

**General Terms and Conditions of Sale and Delivery of
Atlas Copco IAS GmbH
AG Mannheim, HRB 729840
(Version: 04 December 2020)**

1. Scope

- 1.1. Our offers and acceptances, our supplies and deliveries as well as the entire legal relationship in this context with our customers (hereinafter referred to as “**customer**” or “**buyer**”) shall be effected solely on the basis of the following General Terms and Conditions of Sale and Delivery (our “**GTC Sales**”). These GTC Sales shall apply to all future business transactions between the parties and no further reference to these GTC Sales shall be required. They shall also apply if we do not expressly refer to them in future contracts, in particular, in situations in which we make deliveries or render services to customers without reservation while being aware of contrary or deviating conditions of the customer. We do not agree to any conflicting or deviating general conditions of the buyer; we hereby expressly object to any general conditions of the buyer.
- 1.2. Our GTC Sales only apply vis-à-vis entrepreneurs, legal persons under public law or special funds under public law according to Sec. 310 para. 1 German Civil Code (*Bürgerliches Gesetzbuch, BGB*). They do not apply vis-a-vis consumers within the meaning of Sec. 13 BGB.

2. Information and Consultation

The provision of information and consulting services regarding our products is based on our past experiences. Any specifications indicated in this context were determined on an average basis. Our provision of information and consulting services does not render dispensable suitability tests of the delivered goods and the compliance with processing requirements. Oral information shall not be binding.

3. Offers, Contract Formation, Specimen and Samples, Condition of the Goods

- 3.1. Our offers to customers are non-binding and shall be construed as an invitation to the customer to make a purchase offer to us. A contract shall not be formed until we confirm the purchase order or other order of the customer in writing or in electronic form or if we deliver the goods.
- 3.2. Unless otherwise agreed in writing, samples and specimen, especially validation facilities and testing systems are non-binding samples for your appraisal. In case of a purchase after having obtained a sample and/or specimen, we reserve the right to deliver goods with deviations, which are customary in the industry or in range within the regular production of the goods. A delivery of samples or specimen shall not constitute a warranty with regard to the condition or the durability of the goods, unless the order confirmation expressly provides otherwise.
- 3.3. Unless expressly agreed otherwise (e.g., in our order confirmation), the condition of the delivered goods and their possible uses are exhaustively specified in our catalogues, brochures and other publications in writing or in images (e.g., descriptions, illustrations or drawings). Our specifications shall not constitute a warranty with regard to the condition or the durability of the goods and reflect our current status of knowledge. We do not warrant that the goods are suitable for a particular use. We also do not assume any warranty with respect to the condition or the durability of the goods (Sec. 443 BGB) unless expressly stipulated otherwise as an exception.
- 3.4. Unless agreed otherwise, our offers are based exclusively on the specifications provided by the customer without any knowledge of the customer's conditions on our side. The customer bears the risk that the goods offered on such basis do not reflect his wishes and needs.
- 3.5. The customer is responsible for compliance with special provisions applying to the customer's business or import as well as export and for providing all necessary permits; the non-issuance of permits shall not affect the customer's obligation to accept the delivered goods.
- 3.6. We do not accept contractual penalty clauses in the customer's general terms and conditions of purchase. We expressly object to such penalty clauses.

4. Delivery, Time of Delivery and Performance

- 4.1. Deliveries shall be conducted according to our delivery capacities. Agreed delivery times shall only be considered as an approximate estimate, unless it was expressly agreed on a sale with an absolutely fixed date in writing. Especially stipulated delivery terms shall start to run as of the dispatch of our order confirmation. The delivery date is met if the goods leave our plant or warehouse or we indicate the readiness to ship the goods on or before the stipulated delivery date or within the agreed term.
- 4.2. Compliance with our delivery and performance obligations requires the timely and duly fulfilment of the customer's obligations. If an advance payment is agreed or our performance requires the provision of documents, approvals or clearances by the customer, the delivery term shall not start to run until the aforementioned requirements are fulfilled. We reserve the right to raise the defence of unperformed contract. Agreed advance payments must be deposited into our bank account prior to the delivery of the goods. If such payments are not deposited into our bank account until the scheduled delivery, we reserve the right to withhold the delivery.
- 4.3. If we still do not deliver on time due to reasons attributed to us, the customer may upon the expiry of an appropriate grace period withdraw from the contract by written notice.
- 4.4. The correct and timely delivery by our suppliers is essential for our deliveries. If such delivery of our suppliers fails we will notify the buyer of the unavailability of the goods without undue delay and refund the respective payments/performances. We shall be entitled to make partial deliveries unless they would be unreasonable for the buyer. Partial deliveries may be invoiced separately.
- 4.5. In the event of force majeure or other unforeseeable extraordinary circumstances not attributable to us, such as downtime due to fire, flood or similar factors, malfunctioning of production equipment or machines, failure on the part of our suppliers to fulfil delivery dates or to deliver at all, or interruptions in production due to lack of raw materials, adequate power supply or available staff, strike, lockout, difficulties in ensuring transportation, traffic congestion, pandemics, or action by official bodies, we shall be entitled to delay delivery or fulfilment of the agreement for the duration of such circumstances, plus an adequate recovery period, if such circumstances prevent us, through no fault of our own, from fulfilling our obligations. If the delivery or performance is thereby delayed by more than three months, both the customer and we shall be entitled to withdraw from the contract with regard to the delivery quantities or performances affected by the delay under exclusion of any claims for compensation of damages.

5. Transfer of Risk, Acceptance and Shipment

- 5.1. Delivery terms are ex-works, unless otherwise agreed. If the goods have been made available for dispatch, the risk of accidental loss or deterioration of the items being supplied shall pass to the customer once the customer has been notified of the availability for collection or shipment. Apart from that, the risk of accidental loss or deterioration of the items being supplied shall pass to the customer at the moment of handover (whereby the start of the loading process is decisive) to the carrier, haulage contractor or other person charged with shipping the goods. The risk of accidental loss or deterioration of the items being supplied shall likewise pass to the customer in case of partial deliveries, or if we, as an exception, have agreed to assume further obligations, such as bearing costs for shipment, travel and installation. If shipment is delayed for reasons attributable to the customer, the risk shall pass to the customer once we have notified the customer that the goods are ready for shipment.
- 5.2. If the parties as an exception agree on the acceptance of the purchased goods and thereby deviate from the provisions of the German Civil Code governing the sale of goods, the following shall apply:
 - a) The customer is obligated to accept essentially defect-free goods. The customer shall bear the risk of accidental loss or deterioration of the delivered items already from the time of their delivery to the customer on.
 - b) Unless agreed otherwise, the acceptance procedure shall take place without undue delay either on the date agreed upon for acceptance or following our notification that the acceptance procedure can be carried out. A protocol regarding the acceptance shall be drawn up and signed by both parties (e.g. in the acceptance protocol, repairers' report or commissioning report). It is

equivalent to acceptance if the customer does not accept the goods within a reasonable period of time specified for him by us, although he is under a duty to do so.

- c) It is also equivalent to acceptance if the goods produced essentially defect-free and we may perceive the customer's behaviour as approval of the services rendered by us as being essentially in accordance with the terms of the contract. This shall apply especially if the customer uses the item delivered by us for a not insignificant period of time in a productive manner. Further, it is equivalent to acceptance if the customer receives goods essentially defect-free without reprimanding their defectiveness. Such receipt without reprimand takes place if the customer does not inspect the delivered goods after their delivery by us without undue delay, insofar this is appropriate in the ordinary course of business, and if a defect shows up does not notify us immediately. Such notification must be made in writing (letter or fax).

5.3. The goods will be insured only at the express demand of the customer against theft, breakage, fire, and water damages as well as against other insurable risks, and then at the customer's costs.

5.4. If the goods are shipped to a place other than the place of performance at request of the buyer, he shall bear all costs arising from his request unless otherwise agreed. We shall have the right to choose the transport route and the carrier company without warranting the choice of lowest price shipment, full exploitation of the available cargo weight and requested carriage or container size. We shall comply with any request of the buyer as far as possible provided that the costs are borne by the buyer. The buyer shall report any transport damages specifying nature and scope in writing immediately after the receipt of the goods.

5.5. The Incoterms 2010 shall apply to cases in which the delivery was agreed according to Incoterms.

6. Prices

6.1. The prices agreed on at the time of contract formation shall apply, in particular the prices specified in the order confirmation. In case a price is not expressly determined, the valid prices of our price list at the time of contract formation shall apply. Our prices shall be ex-works (Incoterms 2010) in Euro, unless otherwise provided in the order confirmation.

6.2. All of our prices, rental fees and other charges do not include VAT which is invoiced in addition in the respective statutory amount. In the case the shipment of the goods is agreed, the customer shall bear the transport costs ex-works and, if so elected by the customer, the insurance costs. The customer shall further bear any duties, custom charges, fees, taxes and other public charges.

6.3. The prices are charged for the deliveries and services stipulated in our order confirmation. Any excess or supplementary deliveries and services will be charged extra.

7. Payment, Due Date, Right of Retention

7.1. Unless stated otherwise in the order confirmation, the purchase price shall be due and payable (without deduction) within 14 days of the date of the invoice and delivery of the goods or take over by the purchaser. The deduction of a cash discount (*Skonto*) requires a written agreement. If the deduction of a cash discount is agreed, such deduction only is allowed if the customer has fulfilled in full all his other obligations towards us. Cheques will only be accepted if this is expressly agreed and then on account of performance (*zahlungshalber*) only without the possibility to deduct cash discounts.

7.2. If we deliver to new customers or if circumstances become known, which put in question the customer's creditworthiness, we retain our right to demand advance payment. Partial deliveries will be charged after partial acceptance. If circumstances become known, which put in question the customer's creditworthiness, in particular in cases of return debit notes, delays in payment, unpaid cheques or if the customer ceases to make payments, or if other circumstance become known which are likely to significantly reduce the customer's solvency, we shall have the right to demand full payment of the outstanding claim, even if we already have accepted cheques. In the above mentioned cases, we shall be entitled to request prepayment or the provision of security for further deliveries, to claim damages after the expiry of an appropriate grace period or to withdraw from the contract.

- 7.3. The German statutory provisions concerning late payments shall apply. In case of default of payments, discounts, deductions of a cash discount and other benefits granted by us become obsolete; interest in the amount of 9 percentage points above the applicable base interest rate (Sec. 247 BGB) at this time will be charged. Any accidental loss or deterioration of the goods during the default of the customer does not relieve him from the obligation to pay the purchase price. In addition, we shall retain our right to claim additional default damages.
- 7.4. The buyer shall only be entitled to a right to set-off or to a right of retention if his claims have been finally established and are non-appealable or are uncontested or acknowledged by us. In addition, buyer shall only be entitled to use his right of retention if his claim is based on the same contract as our claim. In case of faulty products the customer's rights, in particular under sec. 9 of these GTC Sales remain unaffected.
- 7.5. We shall be entitled to credit payments of the buyer to the oldest claim irrespective of buyer's differing payment instruction.

8. Retention of Title

- 8.1. We shall retain full title to the delivered goods until the buyer has paid the purchase price in full and satisfied all our other current and future claims arising from the business relationship with the buyer. The retention of title shall remain unaffected if our claim for payment of the purchase price is added to a current account and the balance is acknowledged.
- 8.2. The buyer shall not pledge or transfer our goods as security. However, he shall be entitled to resell the goods in the ordinary course of business according to the following provisions. The buyer shall not be entitled to resell the goods if he assigns or pledges his claim arising from the resale of the goods against his contractual partner in advance to a third party or agrees to a non-assignment clause.
- 8.3. The buyer assigns with immediate effect all claims, also future and conditional claims, resulting from the resale of our delivered goods with all supplementary rights in the amount of the value of the delivered goods outranking the remaining parts of his claims in order to secure the fulfilment of all our claims referred to in sec. 8.1 to us. We hereby accept this assignment.
- 8.4. The buyer shall be entitled to collect the claims assigned to us from his customers in the ordinary course of business as long as he meets his payment obligations towards us. However, he shall not be entitled to enter into a current account arrangement with regard to these claims, to agree to a non-assignment clause or to an assignment to third parties or to pledge the claims. In case of the existence of a current account arrangement contrary to sentence 2 between the buyer and the purchaser of our goods subject to retention of title, the assigned claim shall comprise any acknowledged balance and in case of insolvency of the purchaser, the respective balance existing at that time shall be included as well.
- 8.5. The buyer shall account for each claim assigned to us at our request and notify his debtors of the assignment demanding payment to us until all of our claims against the buyer are satisfied. We shall be entitled to notify buyer's debtors of the assignment and collect the claims at any time. However, we will not make use this authorization as long as (alternatively) the buyer duly meets his payment obligations without default, an application for the opening of insolvency proceedings against the buyer is not filed, and the buyer does not cease to make payments. If one of the aforementioned cases occurs, we may request that the buyer discloses the assigned claims and the debtors and provides all necessary information and pertinent documents for the collection of the claims.
- 8.6. In case of seizures or other interventions by third parties, the buyer shall notify us in writing without undue delay so that we can file a complaint according to Sec. 771 German Code Civil Procedure (ZPO) or a comparable provision under the jurisdiction where the customer is located or under the jurisdiction competent for the pledged security.
- 8.7. We agree to release the securities due to us at buyer's request if and insofar as the realisable value of our securities exceeds our claims against the buyer by more than 10 %; we shall have the right to choose the securities to be released.

- 8.8. If the buyer is in breach of contract, in particular if he is in default of payment with more than 10 % of the invoiced amount for a not insignificant period of time, we shall be entitled – without waiving other claims for damages – to withdraw from the contract and demand from him to return the delivered goods. After such return of the delivered goods, we shall be entitled to resell the goods. The proceeds of the sale shall be credited towards the existing liabilities of the buyer with deduction of reasonable sales costs.

9. Buyer's Claims in Case of Defect

- 9.1. The buyer shall only be entitled to bring claims for defects as to quality (warranty claims) if he has duly fulfilled his inspection and notification obligations according to sec. 377 German Commercial Code (*HGB*). The buyer shall inspect the delivered goods – even if samples or specimen were provided in advance – upon receipt with regard to completeness and conformity without undue delay. The delivery is deemed to be approved if we do not receive a notice of defects in writing or by fax without undue delay, however, not later than three workdays after receipt of the goods at their final destination, or, if the defect was not recognizable in spite of a proper inspection, within three workdays after its discovery. This shall apply accordingly to excess deliveries. If an excess delivery is not objected to within three work days from the time of its receipt at its final destination, it shall be deemed as approved. Our sales force and field staff is not authorized to receive notices of defects or notices of excess deliveries.
- 9.2. If the buyer accepts defective goods even though he is aware of its defects, he shall be only entitled to assert claims and rights with regard to defects if he expressly reserved those claims and rights at the time of acceptance.
- 9.3. In case of a justified notice of defects, the buyer initially shall only have a right to supplementary performance (*Nacherfüllung*) which we will fulfil at our choice by either delivering defect free goods or repairing the defect. If supplementary performance has failed or is unreasonable for the buyer or dispensable due to our final rejection of such supplementary performance or if it cannot be effected timely in cases in which the interest of the buyer to receive the goods is connected to the timeliness of the delivery or in case of extraordinary circumstances which justify an immediate withdrawal after an evaluation of both parties' interests, the buyer shall have the right to reduce the price or withdraw from the contract and claim damages according to sec. 10.
- 9.4. The provisions under sec. 9.3 shall not apply in cases of buyer's recourse against us according to Sec. 478 BGB. If a customer of the buyer claims recourse against the buyer due to defects of newly manufactured goods, the buyer shall notify us without undue delay. The buyer shall impose the same obligation on his customers if they are entrepreneurs. We reserve the right to fulfil any claims of the customers against the buyer. In that case, the fulfilment of the claims of the customers shall be deemed as the fulfilment of the claims of the buyer against us.
- 9.5. Any costs arising in connection with the supplementary performance, in particular costs for transport, tolls, labour and material are borne by us. This shall not apply if the costs increase due to the fact that the goods were brought to a different place as the place of residence or business of the buyer unless it is in accordance with the designated use of the goods. Any costs arising in connection with visual inspections due to notices of defects, such as travel costs, examinations etc., shall be borne by the losing party.

10. Liability

- 10.1. We shall only be liable for damages or unnecessary expenses – for whatever legal reason – if the damages or the unnecessary expenses
- a) were caused by us or one of our vicarious agents through a culpable breach of an obligation, the fulfilment of which is essential for the carrying out of the contract and which the customer would ordinarily be entitled to depend upon (material contractual obligation), or
 - b) can be attributed to gross negligence or wilful infringement of a contractual obligation on our part or the part of our vicarious agents.

- 10.2. Notwithstanding of sec. 10.1 a), we shall be liable for damages or unnecessary expenses that arise from providing consulting services and/or information that is not to be billed separately only in the event of wilful or gross negligent infringement of a contractual obligation, insofar as such an infringement does not constitute a defect as to quality with respect to the delivered goods according to Sec. 434 BGB.
- 10.3. If we are liable according to Sec. 10.1 a) for the breach of a material contractual obligation without acting with gross negligence or wilfully, our liability shall be limited to the damage foreseeable at the time of contract formation and typical in such situation. The above limitation of liability according to sentence 1 shall apply *mutatis mutandis* to claims arising from gross negligent or wilful conduct of our employees or authorized representatives, insofar as such persons are not members of our board of directors or management staff.
- 10.4. In any cases of simple negligence our obligation to pay damages for property damages or resulting pecuniary losses shall be limited to the amount of EUR 1 million per incident and in total to the amount of EUR 2 million per calendar year, even if we are in breach of a material contractual obligation.
- 10.5. The above limitations of liability (sec. 10.1 to sec. 10.4) shall not apply if the liability in question is arising under the provisions of the Product Liability Act (*Produkthaftungsgesetz*), or if claims are brought against us for the injury of life, limb or health.
- 10.6. In the event of goods delivered by us not possessing a guaranteed characteristic or feature, we shall only be liable for losses directly resulting from the failure to supply this specific characteristic or feature.
- 10.7. Any liability in excess of the liability stipulated in the aforementioned provisions of sec. 10.1 through sec. 10.6 is hereby expressly excluded, irrespective of the legal nature of the asserted claim.
- 10.8. As far as our liability is excluded or limited according to sec. 10.1 to 10.7, this limitation of liability shall also apply with regard to the personal liability of our employees, labourers, co-workers, representatives and vicarious agents.

11. Limitation of Actions

- 11.1. Claims of the buyer relating to defects of delivered goods or to a breach of obligations including claims for damages and unnecessary expenses, are subject to a limitation period of one year as of the start of the statutory limitation period unless otherwise stipulated in sec. 11.2 and sec. 3.
- 11.2. If we provided consulting services and/or information not to be billed for separately constituting a breach of duty without delivering products in connection with the information or consulting services or the consulting services or information in breach of duty did not give rise to a defect as to quality of the delivered goods / goods to be delivered according to Sec. 434 BGB, any claims of the buyer against us shall be subject to a limitation period of one year running from the commencement date of the statutory limitation period. Claims of the buyer against us arising from breach of contract, breach of pre-contractual or statutory obligations which do not constitute a defect as to quality of the delivered respectively the goods to be delivered, shall be subject to a limitation period of one year, running from the commencement date of the statutory limitation period. As far as the aforementioned breaches of contract constitute a defect as to quality according to Sec. 434 BGB arising in connection with the provision of consulting services or information of the delivered goods, the respective claims shall be subject to a limitation period according to sec. 11.1 and sec. 11.3.
- 11.3. The provisions of sec. 11.1 and sec. 11.2 do not apply to limitation periods of claims arising from injury to life, limb or health, nor do they apply to claims brought under the German Product Liability Act (*Produkthaftungsgesetz*) nor to claims arising from a defective title of the goods delivered by us, which invoke a third parties right *in rem* and would result in that third party's claim to have the delivered goods handed over to him. They furthermore do not apply to the limitation period of the buyer's claim relating to a fraudulent concealment of defects in the delivered products or the wilful or gross negligent breach of an obligation. The limitation period according Sec. 438 para. 1 No. 2, 634a para. 1 No. 2 BGB (defects of buildings or construction materials) and the limitation period in case of a supplier's recourse according to Sec. 478, 479 BGB shall likewise remain unaffected by sec. 11.1 and sec. 11.2. This shall also apply if the buyer is a consumer (Sec. 13 BGB). In these cases the statutory limitation periods shall apply.

12. Intellectual property, Rights of Use and Confidentiality

- 12.1. We expressly reserve title and intellectual property rights with regard to offers, illustrations, drawings, standard sheets, data storage devices, plans, sketches and other work documents (including copies thereof) handed over by us to the customer. Upon our request and after an order is completely processed these items are to be returned to us entirely. Without our written consent these items must not be given to third parties or used for purposes other than the contractual purposes.
- 12.2. If software is delivered together with goods delivered by us, the customer shall obtain a non-exclusive, non-transferable and non-licensable right to use such software for business purposes. Apart from this, the customer is not entitled to hand over software, data or information to third parties.
- 12.3. The parties agree to keep confidential all items (e.g. software, documents, information) provided or become known to them prior or during the performance of the contract which are protected by the operation of law or which contain trade or business secrets or which are classified as confidential both during and beyond the term of the contract, unless such items become publicly known without a breach of the confidentiality obligation. The parties shall keep and secure these items in such a way that third parties are unable to access them.

13. Place of Performance, Jurisdiction, Applicable Law, Miscellaneous

- 13.1. Our respective delivery place shall be the place of performance for deliveries and performances of both parties irrespective of the method of pricing with the exception of buyer's payments; the place of performance for payments of the buyer shall be our accounting office.
- 13.2. The exclusive place of jurisdiction for all disputes with merchants (*Kaufleute*), legal persons under public law or special funds under public law, shall be the place of our registered office in Bretten, Germany. This shall also apply in case the customer does not have a general place of jurisdiction in Germany. However, we shall also be entitled to file a complaint at the statutory place of jurisdiction of the buyer.
- 13.3. All legal relationships between us and the buyer shall be governed by substantive German law in the way it applies to two German merchants; the provisions of the United Nation's Convention on Contracts for the International Sale of Goods shall be excluded.
- 13.4. The buyer shall be responsible for the compliance with the governing tax and custom provisions applicable to him. He shall indemnify us from all disadvantages which arise due to the violation of statutory provisions.
- 13.5. Should the contract or these GTC Sales contain a gap, such gap shall be filled with a valid provision which the parties would have agreed on taking into account the economic goal of the contract and the purpose of these GTC Sales, had they been aware of the gap.
- 13.6. **Note:** The customer is informed that we store data from the contractual relationship for the purpose of data processing in accordance with Sec. 28 of the German Data Protection Act (*Bundesdatenschutzgesetz*) for the purpose of fulfilling the contractual relationship, and we reserve our right to transfer such data to third parties (e.g., insurance companies) if this is necessary for the fulfilment of the contract.
