



Automatisierungstechnik Voigt GmbH

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Terms of delivery and payment abroad

1. General

All export business transacted by Automatisierungstechnik Voigt GmbH, hereinafter called the ATV is governed by following terms of deliveries unless otherwise stated in the offer or in the order acknowledgment. Any amendments or supplements to the terms by the purchaser as well as collateral agreements are binding only, if confirmed in writing by the ATV.

- 1.1 Offers expire 30 days after the date of the offer.
- 1.2 Offers are valid for the country in which the purchaser is domiciled. The purchaser is liable for all prejudice to and claims against the ATV due to the use of the products supplied outside such country.
- 1.3 Unless otherwise agreed, interpretation of contract terms customary in the trade shall be governed by the Incoterms 2000, including the supplements valid at the time when the contract is concluded.

2. Scope of delivery and prices

- 2.1 The supply obligation comprises the supplies and services confirmed by the ATV. If the products to be supplied are to be suitable for specific purpose of the purchaser, such specific purpose and the requirements with which the products to be supplied have to comply accordingly must be indicated fully and expressly by the purchaser in the order and confirmed by the ATV.
- 2.2 Unless otherwise agreed, prices are calculated net EXW from the ATV or, as the case may be, FCA to the carrier nominated by the purchaser at the named place.
- 2.3 Customs duties, consular fees and other taxes, dues or fees charged in accordance with any laws and regulations outside the jurisdiction of the Federal Republic of Germany, as well as any costs connected therewith, shall be borne by the purchaser. In the case of delivery including customs or other duties, the price quoted is based on the rates in force at the time of tendering. The actual expenses will be charged. Any turnover taxes possibly accruing will be charged separately.
- 2.4 The ATV has to comply with any foreign packing, weighing and customs regulations if precise information is given to him by the purchaser in due time. Any additional expenses connected therewith shall be borne by the purchaser.
- 2.5 In the case of fluctuations of rates of exchange, the ATV is entitled to demand retention of the original relation of values on which the prices quoted by him were based.

3. Information, drawings and other documents

- 3.1 All information concerning weights and dimensions, drawings, explanations, descriptions and illustrations submitted by the ATV are to be considered as approximate. Appropriate quantities of drawings and other documents containing final data will be supplied upon request after conclusion of the contract. The ATV must reserve the right to alter the technical concept upon which the offer is based. In so far as the performance and quality of the product offered for supply are not thereby affected.
- 3.2 The ATV will retain the exclusive ownership and all copyrights in respect of any drawings and other documents. Drawings and other documents must not be made accessible to third parties without the ATV's consent and shall be returned if so requested.

4. Terms of payment

- 4.1 All payments shall be made in accordance with the stipulations entered into, without any deductions and free of charge to the address of payment notified by the ATV. Payment can dispose of the amounts within the term agreed.
- 4.2 If a transfer of payments from the country from which payment has to be made should be impossible on the due date, the purchaser shall nevertheless pay the equivalent of the amount owed into a bank in the said country within the stipulated time. In case of deterioration in the rate of exchange for amounts paid in a currency not agreed upon, the purchaser shall make good such deficiencies by additional payment.
- 4.3 In the event of delivery being delayed without fault of the ATV, payments are to be made as if no delay had occurred.
- 4.4 Should the purchaser come into default partly or wholly in respect of his financial liabilities he shall, without prejudice to all other rights of the ATV, pay interest on arrears from that date at a rate of 5% above the key rate of the Europäische Zentralbank (EZB) valid at the time, provided that the ATV does not substantiate higher damages.
- 4.5 Compliance with all obligations of the ATV towards the purchaser shall be subject to compliance with the terms of payment agreed upon and with all other obligations of the purchaser towards the ATV.
- 4.6 The purchaser may only set off such claims or assert retention rights in respect of such claims, which are undisputed or have been finally decided. The right of retention may only be claimed to a reasonable extent.

5. Reservation of ownership

The products supplied shall, unless otherwise agreed, remain the property of the ATV until all debts owed to the ATV or to be created in the future and arising from business connection with the purchaser have been fully paid.

6. Time of delivery and default

- 6.1 Delivery times shall only be binding if they have been agreed to in writing by the ATV.
- 6.2 Adherence to the delivery time shall be subject to the order being completely clarified, all permits being granted and all documents, payments and securities to be furnished by the purchaser being received by the ATV in due time. The delivery time will be reasonably extended if any of the foregoing requirements have not been complied with in due time. The delivery time has been adhered to if the consignment is ready for despatch ex works within the period agreed upon and if a notice to that effect is sent to the purchaser.
- 6.3 In the event of the ATV being prevented from carrying out his supplies and services in due time by mobilisation, war, insurrection, strike, lock-out, interruptions of operation, fire, Acts of God, transport hindrances, alteration of the legal provisions, administrative measures or decrees or the occurrence of any other unforeseeable events which are beyond his control, the delivery time will be reasonably extended.
- 6.4 In the event of The ATV exceeding the agreed delivery time or a possible extension thereof according to paragraphs 6.2 and 6.3, and if the purchaser proves that he has suffered loss due to the default on delivery, he is entitled to demand such compensation amounting to 0,5% for each complete week of delay, however not exceeding 5% of the value of the supplies delayed. This does not prejudice the right of the purchaser to rescission after fruitless expiry of a reasonable extension of time allowed to the ATV. Any other compensation claims of the purchaser in all cases of delayed delivery are excluded even after the expiry of an extension of time allowed to the ATV. This shall not apply to the extent and provided that liability is peremptory in cases of intent or gross negligence or breach of essential contractual obligations by normal negligence as to damage reasonably foreseeable from the type of the contract.
- 6.5 The purchaser shall bear any additional cost resulting from interruption or delay caused by him in the work to be performed by the ATV.
- 6.6 In the event of despatch being delayed for reasons beyond the ATV's control, he shall be entitled to store the products to be supplied at the purchaser's risk and to demand reimbursement of any expenses incurred. The ATV shall be entitled to take out at the purchaser's expense an insurance against storage risks.
- 6.7 Where it is the purchaser's obligation to provide the means of transport for the delivery and where the purchaser fails to do so in due time the ATV may fulfil his delivery by storing and insuring the supplies at purchaser's cost and risk. The Forwarder's Certificate of Receipt (FCR) shall be full proof of the ATV's delivery in accordance with the contractual obligations.

7. Testing and acceptance

- 7.1 Tests in the presence of the purchaser or his representative as well as any special tests must be agreed upon in advance. The ATV shall be entitled to charge the cost of such tests to the purchaser.
- 7.2 If any acceptance test of the products to be supplied is stipulated, acceptance has taken place if the purchaser has not raised any justified complaints up to the time when the test is completed.

- 7.3 If the purchaser waives any acceptance test agreed upon, or if he fails to be present at such test despite having been invited in due time, the test carried out by the ATV shall be regarded as acceptance.
- 7.4 In the event of tests being delayed for reasons beyond the ATV's control, any additional expenses resulting therefrom shall be borne by the purchaser.

8. Transfer of risk

As a rule the risk will pass over to the purchaser as soon as the product to be supplied are leaving the works or are placed at the purchaser's disposal at the works. If, however, a pricing has been agreed upon for which a different regulation of transfer of risk is stipulated under Incoterms 2000, including the supplements valid at the time of conclusion of the contract, such different regulation shall apply. Should despatch be delayed for reasons beyond the ATV's control, the risk is transferred to the purchaser upon notification of readiness for despatch.

9. Warranty

- 9.1 For any defects in the products supplied, including the absence of promised characteristics, the ATV shall be liable in such a way that he will repair or replace at his opinion all parts in which defects are proved to have arisen within six months – without regard to the duration of operation – after the date of transfer of risk owing to any circumstances prior to the transfer of risk, in particular parts which become unusable due to faulty construction, inferior material or defective execution or the usefulness of which is considerably impaired. The ascertainment of such defects must be made known to the ATV in writing without delay.
- 9.2 To remedy the defects, the purchaser shall allow the ATV the time and opportunity required according to the reasonable estimation of the ATV. Should the purchaser refuse to allow such time and opportunity, the ATV shall be released from the obligation to remedy the defects.
- 9.3 In case the defects are not remedied within a reasonable time or if the repairs fail to remedy the defects, the purchaser is entitled to claim the right of abatement (reduction of purchase price) or redhibition (rescission of the contract).
- 9.4 The right of the purchaser to bring actions arising out of defects shall in all cases be in lapse six months after the date of the duly raised notification of defect. Should no agreement be reached within this period, the ATV and the purchaser may arrange for a prolongation of this period of limitation.
- 9.5 The warranty obligation does not refer to natural wear and tear nor to damage occurring after the transfer of risk due to improper or unsuitable handling, excessive stressing, unsuitable operating material, faulty construction work, unsuitable foundations and chemical, electrochemical or electrical influences of a nature not provided for according to the contract. On improper alterations or repairs or maintenance carried out by the purchaser or third parties or in case of breaking of seals the warranty obligations of the ATV and his liability for consequences caused thereby are rendered void.
- 9.6 Further claims of the purchaser against the ATV are excluded, in particular claims for the liability for damages not arising to the object of supply itself and the liability for consequential damages in particular loss of production, loss of utilization or loss of profit. This shall not apply to the extent and provided that liability for personal injuries or damage to privately used property is peremptory under the Product Liability Act, or

that liability is generally imperative in cases of intent or gross negligence or any lack of warranted characteristics.

10. Rescission

- 10.1 The ATV shall be entitled to rescind the contract if the fulfilment of the same becomes impossible for reasons for which he is not liable. The ATV is further entitled rescind the contract if the conditions of the contract are so basically altered at a later date by circumstances which could not be foreseen at the conclusion of the contract that he can no longer be reasonably expected to fulfil the contract.
- 10.2 The ATV can in the aforementioned cases demand from the purchaser reimbursement for all the necessary expenditure incurred in connection with the contract, unless any parts manufactured under the contract can be used elsewhere within a reasonable time or unless the impossibility of fulfilling the contract is due to any intervention by German governmental authorities.

11. Patent rights and other industrial rights

- 11.1 The ATV is liable to the purchaser for the infringement of patent rights and other industrial rights (hereinafter collectively referred to as "patent rights") of third parties only within the limits of the following provisions. Compliance with this obligation is subject to the purchaser immediately informing the ATV of any infringement claims raised by third parties and to the purchaser proceeding in agreement with the ATV in dealing with such claims and in the pursuance of his rights. Should any one of these conditions not be fulfilled, the ATV will be relieved of his obligations. Should an infringement of third-party patent rights be ascertained and should for this reason the purchaser be enjoined by final decision from using any product supplied, either in whole or in part, the ATV shall at his own expense and at his option either
- a) obtain for the ATV the right to use the product supplied, or
 - b) modify the product supplied in such a way that it becomes non-infringing, or
 - c) replace the product supplied by another product of comparable efficiency which does not infringe any patent rights, or
 - d) take back the product supplied against refund of the purchase price.
- 11.2 In case the purchaser should make modifications to the equipment supplied, or incorporate additional devices or combine it with other equipment or device such that patent rights of third parties are infringed the ATV shall not be held liable.
- 11.3 Likewise the ATV cannot be held liable for infringement of third-party patent rights for products supplied which were manufactured according to drawings, models or other data supplied by the purchaser; in this case the purchaser shall indemnify the ATV in respect of third-party claims.
- 11.4 The purchaser shall not be entitled to further or additional claims on the ground of infringement of third-party patent rights. In particular, the ATV will not compensate the purchaser for any indirect or consequential damage such as loss of production, loss of utilization and loss of profit. This shall not apply to the extent and provided that liability is peremptory in cases of intent or gross negligence or breach of essential contractual obligations by normal negligence as to damage reasonably foreseeable from the type of the contract.
- 11.5 The purchaser does not acquire any right to the use of patent rights applying to the combined use of the products supplied with other products.

12. Final provisions

- 12.1 Any agreement, irrespective of whether they are entered into at the conclusion of the contract or after, must be in writing. Verbal statements of the ATV's personnel are binding only if confirmed in writing by the ATV.
- 12.2 The privity of contract and all contractual relations hereunder shall be governed by the laws of the Federal Republic of Germany. Neither the Hague Convention Relating to a Uniform Law on the International Sale of Goods of July 1, 1964, nor in the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, shall apply.
- 12.3 The place of performance for all contractual and legal claims shall be the registered business place of the ATV.
- 12.4 The sole place of jurisdiction for any disputes directly or indirectly arising from the contract shall be Dresden/Saxony. The ATV shall, however, also be entitled to bring an action at the place of the registered office of the purchaser.
- 12.5 Even in the event of individual clauses of the contract being invalid, its remaining parts shall continue to be binding. Should any clause be invalid wholly or in part, the contracting parties will endeavour without delay to attain the economic result aimed at by the invalid clause in another legally admissible manner.