

Addtech General Terms and Conditions of Sale Germany 2024

1. **Applicability**
 - 1.1 These General Terms and Conditions shall apply when the parties (the Purchaser and the Supplier) have agreed in writing or otherwise. Deviations from these General Terms and Conditions must be agreed upon in writing to become effective. Thus, the Purchaser's own delivery terms are only accepted if the parties have expressly agreed on it.
 - 1.2 In these General Terms and Conditions, the Product(s) shall mean the components which the Supplier contractually undertakes to sell to the Purchaser, and which are set forth in detail and specified in the Agreement.
 - 1.3 In these General Terms and Conditions, the Agreement shall mean every individual agreement between the Purchaser and the Supplier for the sale and purchase of Products. These General Terms and Conditions shall constitute an integral part of any such Agreement.
2. **Blueprints, descriptions, other documents, and software**
 - 2.1 Information in marketing materials, price lists and other product information is not binding to the parties, unless the Agreement expressly refers to such information.
 - 2.2 Blueprints, descriptions, software, and other technical documentation which has been provided to a party by the other party may not be used for any other purpose than the purpose for which it was provided. The material may not be copied or otherwise reproduced without the consent of the providing party.
 - 2.3 The Supplier shall no later than upon delivery, without right to compensation, provide the Purchaser with one, or the otherwise agreed amount of, copy(ies) of the blueprints and/or other technical documentation, which is provided by the Supplier to enable the Purchaser to conduct assembly, commissioning, operating and maintenance (including recurring reparations) of the Product. Upon agreement to that effect, the Supplier shall provide other documentation, such as measuring protocols and certificates. The Supplier is entitled to compensation for providing such documentation. The Supplier is not obliged to provide blueprints and documentation for the manufacturing of a Product or spare parts. The Supplier may perform the above obligations by making the relevant documentation available on the Internet.
3. **Testing prior to delivery (acceptance test)**
 - 3.1 Agreed acceptance tests shall be conducted at the premises of the manufacturer of the Product at the Purchaser's expense, unless otherwise agreed in writing.
 - 3.2 If the parties have not specifically agreed on technical requirements and the manner of conducting the acceptance test, the acceptance test shall be conducted in accordance with industry practice of the relevant industry in the manufacturer's country. The Supplier shall keep a record of the acceptance test and shall provide said record to the Purchaser. Acceptance tests shall be approved in the record. If the Purchaser has not raised legitimate objections in writing within five (5) business days of a conducted acceptance test, the Purchaser shall be considered to have accepted the acceptance test. If the Product is not in conformity with the Agreement, the Supplier shall as soon as possible ensure that necessary corrections are performed, unless the non-conformity is without significance for the use of the Product. Thereafter, the Purchaser is entitled to a new acceptance test.
4. **Prices and payment**
 - 4.1 The price of the purchase shall be set to the price which the Supplier applies at the time of receiving the order from the Purchaser, unless the parties have expressly agreed otherwise. Unless otherwise expressly agreed, prices and any other costs are set excluding VAT and other public charges, which shall be paid by the Purchaser. Upon variations in exchange rates exceeding 2 % the Supplier may, up to the time of invoicing of the Product, adjust the indicated prices accordingly. The Supplier's right to adjust the prices shall also apply when a certain price has been agreed upon by the parties.
 - 4.2 Payment must be made upon invoicing and no later than the date set forth in each invoice, unless otherwise expressly agreed. The Purchaser shall under no circumstances, such as due to delays or defects, be entitled to withhold payment. Upon delays in payment, interest on overdue payments shall accrue, from the maturity date until payment has been made to the Supplier, with the from time-to-time applicable basic rate of interest of the German Central Bank (*Deutsche Bundesbank*), with an addition of nine (9) percentage points. If the Purchaser does not pay on time, the Supplier may further, after having given the Purchaser notice in writing thereto, suspend its performance of the Agreement until payment has been made.
 - 4.3 If the conduct or the financial circumstances of the Purchaser are such that there is reason for the Supplier to suspect that the Purchaser will not make full payment, the Supplier may suspend its performance of the Agreement and demand advance payment or adequate security to resume its performance. If the Supplier has already dispatched the Product, and it turns out that the circumstances referred to in the previous sentence exist on the part of the Purchaser, the Supplier may prevent the delivery of the Product to the Purchaser. The Supplier shall urgently notify the Purchaser in writing of its decision to suspend its performance of the Agreement.
 - 4.4 The Supplier may cancel the Agreement with immediate effect if the Purchaser has not paid within three (3) months after the maturity date. Without prejudice to the right to interest on overdue payments, the Supplier shall in such case be entitled to recover damages.
5. **Delivery and delivery time**
 - 5.1 Delivery clauses shall be interpreted in accordance with INCOTERMS in the applicable wording on the date the Agreement was entered into. If no delivery clause has been agreed upon, delivery "Ex Works" shall apply.
 - 5.2 If delivery is to be made within a certain period, the period shall begin on the date the Agreement was entered into, unless otherwise expressly agreed in writing. However, the delivery term shall under no circumstances begin before the Supplier has received (i) payment, if such is due prior to the commencement of manufacturing of the Product or otherwise has been agreed upon, and (ii) the Supplier has received required licenses, authorizations, technical data, and instructions.
 - 5.3 If the delivery is delayed due to any circumstance that constitutes grounds for relief pursuant to item 11.1 or due to any act or omission by the Purchaser, the delivery period shall be extended for a period which is reasonable considering the circumstances. If the delay occurs after the end of the agreed delivery period, the period shall nevertheless be extended. Item 11.2 shall apply accordingly.

- 5.4 If the Supplier does not deliver on time, the Purchaser may demand delivery within a reasonable final time, by giving written notice to the Supplier. Should the Supplier not deliver within this time, the Purchaser is entitled to cancel the Agreement by giving the Supplier written notice to that effect.
- 5.5 If the Purchaser cancels the Agreement pursuant to item 5.4, it is entitled to compensation from the Supplier for the direct additional costs for procuring a corresponding Product from someone else, however the right to such compensation is limited to 7.5 % of the price of the Product. If the Purchaser does not cancel the Agreement, it is not entitled to any compensation for the Supplier's delay.
- 5.6 Should the Purchaser fail to receive the Product on the established delivery date, payment shall nevertheless be made as if the Product was delivered in accordance with the Agreement, and the Purchaser shall compensate the Supplier for its direct additional costs caused by such failure of the Purchaser.
6. **Liability for defects**
- 6.1 A Product which does not conform with the specifications agreed between the parties shall be considered defective if the non-conformity is material for the intended use of the Product. Subject to the exceptions in item 7.3, the Supplier's liability for other defects is limited to defects caused by defective construction, materials, or workmanship.
- 6.2 Information regarding the use of the Product or other information about the Product, which is not expressly part of the agreed specification or the assembly instruction, and which is provided by the Supplier, regardless of the form in which the information is provided, shall only be regarded as recommendations or general information. The Supplier is not liable for such information.
- 6.3 The Supplier is only liable for defects which manifest within one (1) year from the date on which the risk for the Product passed to the Purchaser (warranty period). However, the warranty period does not include wear components which normally have a durability of less than one (1) year. The Supplier is not liable for defects which are caused by inaccurate, ambiguous, or incomplete information from the Purchaser. Further, the Supplier is not liable for defects which are caused by circumstances which occur after the risk for the Product has passed to the Purchaser, such as, but not exclusively, defects caused by ordinary wear or deterioration. The Supplier shall not be liable for defects resulting from excessive use by the Purchaser. Such excessive use shall be deemed to occur if the Purchaser uses the Product for more than 1,760 hours of operation within a one-year period from the date on which the risk for the Product passed to the Purchaser, unless the Parties have agreed to other limits on the number of operating hours.
- 6.4 The Supplier undertakes to, at its own discretion, during the warranty period, to remedy the defect or deliver a new Product as replacement for a defective Product. The Supplier is not liable to pay for replacement media or replacement fluids, such as e.g., refrigerating media. Remedying may occur either at the Supplier's premises or at the Purchaser's premises, depending on which the Supplier determines most appropriate. Replacement products or replacement parts, which the Supplier has provided to the Purchaser, are subject to the warranty period set out in item 6.3. Should the Supplier claim ownership of a Product or part of a Product which has been replaced, the title of ownership to such Product or part of a Product shall pass to the Supplier. Potential demolition cost shall be paid by the Purchaser.
- 6.5 The Purchaser shall bear the cost and risk of transportation of a defective Product or part of a Product to the Supplier. The Supplier shall bear the cost and risk of transportation of the replacement Product or part of a Product to the place of delivery. Should the Supplier choose to remedy the Product at the premises of the Purchaser, the Purchaser shall pay travel costs and allowance for expenses for the travel and work time of the Supplier's staff. Further, the Purchaser shall bear the additional costs which arise from the Product being situated somewhere other than the place of delivery.
- 6.6 If the Supplier does not deliver the replacement product or remedy the defect within a reasonable time after the Purchaser has complained in writing, the Purchaser may cancel the Agreement in respect of the defective Product by written notice to the Supplier. Upon cancelling the Agreement, the Purchaser is entitled to compensation from the Supplier for direct additional costs for procuring a corresponding product from someone else, however limited to 7.5 % of the price of the Product.
- 6.7 The Supplier shall be considered to have fulfilled its obligations under this Agreement by delivering an appropriately repaired or replaced Product or Part of a Product to the Purchaser. The Purchaser shall bear the costs for work and additional costs for operation on something other than the Product, upon dismounting or installing the Product or the part of a Product.
- 6.8 The Purchaser shall examine the Product in accordance with good industry practice (sections 377, 381 German Commercial Code (*Handelsgesetzbuch*)) immediately after delivery.
- 6.9 The Purchaser may not invoke defects which have not been notified to the Supplier in writing within fifteen (15) days from the day the Purchaser notices or ought to have noticed the defect, and in no case later than the time set out in item 6.3 above. Should the Purchaser complain due to a defect, and it turns out that the Supplier is not liable for the defect, the Supplier is entitled to compensation for the costs which have been caused by the complaint.
- 6.10 In the event that the Supplier does not consider either remedying the defect or delivering a replacement Product commercially or technically reasonable, instead of remedying the defect or delivering a replacement Product, the Supplier may choose to repay the purchase price, whereupon the Purchaser shall return the Product in substantially unchanged condition. If this is not possible, the Supplier may be credited with a deduction from the purchase price to an amount corresponding to the value of what has been favored the Purchaser. If the Supplier chooses to repay the Purchase Price, the Purchaser is entitled to compensation from the Supplier for the direct additional costs for procuring a corresponding product from someone else, however limited to an amount of 7.5 % of the price of the Product.
7. **Liability for damage to property and personal injury**
- 7.1 With the exceptions listed in item 7.3, the Supplier is not liable for damages to immovable or movable

- property or consequential damages if the damage occurs while the Product is in the possession of someone other than the Supplier.
- 7.2 The Purchaser shall indemnify and hold harmless the Supplier, to the extent that the Supplier is imposed liability for third party damages or losses for which the Supplier is not liable pursuant to item 7.1.
- 7.3 The limitations of the Supplier's liability in item 7.1 do not apply in the event of (i) gross negligence or intent of the Supplier, (ii) damages to life, limb or health, (iii) breach of contractual obligations essential to the Agreement (*Kardinalspflichten*) and (iv) obligations arising under the German Product Liability Act (*Produkthaftungsgesetz*). In the event of a breach of contractual obligations essential to the Agreement or slight negligence, the Supplier's liability shall be limited to the foreseeable damage.
- 7.4 The Supplier and the Purchaser shall promptly notify the other party in writing of any third-party claim relating to this item 7.
- 7.5 The Supplier and the Purchaser are obliged to comply with summons to a court or arbitration board, which processes claims of damages against any of them if the claim is based on damage or loss alleged to be caused by the Product. However, the relationship between the Purchaser and the Supplier shall always be governed by the Agreement.
- 7.6 In any case other than (i) gross negligence or intent of the Supplier, (ii) damages to life, limb or health, in the event of a (iii) breach of contractual obligations essential to the Agreement (*Kardinalspflichten*) and (iv) obligations arising under the German Product Liability Act (*Produkthaftungsgesetz*), the Supplier's liability for damage caused by the Product to a natural person or immovable or movable property which belongs to the Purchaser or a third party, shall under all circumstances be limited to EUR 500.000 per occurrence of damage. The Purchaser shall indemnify and hold harmless the Supplier for all liability exceeding said amount.
8. **Liability for damages and limitations of liability**
- 8.1 In case of delay or defect, the Purchaser is entitled to damages pursuant to items 5.5 and 6.6.
- 8.2 If the Supplier has developed a product in collaboration with the Purchaser, under an agreement between the parties and at the Supplier's own cost, the Supplier shall not be liable for any delay or defect of the Product unless stated in such agreement or in the event of (i) gross negligence or intent of the Supplier, (ii) damages to life, limb or health, (iii) breach of contractual obligations essential to the agreement (*Kardinalspflichten*) and (iv) obligations arising under the German Product Liability Act (*Produkthaftungsgesetz*). Further, the Supplier is shall not be liable for any delay or defect of a Product which the Supplier has lended out or transferred to the Purchaser without compensation, unless in the event of (i) gross negligence or intent of the Supplier, (ii) damages to life, limb or health, (iii) breach of contractual obligations essential to the agreement (*Kardinalspflichten*) and (iv) obligations arising under the German Product Liability Act (*Produkthaftungsgesetz*).
- 8.3 The Supplier shall under no circumstances be liable for loss of production, loss of profits or any other consequential economic loss, unless in the event of (i) gross negligence or intent of the Supplier, (ii) damages to life, limb or health, (iii) breach of contractual obligations essential to the Agreement (*Kardinalspflichten*) and (iv) obligations arising under the German Product Liability Act (*Produkthaftungsgesetz*).
- 8.4 The Purchaser shall never be entitled to damages exceeding 7.5 % of the purchase price for the Product, unless in the events listed in item 7.3. The limitation of liability shall remain in full force and effect upon cancellation of the Agreement.
- 8.5 The Purchaser may not invoke any other penalties against the Supplier than those expressly set out in the Agreement.
9. **Ownership reservation**
- 9.1 The Product shall remain the property of the Supplier until it has been fully paid, to the extent this ownership reservation is valid. The retention of title shall extend to the products resulting from the processing, mixing or combination (within the meaning of sections 946, 947, 948 and 950 German Civil Code (*Bürgerliches Gesetzbuch*)) of the Supplier's Product at its full value, whereby the Supplier shall be deemed to be the manufacturer. If, in the case of processing, mixing or combining with goods of third parties, their title remains, the Supplier shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods.
10. **Confidentiality**
- 10.1 Neither party may, without the other party's approval, provide third parties with documents or otherwise disclose information of confidential character about the Agreement or the other party, unless disclosure is necessary for the performance of the Agreement or by applicable law. The parties shall enter into non-disclosure agreements with its employees or take other appropriate measures to ensure that confidentiality is maintained. The confidentiality undertaking does not apply to information, which a party can demonstrate was duly brought to its notice other than by the Agreement, or which is commonly known. The confidentiality undertaking shall remain in full force and effect after the cancellation of this Agreement.
11. **Grounds for relief**
- 11.1 A circumstance which prevents or substantially obstructs the performance of any of the parties' undertakings under the Agreement, and which the party could not dispose of, including but not limited to stroke of lightning, fire, earthquake, flooding, war, mobilization or major military conscription, uprising or riot, requisition, seizure, currency restriction, public regulation, fuel restrictions, general scarcity of transportation or energy, or strike, blockade, lock-out or other labour dispute, regardless of whether the party is a party to such dispute, and defects or delays in deliveries from sub-suppliers caused by the above mentioned circumstances, shall constitute grounds for relief which entitles the relevant party to appropriate time extensions and relief of liability from conditional fines and other penalties. A party shall notify the other party in writing without unreasonable delay from the day the party realized or ought to have realized the grounds for relief.
- 11.2 If the performance of the Agreement is delayed for more than six (6) months due to a circumstance set out in item 11.1, each party shall be entitled to terminate the Agreement and shall not be liable to compensate the other party for such termination.

12. **Export and import licences, certification, etc.**
- 12.1 The Supplier's obligation to deliver a Product is contingent on obtaining and maintaining necessary export, import and re-export licenses. Should such licenses not be obtained or are valid licenses revoked without the Supplier's negligence, the Supplier is relieved from its obligation to deliver the Product, and the Purchaser may not claim responsibility against the Supplier in such cases.
- 12.2 The Purchaser undertakes to comply with applicable regulation and, to the extent necessary, co-operate in the obtaining of export and import licenses for the purchased Product, and upon possible re-export of said Product or other product in which the purchased Product is integrated, co-operate in obtaining the necessary authorization.
- 12.3 Possible certification of the Product shall be paid by the Purchaser.
13. **Intellectual Property Rights**
- 13.1 Intellectual Property Rights shall mean all present and future rights, titles, and interests (whether legal or economic and registered or unregistered) in copyright and in all design rights, trademarks, patents, rights, or protection similar to copyright (including all moral rights), topography rights, software, applications, database rights, know-how, company names, trade secrets, inventions and other intangible information.
- 13.2 Unless the parties agree otherwise, each party or such party's licensors shall have sole ownership of all technology and intellectual property rights existing prior to the Agreement. Further, any Intellectual Property Rights granted by one party to the other party under the Agreement may not be copied, reproduced, transferred, or otherwise distributed to a third-party without the prior written consent of the party providing the Intellectual Property Rights. However, this shall not apply to such rights that are necessary for the Purchaser to acquire ownership of the Products and for the use and redistribution of the Products without limitations.
- 13.3 The Supplier shall retain all Intellectual Property Rights related to Products developed under the Agreement, whether developed by the Supplier or jointly by the parties.
14. **Limitation period**
- 14.1 Claims against the Supplier are statute-barred unless arbitration procedure pursuant to item 15.2 regarding the claim has been initiated within two (2) years of delivery of the relevant Product.
15. **Governing law and dispute**
- 15.1 This Agreement shall be governed by German substantive law, without regard to its rules on conflicts of laws and the United Nations Convention on Contracts for the International Sales of Goods (*CISG*).
- 15.2 Any disputes arising out or in connection with the Agreement or its validity shall be finally settled by arbitration proceedings administered by the Arbitration Rules of the German Arbitration Institute (*DIS*). The Arbitral Tribunal shall be composed out of three arbitrators. The arbitration proceedings shall take place in Frankfurt am Main. The language of the proceedings shall be German.
- 15.3 The following information shall be regarded as confidential and may not be disclosed: (i) information

about past or current arbitration proceedings, which is sufficiently detailed to identify the parties, (ii) written statements in arbitration proceedings, as well as what is orally alleged before the arbitration board and (iii) the arbitration board's decision, to the extent that there is a risk that a party may be identified. Without prejudice to the above, a party which seeks execution is entitled to disclose confidential information to the enforcing authority, to the extent required.

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