



## General Terms and Conditions of ATV Technologie GmbH for Service Contracts and Maintenance Contracts

### 1. General

**1.1** These General Terms and Conditions (hereinafter: „GTC“) apply to all service, maintenance, repair and appraisal contracts (hereinafter: „order“) of ATV Technologie GmbH (hereinafter: „ATV“) with all its contractual partners (hereinafter: „customer“), who are entrepreneurs, legal entities, legal persons under public law or special funds under public law.

**1.2** All services of ATV are provided exclusively on the basis of these GTC; this also applies to any amendment of any kind and future orders.

**1.3** Any terms and conditions of the customer that contradict or deviate from these GTC and whose validity is not expressly acknowledged by ATV in written form shall not apply.

**1.4** Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTC. A written contract or the written confirmation of ATV is decisive for the content of such agreements, subject to proof to the contrary.

### 2. Conclusion of Contract

**2.1** All offers of ATV are subject to change and not legally binding. The written order confirmation of ATV is decisive for the conclusion of the contract and its content.

**2.2** ATV reserves the property rights and copyrights to all documents - also in electronic form - provided to the customer in connection with the placing of an order (e.g. illustrations, drawings, sketches, calculations, other calculations, etc.). The customer may not make these documents available to third parties, unless ATV gives its written permission. If no contract is concluded, the customer must immediately return any documents provided to ATV; the customer must delete electronically provided documents completely and permanently.

**2.3** With the conclusion of an order, the permission for test runs and trial operations is considered granted.

### 3. Prices, Insurance

**3.1** The prices of ATV are always net plus the statutory value-added tax („VAT“) applicable on the day of invoicing.

**3.2** If the order items handed over by the customer for repair are not insured against fire, theft, transport and storage damage, etc., these risks must be insured by the customer at his own expense before handover.

### 4. Due date, Terms of Payment, Offsetting, Right of Retention

**4.1** Payments are due on receipt of invoice. Objections to an invoice must be made in written form and within 14 days after receipt of the invoice.

**4.2** Payments are to be transferred to the account of ATV within the agreed payment period in EURO and in full, without discounts or other deductions. Bank charges incurred by foreign payments are to be borne by the customer.

**4.3** The payment is only considered to be completed when ATV has the full amount invoiced at its free disposal, free from third party claims. This applies in particular to cheques, bills of exchange, letters of credit and money orders.

**4.4** The offsetting of payment claims against counterclaims of the customer is excluded, unless it is an undisputed claim of the customer which has been legally established or proven ready for decision. The customer is only authorized to exercise a right of retention to the extent that his counterclaim is based on this (the same) contractual relationship.

**4.5** If the customer's financial situation deteriorates considerably, which gives rise to doubts about his creditworthiness (in particular in the case of protested bills of exchange and cheques, default of payment, default of payment for other deliveries or enforcement measures), ATV may, subject to ATV's other rights, demand advance payment of the purchase price or the provision of equivalent security. If the customer fails to do so, ATV shall be entitled to withdraw from the contract.

### 5. Execution deadlines, Acceptance, Transfer of Risk, Default of Acceptance

**5.1** A deadline for the execution of the order is only binding for ATV if this is expressly agreed in the contract. If this is not the case, ATV has the right to determine the performance period at its own discretion.

**5.2** In the event of force majeure and all other obstacles occurring after the conclusion of the contract for which ATV is not responsible, the time of execution shall be extended appropriately, but at least for the duration of the obstacle to performance. This shall apply regardless of whether these obstacles occur at factory of ATV or at the subcontractors, e.g. in the event of industrial action, loss of work due to an unforeseeable wave of illness of skilled workers, difficulties in procuring spare parts, breakage of specially shaped parts required for the performance of the service, delays in the delivery of essential raw and building materials, in the event of official interventions and in the absence of official or other permits. Force majeure in

the aforementioned sense shall apply in particular in the event of epidemics and other outbreaks of disease and epidemics.

**5.3** ATV will notify the customer of the completion of the order. The sending of the invoice is considered as notification.

**5.4** If ATV demands acceptance of the service after completion of the order - possibly also before the agreed execution period has expired - the customer must carry it out within 12 working days; a different period can be agreed. If the acceptance does not get declared within this period, it is considered to have taken place.

**5.5** If ATV does not demand acceptance, acceptance shall be deemed to have taken place at the latest 24 working days after notification of completion in accordance with Section 5.3.

**5.6** The customer may refuse acceptance only because of substantial defects and only until they are eliminated.

**5.7** With acceptance of the service, the risk of accidental loss and accidental deterioration passes to the customer.

**5.8** If the customer is in default with the acceptance of performance of ATV, the risk of accidental loss and accidental deterioration passes to the customer. ATV is entitled to deposit the object of the contract in a public warehouse or otherwise in a safe manner at the risk and expense of the customer. If ATV stores the subject matter of the contract on its premises, it is entitled to demand reasonable storage costs from the customer.

### 6. Additional Expenditure, Impracticability, Termination

**6.1** If it appears after conclusion of the contract that quantitative or qualitative additional work is required to be able to complete the order, the customer owes the usual remuneration for this, if the additional service can only be expected under the circumstances against remuneration. This is especially the case if additional work, working hours, spare parts or materials are necessary for the performance of the service.

**6.2** If an order cannot be carried out or completed for reasons for which ATV is not responsible, ATV is entitled to charge the incurred and provable expenses. Reasons for a non-executable order are in particular if a reported error does not occur, spare parts cannot be procured or parts or assemblies are damaged in such a way that repair is not possible.

**6.3** If the customer makes use of his ordinary right of termination, ATV can demand 15% of the agreed remuneration as a lump sum if the execution has not yet started. If the execution has already begun, at least 80% of the agreed remuneration is to be paid; if the execution has progressed further, the full remuneration less any saved expenses is to be paid.

### 7. Cooperation and Technical Assistance of Customers for Work Outside the ATV Premises

**7.1** During the execution of the work the customer has to support the staff of ATV at his own expense and, if necessary, provide suitable auxiliary staff in sufficient numbers and for the required time. The auxiliary staff have to follow the instructions of the persons entrusted with the management of ATV.

**7.2** The customer is responsible for the protection of persons and property at the place of repair.

**7.3** The customer has the duty to ensure appropriate working conditions and safety at the place of work.

**7.4** The project manager of ATV is to be informed about the safety regulations to be observed as far as necessary. Any violation of the safety regulations by ATV personnel must be reported by the customer to the management of ATV.

**7.5** The customer is obliged to provide the energy required for the work (e.g. lighting, operating power, water) including the necessary connections at his own expense.

**7.6** All structural preparations and connections for the equipment (e.g. water, gases, exhaust air device, etc.) must be completed before arrival. Necessary assistance from the customer is to be provided free of charge on request.

**7.7** The customer must provide all materials and operating supplies at his own expense and take all other actions necessary to regulate the subject of the order and to carry out the test.

**7.8** The customer has to ensure that the work can be started immediately after arrival of ATV personnel. Any delays for which the customer is responsible are at his expense.

**7.9** If the customer does not comply with his obligations, ATV is entitled but not obliged to take action in his place and at his expense.

### 8. Old Parts

The customer is responsible for the disposal of old parts and other items that are no longer usable. As far as legal regulations are enacted that determine otherwise, the customer is obliged to make an appropriate agreement with ATV regarding recycling. This agreement shall be aimed at the fact that the contractual partners shall use third parties to fulfill the recycling obligation.

## **9. Extended Lien**

**9.1** In addition to the contractor's lien in accordance with § 647 German Civil Code 9 ("BGB"), ATV is entitled to an extended lien on all items that have come into their possession on the basis of the order and are in the ownership of the customer with regard to the following claims:

**9.1.1** Claims from the order,

**9.1.2** Claims from previous orders related to the subject matter of the contract,

**9.1.3** Other claims arising from the business relationship, insofar as these are undisputed or legally established.

**9.2** By way of security, in the event that the customer is not the owner of the repaired object of the order, the customer assigns the claim and the expectancy of transfer of ownership or reassignment after complete redemption of existing claims of third parties to ATV and authorizes ATV to perform for the customer. ATV accepts the assignment. ATV is not obliged to fulfill in place of the customer.

## **10. Warranty**

**10.1** In case of deficiencies, ATV has the right to choose whether to remedy the defect or provide the service again.

**10.2** If the supplementary performance fails or is not carried out within a reasonable period of time, the customer shall be entitled to remedy the deficiency himself and demand reimbursement of the necessary expenses, to withdraw from the contract or to reduce the remuneration. Claims for damages and other claims for reimbursement of expenses shall be governed by Section 11.

**10.3** The customer bears any additional costs of subsequent performance that arise from the fact that the object of the order has been relocated to a location other than the customer's registered office contrary to its contractual stipulations.

## **11. Liability**

**11.1** Unless otherwise stated in the following provisions, ATV shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.

**11.2** ATV is liable for damages - for whatever legal reason - in the case of intent and gross negligence. In the case of simple negligence, ATV is only liable, subject to legal limitations of liability, for

**11.2.1** damages resulting from injury to life, body or health,

**11.2.2** damages resulting from the violation of an essential contractual obligation; in this case, however, ATV's liability shall be limited to compensation for the foreseeable, typically occurring damage.

**11.3** The limitations of liability resulting from 11.2. shall also apply to third parties as well as in case of breaches of duty by persons whose fault ATV is responsible according to the statutory provisions. They shall not apply if a defect has been fraudulently concealed or a guarantee for the quality of the product has been assumed and for claims of the customer under the German Product Liability Act („Produkthaftungsgesetz“).

## **12. Limitation**

**12.1** Deviating from § 438 para. 1 No. 3 BGB, the general limitation period for claims is one year from acceptance.

**12.2** Excluded from this is ATV's liability for intentional or grossly negligent breach of duty and liability for injury to life, body or health; in this respect the statutory limitation period applies.

## **13. Place of Performance, Place of Subsequent Performance**

**13.1** Place of performance is the registered office of ATV (Johann-Sebastian-Bach-Str. 38, 85591 Vaterstetten/Germany).

**13.2** Place of subsequent performance is the place where ATV has to execute the order according to the contract.

## **14. Place of Jurisdiction, Applicable Law, Partial Invalidity, Headings**

**14.1** The place of jurisdiction for both parties for all direct and indirect, present and future claims arising from the business relationship is ATV's headquarters in Munich/Germany.

**14.2** The contract is exclusively subject to the law of the Federal Republic of Germany.

**14.3** In the event of deviations or questions of interpretation, only the German version of these GTC shall prevail.

**14.4** If individual points of the contract and these GTC are or become invalid, the remaining contract shall not be affected. The parties undertake to agree on a provision that is legally permissible and comes closest to what was intended.

**14.5** The headings only serve to improve clarity and have no legal significance, in particular not that of a final regulation.

(state: Oct. 2020)