, lockouts, interventions by public authorities, difficulties with the supply of energy etc. entitle us to delay our performance for the duration of the impediment and a reasonable period of time for operations to get started again. The same shall apply if our sub suppliers are affected by such circumstances. In important cases we will inform the customer of the beginning and ending of such circumstances as soon as possible. If, due to the aforementioned circumstances, the delivery or service to be provided becomes impossible or we can no longer reasonably be

expected to perform, we shall be released from our duty to deliver. In the event that the delivery period is extended or that we are released from our duty to deliver, the customer cannot derive any claims for damages from such extension or release. As far as we are released from our duty to deliver any advances of the customer will be given back.

- 4.6 If we are in delay with delivery and if the customer shows probable cause for a damage, the customer is entitled to claim for each entire week of delay a lump-sum default compensation in the amount of 5% of the value of the delivery, however no more than an overall amount of 15% of the value of the delivery. Further claims for damages and for reimbursement of expenses of the customer due to the delay with delivery shall be excluded. That does not apply as far as the delay in delivery depends on a violation of an essential contractual duty as well as to the extent that we are compulsorily liable in cases of wilful misconduct or gross negligence and/or for a violation of life, body or health; this does not lead to a change in the burden of proof to the customer's disadvantage.
- 4.7 The customer's statutory right to rescind the contract shall remain unaffected but requires that we are responsible for the delay. At our request the customer is obligated to declare within a reasonable period of time whether he will rescind the contract after the expiration of this period of time due to the delay with delivery and/or claim damages in lieu of the performance of the contract and/or reimbursement of expenses or whether he will insist on delivery.
- 4.8 In the case that shipment has been delayed at customer's request - commencing one month after notice of readiness for shipment - customer shall be charged any accruing storage costs. However, if a reasonable additional period of time set by us is expired and after announcement we are entitled to dispose of the item of sale and to deliver the customer within an adequately extended period.

5. Delivery, Transfer of risk, Shipment

- 5.1 Within a reasonable amount partial deliveries shall be permitted.
- 5.2 With handing over the consignment to the shipper or the carrier, at the latest when leaving the works or the distribution center, the risk will pass to the customer. The same applies in the case of carriage paid deliveries. The shipment takes place on behalf of the customer.
- 5.3 In any case of delay of a shipment due to circumstances customer is responsible for, the risk shall pass to customer on the day we are ready for dispatch.

However, we shall, upon customer's request and expense, obtain the insurance coverage the customer demands.

- 5.4 Consignment will be insured by us against theft, breakage, loss in transit, fire loss and water damage as well as against all assurable risks at customer's request and expense.

6. Retention of Title

- 6.1 We retain title to the delivered goods until the receipt of all payments under the business relation with the customer. In the event of a conduct of the customer that is contrary to the terms of the contract, especially in the event of a delay in payment, we shall be entitled to rescind the contract and to take back the delivered goods. The customer is obliged to grant access to the delivered goods to us or to an authorized agent and to give them back immediately. After taking back the delivered goods, we shall be entitled to utilize the same. The proceeds from utilization, less reasonable utilization costs, are to be counted towards the customer's liabilities.
- 6.2 The customer shall be obligated to handle the delivered goods with care and, on our demand and while the retention of title lasts, to insure them against damages sufficiently. The customer herewith assigns his claims against the insurer to us.
- 6.3 In the event of seizures or other interventions by third parties, the customer must notify us without delay in writing so that we may take action according to § 771 ZPO (German Code of Civil Procedure). To the extent to which the third party shall not be able to reimburse judicial and extra-judicial costs of an action according to § 771 ZPO, the customer shall be liable for our loss.
- 6.4 Customer shall be entitled to resell the delivered goods in the ordinary course of business; however, he herewith assigns all claims arising from resale to his purchasers or third parties amounting to invoice amount (including VAT) to us, regardless of whether the delivered goods were resold before or after processing. Even after assignment the customer shall be entitled for collection of such claims; our right to collect such claims remains unaffected. However, we shall be obliged not to collect claims while the customer meets his financial obligations from proceeds received, while he is not in default with payments and in particular did not file for insolvency or stop payments. If this obligation not to collect claims does not apply, the customer shall, on our demand, disclose assigned claims and debtors thereof, give full particulars necessary for collection, deliver all corresponding documents and inform debtors about the assignment.

- 6.5 Processing or transformation of delivered goods by customer shall be made only for us. In the case that delivered goods are processed with other objects not owned by us, we acquire co-ownership in the new object at the rate of the delivered good's value to the other processed objects at the time of processing. For the property resulting from the processing the same applies as for the goods delivered under retention of title.
- 6.6 In the case that the delivered goods are inseparably mixed or connected with other objects not owned by us, we acquire co-ownership in the new object at the rate of the delivered good's value to the other mixed or connected objects at the time of mixture or connection. In the case that the customer's object is to be regarded as the main object after mixture or connection, the transfer of co-ownership in the main object to us shall be deemed to be agreed on. In doing so, the customer preserves the accrued sole or co-ownership for us.
- 6.7 If the realisable value of all the customer's securities exceeds the sum of all our secured claims by more than 10%, we will release an appropriate proportion of the securities at the customer's request. It is our choice which securities will be released.
- 6.8 As far as the law in which area the delivered goods are located does not permit retention of title, we shall be entitled to exercise all rights over the delivered goods we are able to reserve. The customer shall be obliged to participate in actions in respect of protection of our property rights or instead thereof, of other security interests regarding the delivered goods.

7. Defects as to Quality and Title

- 7.1 We will make the promised performances in accordance with the current state of the art as at the point in time the order is placed, as well as in accordance with the applicable statutory provisions, with the care that is usual in this line of business.
- 7.2 To the extent that our performance has a defect as to quality or title (hereinafter: "defect") and that the cause of such defect existed already at the point in time of the passing of risk, the customer has a right to subsequent performance through rectification of the defect or through a new delivery at our choice. The expenses necessary for this purpose, such as wage, material, transportation and travel costs, will be borne by us only to the extent that such expenses are not increased due to the fact that, after delivery, a delivered good has been brought to a place other than the seat of the customer, unless such relocation corresponds to the proper use of the respective good. Replaced parts shall become our property.

- 7.3 If the subsequent performance is carried out unsuccessfully, the customer is entitled, at his own choice and without prejudice to possible claims for damages and for reimbursement of expenses according to no. 8 below, to reduce the amount of consideration or, if our violation of duty is essential, to rescind the contract.
- 7.4 Our liability for defects requires that:
- a) none of the following circumstances exists:
 - inappropriate or improper use, faulty installation and/or faulty initial operation, incorrect or negligent handling, use of inappropriate operating materials or substitute materials by the customer or a third party, natural wear and tear, deficient construction works, chemical, electro-chemical or electrical influences, to the extent that such circumstances are not due to our fault;
 - b) the customer has duly complied with his duties to examine and object under § 377 HGB (German Commercial Code). Complaints in respect of defects must be made in writing within 10 days after receipt or, if not visible in spite of a duly examination, within 10 days as of the customer becoming aware of the respective defect.
 - c) the customer is not in delay with payment, taking into account a reasonable amount retained for warranty reasons according to no. 7.8 below.
- 7.5 In coordination with us, the customer has to grant us the necessary time and opportunity for all reparation and replacements, which are necessary in our equitable discretion. Otherwise, we shall be released from the consequences of loss, which occur due to the fact that the customer did not grant us the necessary time and opportunity to carry out the necessary removal of defects or replacements. The customer has the right to remove the defect by himself or through a third party and to demand the compensation of the costs incurred only in urgent cases of endangerment of the general plant safety and the defence of out of scale damages - whereas we have to be informed immediately - or in case that we are in delay of removing the defect.
- 7.6 Claims based on defects become statute-barred within 12 months. This does not apply to the extent that they are result of willful conduct that is attributable to us or to the extent that the law stipulates longer limitation periods according to §§ 438 para. 1 no. 2 (buildings, items for buildings), 479 para. 1 (recourse claims), 634 a para. 1 no. 2 (construction defects) BGB. With regard to replacement parts and/or

rectifications of defects, we are liable until the expiration of the warranty period that is applicable to the original delivery item.

- 7.7 Claims for recourse against us by the customer in accordance with § 478 BGB (proprietor's recourse) will only exist if the customer and his purchaser have not struck any agreements beyond the statutory claims for defects. Sentence 2 of no. 7.2 applies accordingly. The customer is obliged to inform us immediately in case of claims (against him) due to defects of a newly produced delivery item. The customer has to oblige his purchasers accordingly, if they are businessmen. We reserve the right to fulfil the claims from the purchaser to the customer by way of own-name transaction (*Selbsteintritt*). In this case, the fulfilment of the purchaser's claims shall be considered as fulfilment of possible claims of the customer.
- 7.8 In the event of complaints in respect of defects, the customer may retain payments to an extent reasonably proportional to the defects having occurred only if the claims of the customer have been recognized by declaratory judgment or have been recognized by us. If the complaint in respect of a defect is unjustified, we are entitled to demand from the customer reimbursement of our expenses incurred.

8. Claims for Damages and for Reimbursement of Expenses

- 8.1 We are liable as according to the statutory provisions if the customer asserts claims for damages or for reimbursement of expenses (hereinafter: "claims for damages") incurred as a result of wilful misconduct or gross negligence, including wilful misconduct or gross negligence of our representatives or vicarious agents. Further we are liable if we have culpably violated an essential contractual duty, as well as in the cases of a violation of life, body or health and as far as we have promised a guarantee.
- 8.2 The damages to be paid for the violation of an essential contractual duty shall be limited to the foreseeable, typically occurring damage, except in the case of willful misconduct or gross negligence or if we are liable for a violation of life, body, health or promised guarantees. Insofar, claims for damages become statute-barred within 12 months.
- 8.3 In all other respects, liability for damages shall be excluded regardless of the legal nature of the asserted claim. Insofar, we are, in particular, not liable for damages that have not occurred to the delivery item itself such as loss of profit and other financial losses.

- 8.4 The imperative provisions of the German Product Liability Act (*Produkthaftungsgesetz*) remain unaffected.
- 8.5 The customer's claims for reimbursement of expenses shall be limited to the amount of the interest the customer has in the performance of the contract.
- 8.6 To the extent that our liability is excluded or limited, this shall likewise apply with regard to the personal liability of our employees, workers, representatives and vicarious agents.

9. Place of Performance, Place of Jurisdiction, Applicable Law

- 9.1 With regard to the delivery, the place of performance shall be our works and/or our distribution center. With regard to payment, the place of performance shall be our place of business.
- 9.2 The place of jurisdiction shall be our place of business. We shall be entitled, however, to sue the customer also at another statutory place of jurisdiction.
- 9.3 The contract shall be subject to the laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods and to the exclusion of Private International Law (*IPR*).
- 9.4 If any particular provision of these Terms and Conditions or other contractual agreements is or becomes all or part invalid, such invalidity shall not affect the validity of the other provisions hereof. The German version of these Terms and Conditions shall be authoritative.