

General Terms of Supply and Performance of the Leibniz Institute for Agricultural Engineering and Bioeconomy (ATB) (hereinafter: ATB) for transactions with entrepreneurs

1. General, Area of Application

- a) Exclusively the following terms of business apply to all ATB contracts (especially contracts of supply and performance, contracts for testing, research and development or technology transfer) with an entrepreneur (hereinafter: customer). Any contradicting or differing customer terms of business will not apply, unless ATB has expressly approved application of the same in writing. The following terms of supply and performance shall apply exclusively even if supply/performance has been rendered with knowledge of differing customer terms of business without any reservations being made.
- b) The following terms of supply and performance will also apply to all future business with a customer.

2. Tenders, Scope of Performance

- a) If order acknowledgement is customary, a contract will not become valid until acknowledged in writing by ATB.
- b) The criterion for the content of the contract is the written order acknowledgement from ATB. The right of ATB to make technical alterations and model variations is reserved, inasmuch as they are in line with technical progress and the customer can be reasonably expected to accept them.
- c) Any requests for alterations or additions made by the customer after entering into the contract will only become part of the contract subject to ATB's written consent. The additional costs incurred will be payable by the customer.

3. Prices, Terms of Payment, Offsetting

- a) If nothing to the contrary is specified in the acknowledgement of the order, ATB's supply prices for goods apply ex warehouse with addition of value-added tax at the rate applicable at the time and with addition of carriage and packaging. Any costs other than production and processing costs (e.g. travelling costs) will be charged separately.
- b) If nothing has been agreed to the contrary, the invoiced amount is payable immediately. It shall be paid within no more than 10 days of receipt of the invoice without any deductions. After expiry of this period, the customer will be in default, even without being sent a reminder. If the customer is in default on payment, ATB is entitled to charge interest on default at the statutory rate. The right to provide evidence of greater losses through default is not prejudiced. The customer, for his part, has the right to provide evidence of lower losses through default. However, ATB shall always be entitled to payment of interest on default at the statutory rate.
- c) ATB has no obligation to accept bills of exchange and cheques. Acceptance is only effected on account of performance.
- d) The customer will only hold rights of offsetting and retention if his counter-claims have been confirmed in a legally final form or expressly recognized by ATB.

4. Supply/Performance

- a) ATB is entitled to involve third parties in supply/performance. ATB can effect partial supply and partial performance and issue separate invoices for the same. Every partial supply or partial performance constitutes partial fulfilment of the contract.
- b) ATB has no obligation to effect supply/render performance until all preliminary technical matters have been settled in agreement between the parties.
- c) If the period of supply/performance is not observed, the purchaser has a right and obligation to specify in writing a reasonable period of grace for delivery. This period of grace must be no less than 14 days. If the period of grace expires without result, the customer can rescind the contract.
- d) In cases of force majeure, neither party can rescind the contract until a period of a total of 3 months has expired, unless this period is unreasonable for one of the parties for particular reasons.
- e) The customer can only claim damages instead of performance subject to the statutory requirements under Section 6 d) and e) and only if he informs ATB when granting a period of grace that he will make damages claims if no performance is rendered.

5. Shipment, Passage of Risk

- a) If nothing is agreed to the contrary, goods will be supplied by ATB ex warehouse.
- b) Shipment will be made - if the customer has not given any express instructions - in the customary commercial form and without the customer having any claim to the least expensive method of carriage.
- c) Shipment will always be at the customer's risk, even if prepaid carriage has been agreed or shipment is made using ATB transport vehicles. Transport insurance will be taken out for shipment at the request and expense of the customer.

6. Warranty for Defects, Compensation for Damages

- a) The customer shall examine all supplies and services immediately to ensure that they are complete and not defective. This also applies to any written material and reports which are forwarded. Any complaints must be submitted to ATB immediately in writing. If this is not done, supply/performance will be deemed approved, unless there is a defect which was not identifiable during examination. If such a defect does not become apparent until a later date, the purchaser shall submit a specific complaint immediately after discovery of the defect. If this is not done, supply/performance will be deemed approved in relation to such a defect too.
- b) If a complaint is submitted in due time and is justified, ATB initially has the right - if nothing has been agreed to the contrary - to supply a replacement, rework the goods or remedy the defect.
- c) If ATB is not prepared or not able to perform the above measures or if action is delayed beyond a reasonable period specified by the customer or if action is not successful, the customer can, at his discretion, rescind the contract or demand reduction of the purchase price.

d) ATB's liability to pay compensation for damages for any legal reason whatsoever (including claims based on unlawful acts) is governed by legal regulations, insofar as the loss is due to intent or gross negligence on the part of ATB, its legal representatives or vicarious agents. Liability for simple negligence is ruled out, unless there has been a culpable breach of a major contractual obligation. This restriction of liability does not apply in the event of injury to life, limb and health of a person or in the case of warranty liability. Neither is mandatory liability under the terms of the Product Liability Act prejudiced in any way.

e) Damages claims by the customer are limited to typical, foreseeable damage. For purely financial losses, ATB shall pay in compensation no more than the amount of the counter-performance to which it was entitled under the contract. Sentences 1 and 2 do not apply to claims based on intentional or grossly negligent behaviour on the part of ATB, its legal representatives or vicarious agents, neither do they apply to liability for damages resulting from injury to life, limb or health of a person or in the event of mandatory liability under the terms of the Product Liability Act.

7. Reservation of Ownership

a) The customer does not become the owner of items and written material until all his payment obligations to ATB have been met.

b) If ATB rescinds the contract, the customer must immediately return all the items and written material which are subject to reservation of ownership. The costs of such return will be payable by the customer.

c) The customer must treat all the property of ATB with care until ownership has been transferred and must take out an insurance policy at reinstatement value, covering losses by fire, water and theft.

d) If there is a threat of jeopardisation of the ownership rights of ATB by third parties, particularly as a result of attachment, the customer must notify ATB in writing without delay and give it support in the exercising of its rights.

e) If nothing has been agreed to the contrary, the customer has the right to resell supplies and services in the course of due business. However, on entering into the contract, he assigns to ATB all the claims which he gains from resale, such assignment being to the amount of the invoice total (incl. VAT). The customer will remain authorized to collect such claims for as long as he meets his payment obligations in due time and providing no discontinuation of payments is to be feared. If this is not the case, ATB can require the customer to provide information immediately about the assigned claims and who owes them, to give all the particulars required for collection, to deliver all the appertaining documents and to notify the debtors (third parties) of assignment.

8. Ownership Rights and Copyrights, Rights of Third Parties

a) If nothing has been agreed to the contrary, the property rights created by performance will be owned by ATB. The customer will only hold utilization rights relating to the same if an express agreement to this effect has been made.

b) If nothing has been agreed to the contrary, the customer may only publish the results of ATB work or make them known to third parties subject to the prior written consent of ATB and quoting its name. Any publication of extracts from expert opinions and test reports is subject to prior written consent.

c) The customer is responsible for ensuring that third-party rights, particularly copyrights, are not infringed by the specifications he makes to ATB. To this extent, the customer shall hold ATB harmless in relation to all claims made by third parties due to an infringement of their rights.

9. Statutory Time Limitation

a) Customer claims relating to defects are subject to a time limitation of one year following delivery or, respectively, acceptance.

b) Customer claims for damages due to breaches of obligations (section 280 of the German Civil Code) not covered by a) are subject to a time limitation of one year following the statutory beginning of the time limitation period.

c) The time limitation rulings under paras. a) and b) do not apply in the cases defined in Sections 438 para. 1 no. 1 and no. 2, 634 a para. 1 no. 2 of the German Civil Code and in Sections 478, 479 of the German Civil Code or to damages claims resulting from injury to life, limb or health of a person. Neither do they apply in cases in which there is intent or gross negligence on the part of the vendor, its legal representatives or vicarious agents.

10. Applicable Law, Place of Jurisdiction, Place of Fulfilment

a) The law of the Federal Republic of Germany (especially the Civil Code (BGB) and Commercial Code (HGB)) apply to these terms of business and all legal relations between the parties. Application of UN law on the sale of goods is ruled out.

b) If the customer is a merchant, Potsdam shall be the exclusive place of jurisdiction for all disputes resulting from the contractual relationship.

c) If nothing has been agreed to the contrary, the place of fulfilment is ATB's seat of business in Bergholz-Rehbrücke.

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