

General terms and conditions – Status June 2020

1. The deliveries and services of ATLAS are exclusively based on the following general terms and conditions. These are an integral part of all contracts that ATLAS concludes with its contractual partners for the deliveries or services it offers. If the contractual partner is an entrepreneur in the sense of § 14 BGB (German Civil Code), they also apply to all future deliveries or services, even if they are not agreed upon again separately.
2. General terms and conditions of the buyer or third parties are excluded in their entirety, even if ATLAS does not separately object to their validity in the individual case. Deviating agreements are only valid if they are separately agreed in writing. The general terms and conditions of business of ATLAS shall also apply if ATLAS carries out the delivery to the Buyer without reservation in the knowledge of terms and conditions of the Buyer which conflict with or deviate from its own terms and conditions of business. Even if ATLAS makes reference to a letter containing or referring to terms and conditions of business of the Purchaser or of a third party, this shall not constitute an agreement to the validity of such terms and conditions.

I. Offer and delivery

1. ATLAS reserves the unrestricted property rights and copyrights to cost estimates, plans, drawings, operating instructions and training materials and other documents, even if they are stored on data carriers; they may only be made accessible to third parties with the prior written consent of ATLAS. If the order does not materialize, the documents together with any copies must be returned to ATLAS immediately upon request.
2. The conditions of the deliveries and services of ATLAS are set out in the order confirmation; in the case of an offer with a time commitment and acceptance within the time limit, the offer shall apply unless a separate order confirmation is available.
3. Deviations customary in trade and deviations which are due to legal regulations or which represent technical improvements, as well as the replacement of components by equivalent parts are permissible, as long as they do not impair the usability for the contractually intended purpose. Sale is reserved during the delivery period.
4. Collateral agreements must be in writing.

II. Prices and terms of payment

1. Prices are "EXW ex works Linsengericht" (EXW INCOTERMS 2020), without assembly or installation and excluding packaging but plus statutory value-added tax. The costs of preparing export documents and any registration fees incurred shall be borne by the customer. In the event of deviating delivery conditions, the customer shall bear all costs for transport to the place of delivery including transport, import tax and customs clearance, etc. Payment shall be made free of charge to the place of payment within 30 days of the invoice date without deduction. Only in the case of domestic German contracts do we grant a 2% discount for payments within 14 days of the invoice date. Services and calibration services are to be paid within 15 days.
2. The customer may only offset counterclaims that are legally binding, undisputed or acknowledged by ATLAS in writing. If a consumer is entitled to a statutory right of revocation, a set-off with repayment claims is also permissible in deviation from this.
3. The customer is only entitled to a right of retention because of claims from the same contractual relationship.
4. If the customer withdraws from a placed order without justification before the delivery is ready for dispatch or before the service or calibration performance is provided, ATLAS can demand 25% of the sales price or the remuneration for the costs incurred by the processing of the order and for lost profit, notwithstanding the possibility of claiming a higher actual damage. If the withdrawal takes place after readiness for dispatch or after the commencement of performance, 35 % of the sales price or remuneration shall be paid. The customer reserves the right to prove that the damage incurred is less.
5. In the event of an increase in the prices of materials and raw materials (including any import duties and including such duties resulting from the UK's withdrawal from the EU), ATLAS shall be entitled to adjust the price for such services which are not to be delivered or rendered within four months of the conclusion of the contract.
6. In addition, the prices payable by the customer shall be subject to immediate increase if any governmental action or regulation, including, among others, any such action or regulation provided for in an investigation under Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862), imposes additional duties or tariffs or restrictions on the products sold hereunder or on the raw materials used to make such products. In no event shall the prices include any amounts imposed on ATLAS in connection with its acceptance by the customer, such as taxes, including, among others, value-added tax (VAT) or excise taxes, duties, customs fees or other costs imposed on ATLAS by any governmental authority – in this respect paragraph 4 above applies.

III. Deadline for deliveries and services

1. Compliance with the delivery or performance time according to 1.2 requires the clarification of all technical questions as well as the timely receipt of all documents to be supplied by the customer, such as export documents, permits, certificates, releases, plans, compliance with the agreed terms of payment and other obligations. Otherwise, the deadline must be extended appropriately. The defence of unperformed contract is reserved.
2. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport. If delivery is delayed for reasons for which the customer is responsible, the time of notification of readiness for dispatch shall be deemed the delivery date.
3. If the dispatch or delivery is delayed at the instigation of the customer, ATLAS may, beginning 4 weeks after notification of readiness for dispatch, demand storage charges amounting to 0.5% of the invoice amount for each month or part thereof or a demonstrably higher storage charge.
4. In the event of delays in delivery due to force majeure (e.g. natural disasters, publicly ordered traffic restrictions and plant closures, strikes), compliance with the delivery or performance time is suspended. It shall recommence and shall be extended in accordance with the delay when the respective obstacle has ended.

IV. Transfer of risk

Even if freight-free delivery or return shipment has been agreed, the risk shall pass to the customer as soon as the consignment has been brought to dispatch by ATLAS (handover to transport company) or has been collected by the customer. Deviating from this, in the case of a purchase of consumer goods within the meaning of §§ 474 ff. BGB, the risk shall not pass to the customer until the consignment has been handed over to the customer. The packaging is carried out with the best care, the dispatch is carried out at the best discretion of ATLAS. If the dispatch, the start or the execution of the installation or assembly is delayed at the request of the customer or for reasons for which he is responsible, the risk shall pass to the customer at the beginning of the delay.

V. Installation and assembly

1. ATLAS is only obliged to install or assemble the goods if this has been expressly agreed.
2. If ATLAS has taken over the installation or assembly against individual calculation, the following applies
- 2.1 The customer shall pay ATLAS the agreed rates for working time and surcharges for overtime, night work, work on Sundays and public holidays, for work under difficult circumstances as well as for planning and supervision. Preparation times, running times and confirmations shall be deemed working time.
- 2.2 Furthermore, the following costs shall be remunerated separately: Travel expenses, costs for transport and insurance of tools, expenses for overnight stays and meals.

VI. Acceptance of delivery and acceptance

1. Delivered objects are to be accepted by the customer. This applies even if the delivered item has obvious defects; the statutory obligations to give notice of defects apply.
2. ATLAS is only entitled to make partial deliveries if
- 2.1 the partial delivery is usable for the customer within the scope of the contractual purpose
- 2.2 the delivery of the remaining ordered goods is ensured and
- 2.3 the customer does not incur any significant additional work or additional costs as a result of this (unless ATLAS declares itself willing to assume these costs).
3. The customer undertakes to dispose of the packaging at his own expense and shall indemnify ATLAS from all legal obligations in connection with packaging waste under the Regulation on the Avoidance of Packaging Waste.
4. Formal acceptance must take place for works if one of the contracting parties so requests. If no acceptance is requested, the work shall be deemed to have been accepted upon expiry of 12 working days after written notification of completion of the work. If no acceptance is requested and the client has put the work or part of the work into use, acceptance shall be deemed to have taken place after the expiry of 6 working days after the start of use, unless otherwise agreed.

VII. Retention of title and suretyship

1. ATLAS reserves the right of ownership of the purchased item or parts brought in within the scope of repair and service measures until receipt of all claims (including all balance claims from current account) from the contract but also from any legal ground to which ATLAS is entitled against the customer now or in the future. If the customer is a consumer in the sense of § 13 BGB (German Civil Code), ATLAS reserves the right of ownership of the purchased item until the purchase price for this item has been paid in full. In case of breach of contract by the customer, especially in case of default of payment, ATLAS is entitled to demand the return of the reserved goods, provided that ATLAS has withdrawn from the contract. After taking back the item, ATLAS shall be entitled to sell it and the proceeds of such sale shall be set off against the liabilities of the customer - less reasonable costs of sale.
2. The customer is obliged to treat the item with care and to insure it at his own expense against fire, water and theft at replacement value. If maintenance and inspection work is necessary, the customer must carry this out in good time at his own expense.
3. In the event of seizure or other interventions by third parties, the customer shall immediately notify ATLAS in writing so that ATLAS can file a suit or appeal against such seizure or intervention. If the third party is not able to reimburse ATLAS for the judicial and/or extrajudicial costs, the customer is liable for the damage.
4. The customer is entitled to resell the object of sale or the repaired object in the ordinary course of business; however, he hereby assigns to ATLAS all claims in the amount of the final invoice amount including VAT on ATLAS's claim, which accrue to him from the resale against his customers or against third parties, irrespective of whether the object has been resold without or after processing. ATLAS accepts the assignment. The customer remains authorized to collect this claim even after the assignment. The authority of ATLAS to collect the claim itself remains unaffected. However, ATLAS will not collect the claim as long as the customer meets his payment obligations from the proceeds, is not in default of payment and, in particular, no petition for the opening of composition or insolvency proceedings has been filed or payments have been suspended. If one of the above-mentioned cases occurs, ATLAS may demand that the customer informs it of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtor (third party) of the assignment. ATLAS is also entitled to notify the assignment itself.
5. The processing or transformation of the item by the customer is always carried out for ATLAS as manufacturer in the sense of § 950 BGB. If the item is processed with other items not belonging to ATLAS, ATLAS shall acquire co-ownership of the new item in the ratio of the value of the item (final invoice amount including VAT) to the other processed items at the time of processing. The same rules apply analogously to the item resulting from processing.
6. If the item is inseparably mixed with other items not belonging to ATLAS, ATLAS shall acquire co-ownership of the new item in the ratio of the value of the item (final invoice amount incl. VAT) to the other mixed items. If the mixing takes place in such a way that the item of the customer is to be regarded as the main item, it is deemed agreed that the customer transfers proportional co-ownership to ATLAS. The customer shall keep the sole ownership or co-ownership thus created in safekeeping for ATLAS.
7. The customer also assigns to ATLAS the claim to secure its claims against him which arise against a third party through the connection of the item of sale with a plot of land. ATLAS accepts the assignment.
8. If further measures in the country of the customer should be necessary for the effectiveness of the retention of title, the customer is obligated to carry out these measures or to cooperate in their implementation.
9. In the case of delivery abroad, ATLAS is entitled to demand from the customer, for the purpose of securing the payment claims, the handing over of an unlimited, directly enforceable performance bond, subject to German law, from a credit institution approved in the EU.
10. ATLAS will release the securities to which it is entitled at the request of the customer if the realizable value of the securities of ATLAS exceeds the claims to be secured by more than 20% on a sustained basis; the choice of the securities to be released is incumbent on ATLAS.

VIII. Liability for defects

1. Claims for defects on the part of the customer require that the customer has fulfilled his statutory obligation to examine and give notice of defects. The warranty shall not apply if the customer modifies the delivery item or has it modified by third parties without the consent of ATLAS and the remedy of the defect is thereby rendered impossible or unreasonably difficult. In any case, the customer shall bear the additional costs of the remedy of defects arising from the modification.
2. ATLAS's information on the object of the delivery or work as well as the representations of the same are decisive, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics of quality, but descriptions or identifications of the delivery or work. Deviations customary in the trade and deviations which are due to legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts are permissible, provided that they do not impair the usability for the contractually intended purpose.
3. If the customer is an entrepreneur, the customer's claims for defects require that the customer has properly fulfilled his obligations to inspect and give notice of defects in accordance with § 377 HGB (German Commercial Code). In the case of a contract to produce a work, § 377 HGB shall apply analogously. After the transfer of risk or acceptance of the product, the customer must inspect it immediately for its functionality and notify ATLAS in writing of any detected defects and hidden defects immediately after their

discovery, at the latest within a period of 7 days.

4. If there is a defect in the item matter of the contract, ATLAS is entitled at its discretion to cure in the form of remedy of the defect or delivery of a new defect-free item. In the case of a sale of consumer goods within the meaning of §§ 474 ff. BGB, the legal regulation of § 439 Abs. 1 BGB remains valid. In the case of remedy of defects, ATLAS shall be obliged to bear all expenses necessary for the purpose of remedying the defect, in particular transport, travel, labour and material costs. This does not affect the right of ATLAS to refuse the type of cure chosen by the customer if it is only possible at disproportionate cost. Apart from that the customer shall bear the costs. If the cure fails, the customer can revoke the agreement or reduce the purchase price.
 5. The limitation period for claims for defects is 12 months from the date of transfer of risk (in the case of contracts to produce a work, from the date of acceptance). This does not apply to claims for damages due to defects which have been caused intentionally or by gross negligence or which have led to a culpable injury to life, body or health; in this respect the statutory periods shall apply.
- In the case of a sale of consumer goods within the meaning of §§ 474 ff. BGB, the limitation period shall be 24 months for newly manufactured items and 12 months for used items, calculated from the transfer of risk. The period of limitation in the case of a delivery recourse according to §§ 478, 479 BGB remains unaffected.

IX. Rights of the customer to withdraw from the contract, liability for damages

1. In the event of operational disruptions due to force majeure, strike or shortage of raw materials, ATLAS may withdraw from the contract, unless this is only a temporary obstacle to performance. The rights of ATLAS from § 313 BGB remain unaffected.
2. The customer can withdraw from the contract if the entire performance becomes finally impossible for ATLAS before the transfer of risk. The same applies in case of incapacity of ATLAS. The customer may also withdraw from the contract if, in the case of the provision of similar items, the execution of part of the delivery becomes impossible in terms of quantity and he has a justified interest in refusing a partial delivery; if this is not the case, the customer may reduce the consideration accordingly.
3. If the impossibility of performance occurs during delay in acceptance or through the sole or predominant fault of the customer, the customer shall remain obliged to pay the consideration, unless the impossibility of performance was caused by intent or gross negligence on the part of ATLAS during the delay in acceptance.
4. The liability of ATLAS for damages, regardless of the legal basis, in particular for impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, is limited in accordance with this section, provided that fault is involved in each case.
5. ATLAS shall not be liable in the event of simple negligence of its organs, legal representatives, employees or other vicarious agents, provided that it is not a matter of a breach of essential contractual obligations. An essential contractual obligation is an obligation on which the customer relies and may rely. Essential contractual obligations are, for example, the obligation to deliver and install the delivery item free of essential defects in good time, as well as advisory, protective and custodial duties, which are intended to enable the customer to use the delivery item in accordance with the contract or are intended to protect life and limb of the customer's personnel.
6. In the event of simple negligent violation of essential contractual obligations, ATLAS shall only be liable for reasonably foreseeable damage typical for the contract. If the customer is an entrepreneur in the sense of § 14 BGB, this also applies in the case of gross negligence. In addition, indirect damages and consequential damages resulting from defects of the delivery item are only eligible for compensation if such damages are typically to be expected when the delivery item is used as intended.
7. If ATLAS is liable for damages on the merits under this section, such liability shall be limited to such damages which ATLAS foresaw at the time of the conclusion of the contract as a possible consequence of a breach of contract or which ATLAS should have foreseen by exercising due care. Indirect damages and consequential damages resulting from defects of the delivery item are furthermore only compensable to the extent that such damages are typically to be expected when the delivery item is used for its intended purpose.
8. In the case of liability for simple negligence, the obligation of ATLAS to pay compensation for damage to property and personal injury is limited to an amount of 5,000,000 € per claim, in the case of financial loss to an amount of 1,000,000 € per claim, both together per year, even if it is a breach of an essential contractual obligation. Upon request, ATLAS will send a copy of the insurance certificate to the customer. In the event that the insurer is released from liability due to a breach of obligation by ATLAS, ATLAS undertakes to be liable to the customer from its own resources up to the amount of the sum insured.
9. Exclusions and limitations of liability shall apply to the same extent in favour of the organs, legal representatives, employees and other vicarious agents of ATLAS.
10. The limitations of this section do not apply to the liability of ATLAS for intentional conduct, for guaranteed characteristics, for injury to life, body or health or under the Product Liability Act.

X. Special provisions for the provision of calibration services

ATLAS maintains calibration laboratories. In addition to general services in connection with the traceable calibration of measuring and testing equipment, special calibration services are also provided here on the basis of accreditation by the Deutsche Akkreditierungsstelle GmbH (DakKS) and the American Association for Laboratory Accreditation (A2LA). For these calibration services, the following provisions shall apply in addition to and, in the event of contradictions, with priority to the provisions in Part A of these Terms and Conditions.

1. If calibrations (e.g. DakKS or A2LA) are performed, the scope and content of the accreditation of ATLAS are set out in the accreditation certificate and the corresponding annex to the certificate in the respectively valid version. The accreditation certificate together with the annex can be viewed at any time on the ATLAS homepage at www.atlas-mts.de. Within the scope of its accreditation, ATLAS is entitled to issue DakKS/A2LA calibration certificates. Further details can be found in the annex to the accreditation certificate, see www.atlas-mts.de. ATLAS is entitled to make and store records of the calibrations it has carried out and to pass on this data to the accreditation body to fulfil its duty of documentation.
 2. If the customer places the order or the purchase order with reference to a written cost estimate of ATLAS and if after receipt of the object of calibration the completeness and calibration capability is determined during the receiving inspection, the customer will receive a written order confirmation. However, the calibration will only be initiated after handing over all necessary documents, in particular the operating instructions, and after receipt of the necessary accessories. If a document or accessory required for calibration is missing, ATLAS is entitled to reject the calibration order.
 3. The invoicing of the services of ATLAS is usually made by a lump sum, which is determined by means of empirical values and is documented in a price list. Furthermore, it is also possible to calculate on the basis of hourly rates, which are multiplied by the number of hours spent, plus material required. If the calculation is made on the basis of hourly rates and the cost of materials, then the invoice amount for the client is calculated by adding the working time required to process the calibration order, for example in shipping, in the calibration laboratory, in other order processing, etc. multiplied by the hourly rate determined by the management. If the inability to calibrate the object to be calibrated is determined during the calibration, the customer will be informed about the order processing in writing and the costs incurred up to this point will be charged. The deficiency has to be documented and the calibration order has to be rejected with a corresponding reason. If additional adjustment work is required within the scope of the calibration, the customer shall be informed about the additional expenditure caused thereby by telephone or in writing. If the customer requires a separate estimate or a modified order confirmation, the calibration process shall be suspended for the interim period. Materials to be used in the preparation and execution of the calibration procedure and packaging material for the dispatch of the devices to the customer as well as the postage and transport costs will be charged separately.
 4. If the calibration fails completely or partially or cannot be performed in the form desired by the customer, the claim for remuneration of ATLAS remains in full if ATLAS has informed the customer of the risk of failure before or at the time of the order, unless the missing or limited success is due to a faulty performance of the calibration procedure. If the calibration fails due to a defect in the submitted equipment, ATLAS shall also be reimbursed for the time spent up to that point. Should the agreed delivery time change during the processing of the customer order due to unforeseeable circumstances, for example, failure of the reference standards, temporary inability of the laboratory staff to work or deficiencies in the final assessment within the scope of the QM inspection, the customer will be informed immediately by telephone or in writing. If calibrations are necessary for the fulfilment of the order which cannot be carried out due to the range of services offered by the calibration laboratory or due to unforeseen circumstances, subcontracts may be awarded to appropriate laboratories capable of performing the calibration tasks. These calibration laboratories must meet the requirements of DIN EN ISO/IEC 17025 or corresponding successor regulations. For this purpose, the head of the calibration laboratory obtains a quotation from the calibration laboratory in question and then decides on subcontracting after consultation with the customer. If the subcontractor is selected by the customer or a regulatory authority, the responsibility for the activities to be performed lies with the customer or the authority.
 5. If the equipment submitted by the customer has a defect which impairs the technical function or the calibration capability, ATLAS will, at the request of the customer, send the equipment to the manufacturer/supplier for repair work. For reasons of simplification, the repair order shall be placed in the name and on account of ATLAS, unless the customer expressly wishes to place an order in his name in advance. Irrespective of whose name the order is placed in, ATLAS is entitled to charge a flat handling fee to the customer in addition to the external costs incurred, the amount of which can be found in the current price list (see www.atlas-mts.de). Packaging costs as well as dispatch or transport costs can be charged separately by ATLAS.
- Complaints regarding the type, quality and result of the calibration work must be submitted in writing to the calibration laboratory within a preclusive period of six months after the issue of the calibration certificate.
- In case of liability for simple negligence, the obligation of ATLAS to pay compensation is limited to an amount of 250,000.00 € for property damage and 50,000.00 € for financial loss.
- The limitation of liability shall also apply in the relationship of the customer towards employees, vicarious agents and suppliers as well as other persons involved in the calibration process. The limitation of liability shall not apply in the event of culpable violation of essential contractual obligations. In these cases ATLAS is liable - except in cases of intent and gross negligence - only for reasonably foreseeable damage typical for the contract. Otherwise, the provisions under IX. shall apply.

XI. Software

If software is included in the scope of delivery of ATLAS, the customer is granted a non-exclusive right to use the software delivered. It is provided for use on the delivery items intended for this purpose. The customer may only copy, revise, translate or convert the software from object code to source code to the extent permitted by law (§§ 96a et seq. UrHG (German Copyright Act)). All rights to the software remain with ATLAS. The customer may not change or remove manufacturer's details, in particular copyright notices, without the consent of ATLAS; the same applies to the creation of a backup copy. All rights to the software and the documentation including a backup copy made with the consent of ATLAS shall remain with ATLAS and the granting of sub-licenses is not permitted.

XII. Export, FCPA, Anti-Boycott Laws

1. The products delivered may contain technology and software which are subject to the export control regulations of the Federal Republic of Germany and the control regulations of the United States of America or of the countries to which the products are delivered or in which they are used. The customer undertakes to strictly observe these regulations. According to these regulations, certain products may not be delivered or licensed in particular to certain users or to certain countries which are involved in activities related to weapons of mass destruction or genocide. The customer is aware that the export control regulations provide for different restrictions depending on the goods purchased and are regularly amended. The customer assures that the current regulations will be checked and complied with before each export or re-export of the products. In case of violation of export regulations, ATLAS is entitled to withdraw from the contract at any time.
2. The customer shall not dispose of the products by transshipment, re-export, rerouting or otherwise to any country other than the country of final destination specified on the purchase order(s) or the country of final destination declared on ATLAS's invoice or in ATLAS's end-use statement submitted to the customer by ATLAS, unless expressly permitted under applicable German and U.S. export laws and regulations. ATLAS shall not be named as the official shipper or exporter or U.S. supplier of the goods (USPP) unless ATLAS expressly agrees to this in writing. In this case, the customer shall provide ATLAS with a copy of the documents submitted by the customer for export clearance. Upon ATLAS's request, the customer shall provide information on the end use and the end user so that the applicability of the export license can be determined. Failure by the customer to comply with this Section shall constitute a material breach of contract and shall entitle ATLAS to cancel the relevant purchase order(s) without liability of any kind.
3. The customer warrants that in connection with the sale or distribution of the products and/or services it will not, and will not cause ATLAS to, be in breach of the United States Anti-Bribery Act 1977 (FCPA), as amended, the United Kingdom Anti-Corruption Act 2010 (UKBA), as amended, or its implementing regulations, and that it has no knowledge of, or will not be liable for, any breach of such laws, has no reason to believe that any consultant, agent, representative or other person employed by it in connection with the sale and/or distribution of products/services will, or will have the effect of, causing ATLAS to violate the FCPA and/or the UKBA. If the customer learns of a violation of the FCPA and/or UKBA in connection with the sale or distribution of products/services or has reason to believe that such a violation has occurred, the customer must notify ATLAS immediately.
4. The customer further warrants that it will not, in connection with its purchase of products/services, violate the U.S. Antiboycott provisions of the U.S. Export Administration Regulations issued under the Export Administration Act of 1979, as amended, and that it will not request or require ATLAS to make any representation or certification against countries not boycotted by the U.S.

XIII. Final provisions

1. Should one or more provisions of these terms and conditions be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The parties will then find a permissible replacement provision which comes as close as possible to the economic result of the invalid provision.
2. The law of the Federal Republic of Germany shall apply. The application of UN purchase law is excluded. In order to assess all disputes arising from the contractual relationship – as far as the customer is a merchant in the sense of § 1 ff. HGB (German Commercial Code) – the court at the headquarters of ATLAS shall have exclusive jurisdiction. ATLAS shall also be entitled to bring an action at the place of the customer's head office. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision