

## **General Terms and Conditions of ATP Automotive Testing Papenburg GmbH**

ATP Automotive Testing Papenburg GmbH, hereinafter referred to as "ATP" operates one of the largest automotive test sites for passenger cars, motorcycles and commercial vehicles. State-of-the-art and partly unique test tracks, completely equipped workshops as well as associated test facilities and a competent engineering team are available to all national and international automotive manufacturers and their suppliers for the implementation of test activities.

### **A. General Part**

#### **§ 1**

##### **General • Scope**

- (1) These general terms and conditions applicable to orders of ATP apply exclusively. Conflicting or customer conditions deviating from these terms and conditions of ATP are not recognised by ATP, unless ATP has expressly agreed to their validity. These general terms and conditions applicable to orders of ATP also apply if ATP provides/supplies the contractual services without reservation whilst being aware of contradicting or deviating conditions of the customer.
- (2) All agreements made between ATP and the customer for the execution of the contractual relationship, must be made in writing in this contract; there are no verbal ancillary agreements. The individual contractual provisions of the ATP apply with priority.
- (3) These general terms and conditions applicable to orders of ATP apply only in respect to an entrepreneur, a legal person governed by public law and a special government-owned fund under public law according to § 310 para. 1 BGB.
- (4) In the context of an ongoing business relationship, these general terms and conditions applicable to orders shall also apply to all future contracts with the customer concerned.
- (5) These general terms and conditions applicable to orders relate to the following services of ATP:
  - B. Use of test track, leasing, events (page 5 to page 8)
  - C. Test stand operation and engineering services (page 8 to page 13)
  - D. Sale (page 14 to page 15)

#### **§ 2**

##### **Offer • Offer documents • Conclusion of contract • Cancellation costs**

- (1) Offers from ATP are non-binding unless stated otherwise in the order confirmation. We reserve the right to interim allocation of the services to third parties.
- (2) ATP reserves ownership and copyrights of figures, drawings, calculations and other documents. This applies also to such written documents designated as "confidential". Before their transfer to third parties the customer requires express written consent of ATP.
- (3) The contract is concluded by accepting the binding offer of ATP within the acceptance period.
- (4) Costs for the cancellation of orders for services of the ATP staff amounting to 50% of the not retrieved order value are accrued, if the cancellation of the customer is made within the last 24 hours before the agreed utilisation. Cancellation costs for external services (hotel reservations, catering, rental vehicles, tents, etc.) are forwarded by the external service provider via ATP to the customer.

#### **§ 3**

##### **Compliance with laws / Right to receive information of ATP / Quality management / Data protection**

- (1) The customer is obliged to commit no actions or to refrain from committing actions that could lead to a criminal liability due to fraud or breach of trust, insolvency offences, criminal acts against the competition, granting of advantages, accepting of advantages, bribery, corruption or comparable offences of persons employed with the customer or other third parties. In the event of a violation of this, ATP is entitled to the right of withdrawal or termination without notice of all

legal transactions with the customer and the cessation of all negotiations. Notwithstanding the aforementioned, the customer is obliged to comply with all laws and regulations concerning himself and the business relationships with ATP.

- (2) In the event of violation of his duties from para. (1), the customer is obliged to hold ATP harmless from claims of third parties and to immediately replace the damage caused to ATP by this.
- (3) To ensure process and service quality, the contractor assures the use of certified quality management systems (e.g. ISO 9000 et seq.). This also applies to achieving an adequate level of information security (confidentiality, integrity and availability of all information and data of ATP) by assuring the respective state-of-the-art technology as well as appropriate organisational measures. The principal has the right to carry out audits in this respect at the contractor.
- (4) ATP takes data protection seriously. ATP refers to its separate privacy statement for all information related to the handling of customer data: <https://atp-papenburg.de/en/datenschutz/>

#### **§ 4**

##### **Booking of accommodation**

- (1) ATP offers the customer the possibility to book rooms on customer request via ATP. Information on accommodation that can be generally booked via ATP is available on request.
- (2) If the customer intends to make use of ATP's booking service, the customer shall inform ATP about the desired accommodation, and, where applicable, about room type(s) and room category (categories) as well as the desired time period.
- (3) With the communication of the data mentioned under para (2) to ATP, the customer places a binding order for booking the desired accommodation in the name and on behalf of the customer. The power of attorney issued with the booking order is revocable, limited to the specific period of the desired stay and comprises only the conclusion of accommodation contracts with the provider of the accommodation desired by the customer as well as the conclusion of all associated other legal transactions.
- (4) The order shall become effective only if ATP sends a corresponding order confirmation to the customer. Under no circumstances shall the order confirmation constitute a commitment with regard to the provision of accommodation. There is no entitlement to the provision of accommodation. With the booking of accommodation via ATP, the customer enters a direct and legally binding contractual relationship with the accommodation provider where ATP books for the customer. From the date of execution of the booking, ATP acts solely as intermediary between the customer and the accommodation provider. The booking confirmation by the respective accommodation provider is relevant.
- (5) Any costs incurred shall be borne exclusively by the customer, this includes in particular the costs for cancellations, special requests, and meals. Any discounts or special conditions may be granted by the accommodation provider. There is no claim against ATP for such discounts or special conditions.
- (6) The information used by ATP for the execution of the services, is based on the information provided by the customer and the accommodation providers.
- (7) All claims and obligations resulting from the booking contract are directly and exclusively between the customer and the accommodation provider in question. There will be no contractual relationship between the customer and ATP created by the use of the accommodation service that goes beyond the execution of the booking.
- (8) If the customer wishes, ATP will communicate on special request the contact data of the accommodation listed under para. (1). There will be no further claims by the customer resulting from the notification. In particular, the release of the contact information is not connected to any statements on the quality, availability, prices or the service of the accommodation provider. In the event that the customer decides to book one of the procured accommodations, the customer shall inform the accommodation in question that the contact data were provided by ATP. In the event that the customer books a procured accommodation, the customer shall inform ATP accordingly.

## **§ 5**

### **Prices / Terms of payment / Advance payments**

- (1) The payment for the contractual object, such as rent and ancillary costs, arise from the respective current offer or the price list for the respective contractual object.
- (2) The prices quoted by ATP do not include the statutory VAT. It shall be shown separately at the statutory rate in the invoice.
- (3) The request for payment by ATP is due with the transfer of the contractual object if the contractual partners agree on a fixed contract term. The payment and other costs shall be invoiced to the customer after the end of the contract with a payment period of 10 days from receipt of invoice.
- (4) If the contractual parties do not agree on a contract end that is determined by a calendar date, ATP shall be entitled to invoice advance payments to a reasonable extent that shall become due with the conclusion of the contract and must be settled prior to the transfer of the contractual object – e.g. prior to accessing the test track. The outstanding payment and other costs shall be invoiced separately to the customer after the contract end with a payment period of 10 days from receipt of invoice.
- (5) For rentals, long-term renters with rental periods of more than 1 month pay the rent monthly in advance.
- (6) The customer is entitled to rights of set-off only if his counterclaims are legally established, undisputed or acknowledged in writing by ATP. Furthermore, he is entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

## **§ 6**

### **Access authorisation of the customer to the ATP test site**

- (1) ATP grants access and usage rights only in a limited manner for the comprehensive protection of its possession, property, know-how and for security reasons. Without prior notification of ATP, nobody is allowed to access the test site. In any case, the procedure described below to receive access authorisation for the customer, his employees, suppliers and guest must be adhered to.
- (2) For the access authorisation of the customer, his employee, supplier and guests to the entire test site - and thus also to the contractual object - and if no permanent passes have been issued, in any case a written registration by an authorised signatory of the customer, which must be known by name to ATP, must be issued. As a rule, the written registration must reach ATP (Customer Service) with a lead time of at least 1 working day.
- (3) Access to the ATP test site is permitted only upon presentation of a personal confidentiality obligation. The ATP ID must be worn visibly at all times and must be presented at the request of ATP.
- (4) ATP expressly reserves the right to refuse / withdraw the access authorisation for legitimate reasons in individual cases. ATP will inform the customer immediately about the reasons.
- (5) The authorisation for the customer to access the contractual object does not include access to other ATP facilities.

## **§ 7**

### **Use of the ATP facilities • Property owner's duty of care**

- (1) The ATP facilities are at the customer's disposal and at the disposal of the group of persons working for him exclusively for the agreed type of use and within the agreed scope, on the agreed days, at the agreed times of use.
- (2) The customer is authorised to the transfer of use and access rights to third parties only with the consent of ATP. Third parties are all persons not employed with the customer. Access to ATP facilities that are not part of the agreed scope of use, is expressly prohibited to the customer and the group of persons associated with him (also guests and suppliers).

- (3) ATP has the right to establish general rules on the behaviour on the test track and the entire ATP test site. These rules are required to maintain safety and order on the property. The rules shall become an integral part of this contract and must be complied with.
- (4) The customer must ensure that his activities on the test track are carried out in accordance with the generally valid safety provisions in their current form.
- (5) When using vehicles on the ATP test site, the traffic regulations of the respectively valid operating and safety manual apply to the respective driver.
- (6) Before the first use of a technical facility/device or a technical instrument, the customer and the group of persons working for him shall participate in the mandatory electronic instruction. This instruction will be repeated once a year by the aforementioned group of persons if required. The customer has to inform the group of persons working for him and place it under a corresponding obligation.
- (7) During the term of the contract, the customer assumes full responsibility for the property owner's duty of care for exclusively used ATP facilities. This does not apply to test tracks.

### **§ 8**

#### **Liability of ATP**

- (1) ATP's liability is restricted to its contractual obligations. Depending on the object, these could be the allocation of the test tracks for contractual use and compliance with the duty to ensure public safety, insofar as these concern the test tracks and have not been taken over by the customer.
- (2) Moreover, the liability of ATP is limited to gross negligence and intent with regard to other violations of duty, tort or negligence on conclusion of the contract.
- (3) In the event of slight negligence, ATP's liability is limited to replacing immediate, typically foreseeable damage even in case of violation of contractual duties. In particular, a loss of profit resulting from this will not be replaced.
- (4) ATP is liable to the extent to which its negligence has contributed in the creation of the damage in relation to other causes.
- (5) The description of the contractual object such as test tracks in brochures and models is not a contractually agreed condition. With regard to the design of the contractual object, ATP can effect changes as long as the contractual object does not lose its character as a result.
- (6) All limitations of liability do not apply if the loss of life, body or health is concerned.
- (7) Unless otherwise agreed in the contract, the provisions on the waiver of liability in connection with insurances apply.
- (8) Insofar as the liability for damages of ATP is excluded or limited, this shall also apply to the personal liability for damages of the staff, workers, employees, representatives and vicarious agents of ATP.

### **§ 9**

#### **Confidentiality**

- (1) Confidentiality obligations result from a separate confidentiality obligation (ATP 4116).
- (2) ATP is authorised to state the fact of the relationship with the customer for reference purposes if the customer gives his consent.

### **§ 10**

#### **Place of jurisdiction • Place of performance**

- (1) If the customer is a merchant, the place of jurisdiction is the registered office of ATP. However, ATP is authorised to sue the customer also at the court of his registered office.
- (2) The law of the Federal Republic of Germany shall apply. Application of the UN sales convention is excluded.
- (3) Unless stated otherwise in the order confirmation, the registered office of ATP is place of performance.

## **B. Use of test track, leasing and events**

### **§ 1**

#### **Contractual object**

- (1) Contractual object is the payment-based utilisation of test tracks and/or leasing of a workshop and/or an office including the respective inventory. Further sections of the ATP rest site can be rented for customer events. The specification of the test tracks (track modules) respectively of the rented object is done in the booking form or in the contract.
- (2) The respective contractual object is provided in the state in which it is at the time of transfer of usage and exclusively for the agreed purpose. The customer may not carry out any modifications to the contractual object without the consent of ATP. Sub-letting of a leased workshop/office is prohibited. Sub-letting is not the complete or partial transfer of use of the rented object to associated companies according to § 15 German Stock Corporation Act.
- (3) The customer has to voice his complaints prior to using the contractual object, otherwise the contractual object is seen as perfect. Subsequent complaints will not be recognised.
- (4) ATP is authorised to permit driving on the test track to several customers at the same time. The exclusive use of the test track must be expressly agreed in the contract. ATP does not provide any protection against competition.

### **§ 2**

#### **Contract period**

- (1) The contractual relationship commences as soon as the customer receives the order confirmation from ATP, unless a different date has been agreed in the contract by the contractual partners. The contractual relationship starts at the latest with the transfer of usage of the contractual object.
- (2) The contractual end is fixed in the contract. The contract term can be exceeded only after prior agreement of ATP. Changes to the contract term might result in additional claims of ATP. The customer holds ATP harmless from claims that third parties make against ATP due to exceeding the contract term.
- (3) If the contractual partners have not agreed on a fixed contractual end, the notice of termination is permitted at any day for the expiry of the following working day. The notice of termination must be made in writing to be effective.

### **§ 3**

#### **Withdrawal prior to using the contractual object**

- (1) The customer is entitled to withdraw from the contract prior to using the contractual object without stating any reasons. The withdrawal must be made in writing to be effective. In this case, the customer is obliged to pay the following compensation to ATP depending on the time of receipt of the declaration of withdrawal, if

the customer has withdrawn from the exclusive use of test tracks:

- (a) 50% of the net fee plus VAT at the statutory rate, if the withdrawal is made between the 29<sup>th</sup> and 14<sup>th</sup> day prior to the contract start;
- (b) 70% of the net fee plus VAT at the statutory rate, if the withdrawal is made between the 13<sup>th</sup> and the 7<sup>th</sup> day prior to the contract start;
- (c) 90% of the net fee plus VAT at the statutory rate, if the withdrawal is made less than 7 days prior to the contract start.

the customer does not take over the contractual rented object:

- (d) the customer is obliged to pay ATP a compensation of Euro 150 plus VAT at the statutory rate, if the cancellation is made less than 3 working days prior to the beginning of the contract.

- (e) the customer shall have to pay 50% of the net rent plus VAT at the statutory rate during the rental duration, if the customer does not take over the contractual rented object at the rental start, without having informed ATP beforehand about the cancellation,
- (2) The customer shall retain the right to prove a lower damage on the part of ATP.

#### **§ 4**

##### **Due diligence obligations and liability of the customer • Insurances**

- (1) The rules of the house (ATP 3008), the terms of use and safety of ATP must be adhered to by the customer, his employees and other vicarious agents.
- (2) The customer, his employees and other vicarious agents must treat the contractual object, the test track accessories and the inventory in such a way that no significant defects are caused.
- (3) In the event of damage to the contractual object or other ATP facilities, the customer is obliged to inform ATP immediately.
- (4) If the customer, his employees or other vicarious agents damage the contractual object or other ATP facilities by an action (e.g. improper use) or failure to comply with reasonable precautions against the damage, ATP may demand compensation of the damage incurred. This does not apply if the damaging party has acted neither intentionally nor negligently.
- (5) The customer is obliged to take out the following insurances with adequate coverage and maintain during the contract term:  
Business liability insurance, environmental damage insurance and a liability insurance, which covers the use of the contractual object by persons or machines

#### **§ 5**

##### **Extraordinary termination**

- (1) ATP has the right to terminate the contract for good reason without observing a notice period and with immediate effect. An important reason exists, in particular, also, if the customer continues to use the contractual object in a non-conforming manner despite written warning by ATP (e.g. risk to the test track by inappropriate use, unauthorized sub-letting, risk to the rented object by inappropriate use or neglect of exercising due diligence) and thus violates the rights of ATP not only slightly.
- (2) Any termination of this contract must be made in writing.
- (3) Section 580 of the German Civil Code [*BGB*] is excluded.

#### **§ 6**

##### **End of the contractual relationship**

- (1) The customer is obliged to leave the contractual object (test tracks, rented/leased objects) completely empty on the last contract day. The rented object has to be returned including the inventory on the last rental day without any defects and swept clean, as well as all keys for the rented object to the relevant contact persons of ATP. The original state must be restored by the customer.
- (2) If the contractual relationship is ended by termination without notice by ATP, the customer shall also be liable for any damage caused to ATP by the fact that the test tracks remain unused (profit loss) and that the rented object will be empty after evacuation and return by the customer or must be rented at a cheaper rate (rental loss). If a test track is blocked by the customer or if the evacuation and return of the rented object is delayed on termination of the contractual relationship, the customer shall be liable against ATP for all damage resulting from the delay of the evacuation and return, whereby the client subject to proof of a higher damage, must pay at least the payment owed (track use respectively rent) according to this contract as usage payment.

## **§ 7**

### **Environment / emissions**

- (1) The customer must dispose of any waste generated by him (e.g. old tyres etc.) at his own expense according to the provisions of the waste legislation, unless it has been agreed that ATP carries out the disposal of the waste for the customer against payment.
- (2) If the customer fails to comply with his obligation to dispose of the waste and ATP has not received an order to dispose of the waste, ATP reserves the right to carry out the work to be done for the customer. The costs incurred shall be charged to the customer.
- (3) The directive "loud vehicles" of ATP (ATP 3024) is an integral part of the contract. The customer is obliged to comply with this directive.
- (4) Upon registration, the customer must make a binding statement of the noise emissions of the individual vehicles (<98 dBA; >98 dBA <118 dBA) and comply with the respective limits for the permitted usage times. Vehicles with noise emissions >118 dBA are not allowed on the test site. The noise emissions must be determined using the measurement method stated in ATP 3024.
- (5) ATP reserves the right to check the stated noise emissions on site. If the limits are exceeded, further use of the test site is not permitted.

## **§ 8**

### **Goods deliveries**

- (1) If the customer wants to have goods delivered to the rented object on the ATP test site, he must register such goods deliveries in advance with ATP, grant access to the rented object on the day of delivery and ensure the processing of customs and delivery formalities. The respective supplier/carrier/freight forwarder will not be granted access to the ATP test site in case of unregistered goods deliveries and the goods cannot be delivered. The customer has to bear the resulting costs unless he proves that he is not responsible for the failure to register.
- (2) ATP assumes for the customer neither the acceptance of delivered sale goods or transport services through product testing and signing of the delivery note, nor does it store delivered goods for the customer, but it only informs the customer immediately about the receipt of goods. After consultation, the lessor accepts the goods delivered for the lessee (goods receipt) and takes over the handling of delivery formalities. However, the testing of the goods and the approval of the goods/transport services as contractual service (approval) is the sole responsibility of the customer.
- (3) In the case of goods collections that are to be coordinated by ATP, a certificate for transporting materials or goods must be filled in and deposited at the gate. Collection of goods must be carried out by the end of the contractual relationship.
- (4) Hazardous goods must be declared properly and must be stored only in designated containers and premises.

## **§ 9**

### **Events**

- (1) If the customer rents sections of the ATP test site for the purpose of organising an event, the following contractual terms apply, unless otherwise agreed.
- (2) ATP and the customer shall cooperate constructively for the purpose of the scheduled implementation of the event and provide each other with all relevant information. Nevertheless, the implementation of the event in line with the rental purpose is the exclusive responsibility of the customer. To this extent, ATP and the customer agree that the customer fulfil the following obligations at his own expense:
  - (a) Obtain the special permits or building permits required for the implementation of the event,
  - (b) Fulfil all regulatory requirements determined by the rental purpose,
  - (c) Ensure the proper and trouble-free running of the event by complying with all provisions of public law and taking the required security measures. In particular, the customer assumes

the obligations from § 38 para. 1 to 4 VStättVO (Regulation on Places of Assembly – Lower Saxony),

- (d) Registration of the event with GEMA, if required by the law, and payment of the fees and charges.
- (e) Insofar, the customer will hold ATP harmless from all claims of third parties that are made against ATP as a result of non-compliance with legal provisions.
- (3) The customer must describe in detail to ATP the type and content of the event as part of the rental purpose, in particular the number of visitors.
- (4) On all printed media, posters, tickets, invitations etc. the customer must be stated as organiser to indicate that there is a legal relationship between the event visitor and the customer, and not between visitor and ATP.
- (5) The customer must name ATP responsible persons who must be present during the event and must be reachable at any time.
- (6) Advertisement for the event is the sole responsibility of the customer. The textual and visual design of the advertisement has to be carried out in accordance with ATP. This also applies to the provision of the advertising media in the rooms and on the premises of ATP.
- (7) Required setup and dismantling for the event can only be carried out and completed after consultation with ATP and after approval by ATP outside the rental time.
- (8) The customer has to follow the invitation to carry out an inspection of the rented rooms or the event site prior to and after an event by ATP.
- (9) The customer is liable for all personal injury, material damage and property damage including any consequential damage caused by him, his employees, guests, visitors or other third parties in connection with the event. If the subsequent room or site use is hindered or impeded due to damage and its elimination, the customer shall also be liable for the resulting loss.
- (10) The customer must indemnify ATP from all claims for damages that could be asserted in connection with the event. This does not apply in the case of violation of the property owner's duty of care of ATP.
- (11) The customer is obliged to take out a comprehensive and adequate organiser liability insurance for the event area. Corresponding proof must be submitted to ATP no later than two weeks prior to the start of the event.

## **C. Test stand operation and engineering services**

### **§ 1**

#### **Typical contractual obligations**

- (1) The contract obliges ATP to the provision of the promised engineering services, and the customer is obliged to pay the agreed remuneration.
- (2) The test stand required for the provision of services are specified in the contract.
- (3) Engineering services of any kind can be contractual object. Engineering services are all services in connection with testing, inspection and repair of motor vehicles and motor vehicle parts and also of success brought about by such services as well as items that are produced or modified by technical services.

### **§ 2**

#### **Scope of services**

- (1) Type and scope of the services to be rendered by ATP for the customer, are described in ATP's offer. The offer is prepared by ATP based on a performance specification created by the customer that must be complete and correct.
- (2) If ATP takes the work results of third parties as basis or part of its services, with the consent of the customer, ATP can take these results without testing as a basis for its further service



provision, unless the customer orders ATP expressly in writing that these adopted work results must be tested.

- (3) ATP will render the services based on the generally acknowledged rules of technology applicable during the respective execution, as well as in compliance with the due diligence customary in the industry. According to the rules of sound engineering practice it is not possible in general to detect all errors or deviations in products or systems under all application conditions. Taking into account this fact, ATP takes over the responsibility for the proper processing and documentation of the service agreed with the customer without guaranteeing that ATP can detect all product or system errors or deviations through this. If the customer obtains knowledge of product or system errors or deviations during the service period, he will inform ATP immediately in writing.
- (4) Should additional service requirements or change requests lead to a change in the scope of services, these services must be confirmed by ATP in writing stating the expected additional costs and they will be invoiced separately.
- (5) ATP is authorised to include third parties in the processing of the orders if the customer does not expressly object to this.

### **§ 3**

#### **Collaboration by the customer**

- (1) The provision of the documents, documentation, hardware and software and all objects required to render the services as well as delivery and collection of a test object (vehicle, vehicle component) is the responsibility of the customer and the date for this must be coordinated with ATP. If the customer does not collect the test object, documents, documentation, hardware and software and other object after having been requested by ATP to do so, the return transport or the return shipment will be organised and charged to the customer.
- (2) The implementation of vehicle or vehicle component tests is carried out by ATP, if the customer provides proof about the conclusion of comprehensive insurances with appropriate amounts of coverage that covers the personal injury/passenger injury, material damage, environmental damage and property damage of ATP in connection with the test items insured against damage and destruction. Until proof is received, ATP can refuse engineering services without defaulting.
- (3) Scope and quality of services of ATP are decisively dependent on the scope and the quality of the involvement of the customer and, if necessary, product manufacturer and/or user. Therefore, the customer will take care of all required cooperation on his side or on the part of his vicarious agents in due time and free of charge for ATP.
- (4) The customer shall bear the costs for the additional expenses that are generated by the fact that service of ATP must be repeated or are delayed due to delayed, incorrect or incomplete information or other improper cooperative actions. Especially also in the case of the agreement of a binding fixed or maximum price, ATP shall be entitled to charge this extra expense separately.
- (5) ATP does not pay any compensation for damage or expenses arising from incorrect or incomplete preliminary work or incomplete cooperative actions of the customer. If such preliminary works/cooperative actions were not rendered in due time, the agreed periods shall be extended accordingly.
- (6) The customer is obliged to inform ATP immediately about damages and loss for which ATP is liable and have them documented on request by ATP itself or by a third party appointed by ATP.

### **§ 4**

#### **Deadlines • Dates**

- (1) The start of the deadlines stated by ATP and keeping of dates each require the binding specification of all technical questions and a binding order.
- (2) Compliance with the obligation of ATP requires the timely and proper fulfilment of the customer's obligations. The objection to unfulfilled contracts is reserved.
- (3) If during the execution of the order it becomes apparent that ATP cannot meet the deadlines due to reasons for which ATP is not responsible (e.g. strikes and lock-outs, breakdowns and delays by

suppliers as well as cases of force majeure), agreed deadlines shall be extended accordingly. This applies in particular if the customer expands the scope of service during the contract term, or if he has other change requests or if there are delays that are based on incorrect or incomplete information or other improper cooperative actions of the customer. ATP will immediately coordinate any resulting postponements with the customer.

- (4) If the customer is in default of acceptance or if he culpably violates other cooperative actions, ATP is authorised to demand compensation for damages, including any additional expenses. Further claims or rights are reserved.
- (5) If the violations from § 4 para. (4) apply, the risk of accidental loss or accidental deterioration of the work shall be transferred to the customer at the time when he fell into acceptance or payment default.
- (6) If the delay is based on a grossly negligent violation of the contract for which ATP is responsible, its liability for damages shall be limited to the foreseeable, typically occurring damage.
- (7) ATP shall be liable according to the statutory provisions, if the delay for which it is responsible is based on the culpable violation of an essential contractual obligation. In this case, however, the liability for damages is limited to the foreseeable, typically occurring damage.
- (8) Furthermore, if in default, ATP shall be liable for each completed week of default within the scope of a lump sum compensation amounting to 0.1% of the order value, however, not more than 5% of the order value.
- (9) Further statutory claims and rights of the customer are reserved.

## **§ 5**

### **Acceptance**

- (1) In case of services that are delivered, delivery "ex works" is agreed unless otherwise stated in the order confirmation.
- (2) Upon request of the customer ATP will cover the delivery with a transport insurance, which will be charged to the customer.
- (3) If the service can be accepted and if ATP demands acceptance of the service after completion, the customer has to carry it out within 12 working days. A different deadline can be agreed.
- (4) At the request of ATP self-contained partial performance are to be accepted separately.
- (5) Acceptance can only be refused in the event of major defects, and only until these defects have been remedied.
- (6) Acceptance must be made in writing if a contractual party demands it. Any reservations due to known defects and contractual penalties as well as any objections raised by ATP must be recorded in the acceptance protocol.
- (7) If no acceptance is requested, the delivery is deemed accepted with the expiry of 12 working days after written notification about the completion of the service.
- (8) Reservations due to obvious defects or due to contractual penalties must be expressed by the customer at the latest as stated in § 5 para. (7). Claims on account of hidden defects must be asserted immediately by the customer, in any case within 5 days after detection, and a comprehensible and exhaustive defect report must be submitted to ATP.
- (9) The risk is transferred to the customer with the acceptance.

## **§ 6**

### **Liability for defects**

- (1) Claims for defects by the customer require the proper exercise of his obligations of examination and notification.
- (2) If the customer proves the existence of a defect at the time of the passing of risk, ATP is authorised to subsequent performance in the form of rectification of defects or repeated service at its discretion. In the case of rectification of defects or replacement service, ATP is obliged to bear all expenses required for the subsequent performance, especially transport, travel, labour

and material costs, insofar as these are not increased by the fact that the project subject is transported to a different location than the place of performance.

- (3) If the enforceable claim for subsequent performance of the customer is not fulfilled by ATP within a reasonable period of time, the customer is entitled, at his discretion, to demand withdrawal or reduction.
- (4) ATP is liable according to the statutory provisions, if the customer asserts claims for damages that are based on intent or gross negligence, including intent or gross negligence of its representatives or vicarious agents. If ATP is not accused of any intentional breach of contract, the liability for damages is limited to the foreseeable, typically occurring damage.
- (5) ATP shall be liable according to the statutory provisions, if ATP culpably breaches an essential contractual obligation. In this case, however, the liability for damages is limited to the foreseeable, typically occurring damage. An essential contractual obligation exists, for example, if the breach of obligation refers to an obligation on the fulfilment of which the customer has relied on and was entitled to rely on.
- (6) The liability due to culpable injury to life, body or health is unaffected. This also applies to the mandatory liability according to the Product Liability Act.
- (7) Unless otherwise stipulated above, ATP excludes its liability.
- (8) The customer must bear the expenses required for the purpose of determining a material defect or defect of title, if the work was free of material defects at the time of the transfer of risk despite its assertion to the contrary. The goods shall also be considered free of material defects, if the proof that the work was defective at the time of the transfer of risk, cannot be presented.
- (9) The claims and rights described in this paragraph due to a defect become time-barred or terminate in 12 months, calculated from the transfer of risk. The limitation period for claims from legally declared withdrawal or declared reduction is 1 year, calculated from the end of the year in which the claim has arisen.

## **§ 7**

### **Total liability**

- (1) Any further liability for damages is excluded, regardless of the legal nature of the asserted claim. This applies in particular to damage compensation claims arising from culpa in contrahendo, due to other breaches of obligation or due to illicit actions for replacement of material damages according to § 823 BGB.
- (2) The limitation according to para. (1) also applies if the customer requests compensation for useless expenditures instead of damage or service compensation.
- (3) Insofar as the liability for damages of ATP is excluded or limited, this shall also apply to the personal liability for damages of the staff, workers, employees, representatives and vicarious agents of ATP.

## **§ 8**

### **Copyrights • Property • Right of use**

- (1) All copyrights, joint copyrights and property rights of procedures, documentation, programmes, calculations, other representations and the like developed by ATP remain with ATP.
- (2) The customer shall receive an exclusive right of use for the results achieved within the context of the order for the purposes determined in accordance with the contract, otherwise for the production and/or for the sale of corresponding products without restriction of the manufacturing and sales area.
- (3) The costs for the registration of property rights that are created during the provision of services shall be borne by each contractual party for the rights registered by it. This also applies to the invention remunerations for the respective employees. The contractual parties will inform themselves immediately about the submission of a registration of property rights application and in which countries it is lodged.

- (4) If employees of the customer and of ATP are involved in inventions that are created during the provision of the agreed services, the contractual parties shall immediately agree on who will appropriately work out the joint patent application. The registration of joint inventions is done by both contractual parties together. The resulting costs shall be born half/half by the contractual parties, unless the customer shall receive an exclusive right of use.
- (5) If one of the contractual parties is no longer interested in pursuing a property right, it will offer its share for takeover to the other contractual party.

## **§ 9**

### **Rights of third parties**

- (1) ATP is liable to the customer for the infringement of industrial property rights of third parties within the context of the following regulations. ATP is liable for ensuring that its services within the Federal Republic of Germany are free of proprietary rights of third parties.
- (2) If a third party raises an existing claim from property rights against the customer, the prerequisites for liability on part of ATP towards the customer are that the customer informs ATP immediately about this and that he will proceed in agreement with ATP when handling these claims and exercising his rights. If there is an infringement of third-party property rights, for which ATP is liable in accordance with the conditions and if therefore the customer is legally not allowed to make use of a service by ATP either wholly or in part, ATP will, at its own expense, either
  - (a) grant the customer the right for the use of the service (license purchase), or
  - (b) design its service without trademark rights, or
  - (c) replace its service with a service of equivalent quality, which does not infringe any property rights, or
  - (d) take back its service against reimbursement of the counter payment.
- (3) If the customer makes changes to the services of ATP or connects the supplied goods to other equipment or devices, and if this infringes third-party property rights, ATP shall no longer be liable.
- (4) ATP is not liable for infringements of third-party property rights for a service that has been manufactured according to templates, development services or other information provided by the customer. Neither is ATP liable for any use that cannot be foreseen. In these cases, the customer must exempt ATP from third-party claims.
- (5) The customer is not entitled to any further or other claims due to the infringement of third-party property rights. In particular, ATP shall not replace any consequential damage, such as production loss or loss of use, and also no loss of profit. These limitations of liability do not apply, if liability is mandatory for foreseeable damages typical for this type of contract in cases of intent or gross negligence of the breach of essential contractual obligations or the lack of warranted properties. The customer's right to withdraw from the contract remains unaffected.
- (6) The customer shall not acquire any rights to the use of property rights of ATP, which concern the interaction of ATP's service with third-party services.

## **§ 10**

### **Termination**

- (1) If the customer does not meet the necessary cooperative actions, if he does not ensure the participation of the product manufacturer and/or user required for the provision of services, if the information or details provided by the customer, product manufacturer and/or user are insufficient, unsuitable, incomplete or if the request for modification requires additional not calculated additional effort the additional cost of which are not borne by the customer, ATP shall be authorised to terminate the contract without notice after a reasonable deadline for the creation of suitable conditions or covering the additional costs by the customer has expired without success.

- (2) The customer has to reimburse the costs arising for ATP from the termination without notice. Contractual partial services can be provided until the termination of the contractual relationship and must be accepted and paid for by the customer.

### **§ 11**

#### **Confidentiality**

- (1) The contractual parties shall undertake to treat the conclusion, content and the rendering of the offered services as well as all information and documents they shall receive from the respective other contractual party as confidential and also undertake to use the information and documents only for their own business purposes. The customer also undertakes to impose this obligation to confidentiality on every product manufacturer and/or user who is involved in connection with the service provision in an advisory capacity or in any other way, or who provides the equipment or components required for the provision of the services. If ATP uses subcontractors it will impose this confidentiality also on them accordingly. This obligation continues to apply also after the handover/delivery or acceptance for a duration of 2 years from this time.
- (2) The obligation to secrecy does not apply in respect of information that have verifiably been known before, that were or will be published or made accessible legally by third parties, that were or are publicly known or accessible or become publicly known or accessible without any fault on the part of the other contractual party, that were verifiably compiled in the context of own independent developments or that must be disclosed due to legal provisions, official orders, court decisions or requests by a supervisory authority.
- (3) ATP is authorised to state the fact of the service provision for the customer for reference purposes.

### **§ 12**

#### **Non-solicitation clause**

- (1) During the provision of the services and in the following 2 years the customer will not entice any ATP employees that are involved in the respective services, in particular no engineers, consultants or managers and employ them in his company. This holds true for an employment as a self-employed person, as employee or also as temporary worker. In the case of enticement or other culpable takeover of an ATP employee by the customer, the customer must pay a transfer fee of € 30,000 per former employee to ATP. The assertion of further damages by ATP remains unaffected.
- (2) The customer undertakes to immediately inform ATP if he gains knowledge about not approved attempts of individual ATP employees to provide engineering services in their own name/on their own account.

### **§ 13**

#### **Contractual penalty**

If a binding order is not adhered to by the customer, ATP is entitled to charge the idle time with 25% of the order total. This shall not apply if an adequate replacement order with regard to sales volume and utilisation volume is made within 4 weeks. Cancellation costs for external services booked according to the contract are invoiced separately to the customer, in addition to a lump sum for expenses amounting to EUR 100 (net) per item. Further legal claims in this case are reserved. The customer is entitled to prove ATP that no or a considerably lower damage has been caused as a result of the contractual infringement. If ATP demands compensation, the customer is entitled to prove that he is not responsible for the breach of obligation.

## **D. Sales**

### **§ 1**

#### **Typical contractual obligations**

- (1) With the purchase contract, ATP is obliged to provide the customer with the contractual object and to transfer the ownership of the object. ATP must provide the customer with the object in the agreed quality.
- (2) The customer is obliged to pay the agreed purchase price to ATP and to accept the purchased object.

### **§ 2**

#### **Deadlines • Dates**

- (1) The start of the deadlines stated by ATP and keeping of dates each require the binding clarification of all technical questions.
- (2) Compliance with the delivery obligation of ATP requires the timely and proper fulfilment of the customer's obligations. The objection to unfulfilled contracts is reserved.
- (3) If during the execution of the order it becomes apparent that ATP cannot meet the deadlines due to reasons for which ATP is not responsible (e.g. strikes and lock-outs, breakdowns and delays by suppliers as well as cases of force majeure), agreed deadlines shall be extended accordingly.
- (4) If the customer is in default of acceptance or if he culpably violates other cooperative actions, ATP is authorised to demand compensation for damages, including any additional expenses. Further claims or rights are reserved.
- (5) If the violations from para. (4) apply, the risk of accidental loss or accidental deterioration of the object of sale shall be transferred to the customer at the time when he fell into acceptance or payment default.
- (6) ATP is liable according to the statutory provisions, insofar as the underlying contract of purchase is a transaction at a fixed date as defined by § 286 para. 2 no. 4 BGB or § 376 HGB (Commercial Code), ATP shall also be liable according to statutory provisions, if as a result of a default in delivery, the customer is entitled to assert that his interest in the further performance of contract has discontinued. If the delay is based on a grossly negligent violation of the contract for which ATP is responsible, its liability for damages shall be limited to the foreseeable, typically occurring damage.
- (7) ATP shall further be liable according to statutory provisions to the extent that the delay in delivery is based on an intentional or grossly negligent breach of contract for which ATP is responsible; any fault by our representatives or vicarious agents shall be attributed to ATP. If the delay in delivery is based on a grossly negligent violation of the contract for which ATP is not responsible, its liability for damages shall be limited to the foreseeable, typically occurring damage.
- (8) ATP shall be liable according to the statutory provisions, if the delay for which it is responsible is based on the culpable violation of an essential contractual obligation. In this case, however, the liability for damages is limited to the foreseeable, typically occurring damage.
- (9) Furthermore, if in default, ATP shall be liable for each completed week of default within the scope of a lump sum compensation amounting to 0.1% of the delivery value, however, not more than 5% of the delivery value.
- (10) Further statutory claims and rights of the customer are reserved.

### **§ 3**

#### **Transfer of risk**

- (1) Unless stated otherwise in the contract, delivery "ex works" is agreed.
- (2) At the request of the customer, ATP will cover the delivery with a transport insurance, which will be charged to the customer.

#### **§ 4**

##### **Inspection of defects • Burden of proof • Claims for defects & defect rights • Limitation period**

- (1) The sale shall be effected under the exclusion of any guarantee. In the case of fraudulent concealment of defects or the assumption of a guarantee for the quality of the objects of sale, further claims remain unaffected. This exclusion does also not apply to damage compensation claims against ATP arising from liability for material defects both due to injury to life, body and health, and also due to grossly negligent or intentional breach of obligation.
- (2) ATP is liable according to the statutory provisions, if the customer asserts claims for damages that are based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. If ATP is not accused of any intentional breach of contract, the liability for damages is limited to the foreseeable, typically occurring damage.
- (3) ATP shall be liable according to the statutory provisions, if ATP culpably breaches an essential contractual obligation. In this case, however, the liability for damages is limited to the foreseeable, typically occurring damage. An essential contractual obligation exists, for example, if the breach of obligation refers to an obligation on the fulfilment of which the customer has relied on and was entitled to rely on.
- (4) Unless otherwise stipulated above, ATP excludes its liability.
- (5) Claims and rights due to a defect become time-barred or terminate in 12 months, calculated from the transfer of risk. The limitation period for claims from legally declared withdrawal or declared reduction is 1 year, calculated from the end of the year in which the claim has arisen.

#### **§ 5**

##### **Total liability**

- (1) Any further liability for damages other than those provided for in § 4 is excluded, regardless of the legal nature of the asserted claim. This applies in particular to damage compensation claims arising from culpa in contrahendo, due to other breaches of obligation or due to tortious claims for replacement of material damages according to § 823 BGB.
- (2) The limitation according to para. (1) also applies if the customer requests compensation for useless expenditures instead of damage or service compensation.
- (3) Insofar as the liability for damages of ATP is excluded or limited, this shall also apply to the personal liability for damages of the staff, workers, employees, representatives and vicarious agents of ATP.

#### **§ 6**

##### **Reservation of proprietary rights**

ATP retains the title to the object of sale until receipt of all payments from the underlying contract. If the customer acts in violation of the contract, in particular in case of default in payment, ATP is authorised to repossess the delivered item. The repossession of the item by ATP constitutes a withdrawal from the contract. After repossession of the item, ATP is entitled to redeem it. The redemption proceeds must be offset with the customer's liabilities, minus reasonable costs of redemption costs.