

General Terms of Contract of ATP Automotive Testing Papenburg GmbH

ATP Automotive Testing Papenburg GmbH, hereinafter referred to as "ATP", operates one of the world's largest manufacturer-independent automotive proving grounds for passenger vehicles, motorcycles and commercial vehicles. The most modern and, in part, unique test tracks, fully equipped workshops and related testing facilities as well as a competent engineering team are available to all national and international automobile manufacturers and their suppliers for carrying out testing activities.

A. General Part

§ 1

General • Scope of Application

- (1) These General Terms of Contract of ATP apply exclusively; ATP shall not accept any conditions of the customer that conflict with or deviate from these Terms of Contract of ATP, unless ATP expressly approved the validity thereof. These General Terms of Contract of ATP shall apply even where, in knowledge of conflicting or deviating conditions of the customer, ATP unconditionally provides the contractual performance or makes it available.
- (2) All agreements made between ATP and the customer for the purpose of implementing the contract shall be set down in writing in this contract; no verbal agreements have been made.
- (3) These General Terms of Contract of ATP apply only vis-à-vis an entrepreneur, a legal entity governed by public law and a special fund under public law in accordance with Section 310 paragraph (1) of the German Civil Code [*BGB*].
- (4) Within the scope of a current business relationship these General Terms of Contract shall also apply to all future contracts with the customer concerned.
- (5) These General Terms of Contract relate to the following services of ATP:
 - B. Granting of Use of Test Tracks (page 2 to page 5)
 - C. Leasing, Events (page 6 to page 9)
 - D. Test Station Operations and Engineering Services (page 9 to page 14)
 - E. Sales (page 14 to page 15).

§ 2

Offer • Offer Documents • Conclusion of Contract • Cancellation Costs

- (1) Offers of ATP are without obligation, unless otherwise specified in the order acknowledgement; the right is reserved to place the services with third parties in the meantime.
- (2) ATP reserves the right of ownership and copyrights to illustrations, drawings, calculations and other documents. This also applies to written documents marked as "confidential". Before these are passed on to third parties, the customer requires the express written consent of ATP.
- (3) The conclusion of contract is executed by accepting the binding offer of ATP within the period of acceptance.
- (4) Costs shall be incurred for the cancellation of orders for services of ATP staff at 50% of the non-called up order value if the customer cancels within the last 24 hours prior to the agreed utilisation. Cancellation costs for external services (hotel reservations, catering, rental vehicles, tents etc.) shall be forwarded to the customer by the external service provider via ATP.

§ 3

Compliance with Laws

- (1) The customer is obliged not to take any action or to omit any action which can lead to penal liability due to fraud or embezzlement, insolvency offences, offences against free competition, the granting of advantages or the corruption of persons employed by the customer or other third parties. In the event of a breach of this rule, ATP has a right to instantly withdraw from or to terminate all the legal transactions existing with the supplier and to break off all negotiations.
- (2) Notwithstanding the above, the customer is obliged to observe all the laws and regulations relating to him and the business relationship with ATP.
- (3) In the event of a breach of his duties under paragraph (1) and (2), the customer is obliged to indemnify ATP from third-party claims and to compensate ATP for the damage arising from this.

§ 4

Booking of accommodation

- (1) If the customer is a merchant, the place of jurisdiction shall be the registered office of ATP; however, ATP shall also be entitled to sue the customer at the competent court of his registered office.
- (2) On special request, ATP offers the customer the option to book rooms in particular lodgings via ATP. Information on the accommodation that is available for booking via ATP will be provided on request.
- (3) Insofar as the customer intends to use the ATP booking service, the customer will inform ATP, which accommodation and, if applicable, which type(s) of room(s) and room categories, as well as the period he wishes to book.
- (4) By notifying ATP of the data specified in clause (3), the customer places a binding order for the booking of the selected accommodation. The authorisation granted with the placing of the booking order shall be revocable, limited to the specific period of the desired stay, and it shall only include the conclusion of the lodging contract with the provider of the accommodation selected by the customer, as well as the conclusion of all associated legal transactions.
- (5) The order shall only become effective once ATP sends the relevant order confirmation to the customer. Under no circumstances shall the order confirmation constitute a commitment with respect to the provision of accommodation. No entitlement to the provision of accommodation exists. By booking accommodation via ATP, the customer enters into a direct and legally binding contractual relationship with the accommodation provider, whereby ATP performs the booking on behalf of the customer. From the point of performance of the booking, ATP shall exclusively act as an intermediary between the customer and the accommodation provider. The point of performance of the booking shall be determined by the booking confirmation by the relevant accommodation.
- (6) Any costs incurred shall be exclusively for the account of the customer; including but not limited to costs for cancellations, special requests and board. Insofar as is applicable, any discounts or special conditions shall be granted by the provider of the accommodation. No claim against ATP for such discounts or special conditions exists.
- (7) The information that ATP uses for the performance of their services shall be based on the information provided by the customer and the accommodation providers.
- (8) All entitlements and obligations arising from the booking contract shall be direct and exclusive entitlements and obligations between the customer and the relevant accommodation provider. The use of the booking service shall not give rise to a contractual relationship between the customer and ATP beyond the performance of the booking.
- (9) ATP will communicate the contact details of the accommodations listed under (2) to the customer to the extent that these are requested. No further entitlements of the customer arise from this information. In particular, the communication of the contact details shall not be connected to any statement on the quality, availability, prices or service of the accommodation. In the event that the customer decides to book one of the referred accommodations, the customer will inform the relevant accommodation provider that the contact details were provided by ATP. In the event that a referred accommodation is booked, the customer will notify this to ATP.

§ 5

Place of Jurisdiction • Place of Performance

- (1) Provided that the customer is a merchant, the principal place of business of ATP is the place of jurisdiction; however ATP is also entitled to bring legal action against the customer at the court with jurisdiction over his principal place of business.
- (2) The laws of the Federal Republic of Germany apply; the validity of the UN Sales Convention is excluded.
- (3) Unless otherwise specified in the order acknowledgement, the principal place of business of ATP is the place of performance.

B. Use of Test Tracks

§ 1

Subject of the Contract

- (1) The subject of the contract is the use of test tracks for a fee. The test tracks (track modules) are specified in the booking form and in the contract. The test tracks are located on the proving grounds of ATP.
- (2) The respective test track is made available in the state in which it is in upon provision and is made available solely for the agreed purpose of use. The customer is prohibited to make any modifications to a test track without the approval of ATP.
- (3) The customer must make any complaints prior to the use of a test track; otherwise the test track is considered to be without fault. Complaints cannot be made subsequently.

- (4) ATP is entitled to permit several customers to drive on a test track at the same time. Any exclusive use of the track must be expressly agreed in the contract. ATP does not guarantee any kind of protection against competition.

§ 2

Access Authorisation of the Customer to the ATP Proving Ground

- (1) ATP grants rights of access and use solely to a limited extent for the comprehensive protection of its possessions, its property, its know-how and for safety reasons. Without prior registration with ATP no-one is allowed to enter the proving grounds. The procedure described below must be observed in each case so that the access authorisation can be maintained for the customer, his employees, his suppliers and guests.
- (2) For the access authorisation of the customer, his employees, suppliers and guests to the entire proving grounds - and thus also to test tracks - registration is required in writing in advance in each individual case by a person of the customer with signing powers - who ATP must know by name - unless permanent access permits were issued. ATP (Customer Service) must have received the written registration as a rule with a lead time of at least 1 workday.
- (3) The ATP proving grounds may only be entered upon presentation of a personal confidentiality agreement. The ATP identity card must always be worn in a visible spot and shown to ATP upon demand.
- (4) ATP expressly reserves the right to refuse or to withdraw the access authorisation in an individual case for legitimate reasons. ATP shall notify the customer of the reasons without delay.
- (5) The customer is only entitled to drive on the areas marked for this purpose. The authorisation of the customer to use the test tracks under the contract only entails the authorisation to access and use further ATP facilities if additional agreements are made.

§ 3

Term of the Contract

- (1) The contractual relationship commences as soon as the customer receives the order acknowledgement from ATP, unless a different date is agreed between the contracting parties in the contract. The contractual relationship commences at the latest upon provision of the test tracks for use.
- (2) The end of the contract is specified in the contract. The term of the contract can only be exceeded after obtaining the prior approval of ATP. Amendments to the term of the contract might result in supplementary claims being asserted by ATP. The customer shall indemnify ATP from claims which third parties assert against ATP as a result of exceeding the term of contract.
- (3) If the contracting parties have not agreed a fixed end of contract, notification of termination is permitted on any day for the end of the following workday; notice of termination must be given in text form to take effect.

§ 4

Withdrawal Prior To Using the Test Track

- (1) Prior to using the test track, the customer is entitled to withdraw from the contract without stating reasons; withdrawal must be declared in text form to take effect. In this case the customer is obliged vis-à-vis ATP, depending on the time when the notice of withdrawal is received, to pay the following compensation if the customer has withdrawn from an exclusive use of test tracks:
 - (a) 50% of the net remuneration plus VAT at the statutory rate if the customer withdraws between the 29th and the 14th day before commencement of contract;
 - (b) 70% of the net remuneration plus VAT at the statutory rate if the customer withdraws between the 13th and the 7th day before commencement of contract.
 - (c) 90% of the net remuneration plus VAT at the statutory rate if the customer withdraws less than 7 days before commencement of contract.
- (2) The customer reserves the right to furnish proof of less damage on the part of ATP.

§ 5

Remuneration • Terms of Payment • Advance Payments

- (1) The remuneration is shown in the respective current offer or the price list for test track use.
- (2) The statutory value-added tax is not included in the prices stated by ATP; it is reported separately at the statutory rate in the invoice.
- (3) The claim to remuneration becomes due and payable upon provision of the test track for use if the contracting parties have agreed a fixed term of contract. The remuneration and other costs shall be invoiced to the customer after the end of contract with a time allowed for payment of 10 days after receipt of invoice.
- (4) If the contracting parties do not agree the end of contract as a specific calendar date, ATP is entitled to invoice advance payments to a reasonable extent which shall become due and payable upon conclusion of contract and shall be paid prior to on the use of

any test track. The outstanding remuneration and other costs shall be invoiced to the customer separately after the end of the contract with a time allowed for payment of 10 days after receipt of invoice.

- (5) The customer is only entitled to offsetting rights if his counterclaims have been declared legally valid by a court of law, are uncontested or have been acknowledged in writing by ATP. Furthermore, he is only authorised to exercise a right of retention if his counterclaim is based on the same contractual relationship.

§ 6

Use of ATP Facilities • Duty to Make Premises Safe for Persons and Vehicles

- (1) ATP facilities - thus also the test tracks - are available to the customer and the group of persons working on his behalf to the extent agreed, on the days agreed, at the times of use agreed solely for the type of use agreed.
- (2) ATP has the right to issue general rules on conduct on the test track and on the entire ATP proving grounds. These rules are required in order to maintain safety and order on the premises. The rules are an integral part of this contract and shall be observed.
- (3) The customer shall ensure that his activities on the test track are carried out in compliance with the generally valid safety provisions as amended.
- (4) When using vehicles on the ATP proving grounds the traffic regulations of the respectively valid operating and safety manual apply to the respective drivers.
- (5) Before using a test track for the first time, the customer and the group of persons working on his behalf shall receive instruction from an employee of ATP based on the operating and safety manual. Participation in this instruction is obligatory and shall be repeated each year. The customer shall point this out to the group of persons working on his behalf and impose such an obligation on them accordingly.
- (6) During the term of contract the customer shall fully assume the duty to make premises safe for persons and vehicles for ATP facilities used exclusively; this does not apply to test tracks.
- (7) The customer is only entitled to transfer rights of use and access to third parties with the consent of ATP; in this context third parties are all those persons not employed by the customer. The customer and the group of persons attributable to him (also guests and suppliers) are expressly prohibited from entering ATP facilities which are not included in the agreed scope of use.

§ 7

Liability of ATP

- (1) The liability of ATP is limited to its essential contractual duties. These are the provision of the test tracks for use as per contract and compliance with the duties to make premises safe for persons and vehicles to the extent that these concern the test tracks and are not assumed by the customer.
- (2) In other respects the liability of ATP for other breaches of duty, tortious acts and culpa in contrahendo is limited to gross negligence and intent.
- (3) In case of simple negligence the liability of ATP is limited to the reimbursement of direct damage even in the event of a breach of essential contractual duties; in particular lost profit is thus not compensated.
- (4) ATP is liable to the extent to which its fault contributed to the occurrence of the damage in relation to the other causes.
- (5) The description of the test tracks in brochures and models is not an agreed quality. ATP may make changes relating to the design of the test tracks provided that the test track does not lose its character as a result thereof.
- (6) All limitations of liability shall not apply to the extent they refer to death, physical injury or an impairment of health.
- (7) Furthermore, the provisions on the waiver of liability in connection with insurance apply to the extent agreed in the contract.
- (8) To the extent liability for damages vis-à-vis ATP is excluded or limited, this also applies to the personal liability for damages of the salaried employees, workers, staff, representatives and vicarious agents of ATP.

§ 8

Duties of Care and Liability of the Customer • Insurance

- (1) The customer, his employees and other vicarious agents must observe the house rules as well as the regulations on use and safety of ATP.
- (2) The customer, his employees and other vicarious agents must treat the test track and the test track accessories in such a manner that no significant defects occur to them.
- (3) The customer is obliged to immediately inform ATP in the event of any damage to the test track, the test track accessories or other ATP facilities.
- (4) If the customer, his employees or other vicarious agents damage the test track, the test track accessories or other ATP facilities by an action (e.g. improper use) or by the failure to take reasonable precautions against damage, ATP may demand

compensation for the damage caused in such manner. This shall not apply if the damaging party acted neither intentionally nor negligently.

- (5) The customer is obliged to take out the following insurance with reasonable cover and to maintain such insurance during the term of the contract: employer's liability insurance, environmental damage insurance and motor third-party liability insurance.

§ 9

Extraordinary Termination

- (1) ATP is entitled to give notice of termination for good cause with immediate effect without observing a notice period. A good cause has occurred particularly if the customer, irrespective of a written warning given by ATP, continues to use the test track contrary to contract (e.g. endangering the test track through inappropriate use or neglecting his duty of care) which infringes the rights of ATP not only to a minor extent.
- (2) Any notice of termination of this contract must be in text form.

§ 10

End of the Contractual Relationship

- (1) The customer is obliged to leave the test tracks completely cleared on the last day of the contract. The customer must restore the test tracks to their original state.
- (2) If the contractual relationship ends through the instant termination of ATP, the customer shall also be liable for the damage which ATP suffers as a result of test tracks remaining unused (damage caused by loss of profits). If upon the end of the contractual relationship a test track is blocked by the customer, the customer shall be liable to ATP for all the damage arising from the delay of clearing the track, whereby the customer shall owe at least the remuneration owed under this contract as a fee for use subject to proof of greater damage.

§ 11

Secrecy

- (1) Secrecy obligations are defined in a separate confidentiality agreement.
- (2) ATP is entitled to name the fact that a customer relationship exists for reference purposes if the customer gives his consent thereto.

§ 12

Environment

- (1) The customer shall dispose of the waste arising on his premises (e.g. old tyres etc.) at his own expense in accordance with the provisions of waste legislation, unless it has been agreed that ATP carries out the waste disposal on behalf of the customer for a fee.
- (2) If the customer does not comply with his obligation to dispose of waste and ATP has not received any instructions to dispose of waste, ATP reserves the right to carry out the arising work on behalf of the customer. The costs incurred shall be invoiced to the customer.
- (3) The directive "Registration of Racing Teams and Team with Loud Vehicles" of ATP (ATP 3024) is an integral part of the contract. The customer is obliged to observe this directive.
- (4) Upon registration the customer must provide a binding statement of the noise emissions of the individual vehicles (<100 dBA; >100 dBA < 120 dBA) and observe the periods of use permissible for the respective limits. Vehicles with noise emissions >120 dBA are not permitted on the proving grounds. Noise emissions shall be determined with the measuring method stated in ATP 3024.
- (5) ATP reserves the right to check the stated noise emissions on the proving grounds. Any further use of the proving grounds is not permitted if limits are exceeded.

C. Leasing, Events

§ 1

Subject of the Lease Agreement

- (1) The subject of the lease agreement is a workshop and/or an office including the respective inventory as a basic principle. Further sub-areas of the ATP testing grounds can be rented for customer events. The leased property is specified in the booking form/offer and/or in the lease agreement.
- (2) The respective leased property is let in the state in which it is in when the property is provided for use and exclusively for the agreed purpose of use. Without the approval of ATP the customer is prohibited from making any changes to the leased property or to sublet the property. The complete or partial provision of the leased property for use by associated companies in accordance with Section 15 of the German Stock Corporation Act [*Aktiengesetz*] is not considered to be subletting.
- (3) If the customer does not make any complaints upon taking over the leased premises, the leased property is considered to be taken over without fault. Complaints cannot be made subsequently.
- (4) ATP does not grant any kind of protection against competition.

§ 2

Access Authorisation of the Customer to the ATP Proving Ground

- (1) ATP grants rights of access and use solely to a limited extent for the comprehensive protection of its possessions, its property, its know-how and for safety reasons. Without prior registration with ATP no-one is allowed to enter the proving grounds. The procedure described below must be observed in each case so that the access authorisation can be maintained for the customer, his employees, suppliers and guests.
- (2) For the access authorisation of the customer, his employees, suppliers and guests to the entire proving grounds - and thus also to leased property - registration is required in writing in advance in each individual case by a person of the customer with signing powers - who ATP must know by name, unless permanent access permits were issued. ATP (Customer Service) must have received the written registration as a rule with a lead time of at least 1 workday.
- (3) The ATP proving grounds may only be entered upon presentation of a personal confidentiality agreement. The ATP identity card must always be worn in a visible spot and shown to ATP upon demand.
- (4) ATP expressly reserves the right to refuse or to withdraw the access authorisation in an individual case for legitimate reasons. ATP shall notify the customer of the reasons without delay.
- (5) The authorisation of the customer to access the leased property does not entail the authorisation to access other ATP facilities.

§ 3

Term of Lease

- (1) The lease commences as soon as the customer accepts the binding offer of ATP, unless a different date is agreed between the contracting parties in the lease agreement. The lease commences at the latest upon provision of the leased property by handing over the keys.
- (2) The end of the lease is specified in the contract. The term of lease can only be exceeded after obtaining the prior approval of ATP. Amendments to the term of lease might result in supplementary claims being asserted by ATP. The customer shall indemnify ATP from any claims which third parties assert against ATP as a result of exceeding the term of lease.
- (3) If the contracting parties have not agreed a fixed end of lease, notification of termination is permitted on any day for the end of the following workday; notice of termination must be given in text form to take effect.

§ 4

Withdrawal before Taking over the Leased Property • Loss of Use

- (1) The customer is entitled to withdraw from the contract prior to taking over the leased property without stating reasons; withdrawal must be declared in text form to take effect. In this case the customer is obliged vis-à-vis ATP to pay compensation of EUR 150 plus VAT at the statutory rate if he withdraws less than 3 workdays before the commencement of contract.
- (2) The customer reserves the right to furnish proof of less damage on the part of ATP.
- (3) If the customer does not take over the leased property under the contract upon commencement of the lease without having declared his withdrawal prior to such time, the customer shall pay 50% of the net rent plus VAT at the statutory rate during the term of lease.

§ 5

Rent • Terms of Payment • Advance Payments

- (1) The rent and supplementary charges are shown in the current offer or in the price list for workshops and offices.
- (2) Statutory value-added tax is not included in the rent stated by ATP; it is stated separately in the invoice at the statutory level.
- (3) The rent becomes due and payable upon the provision of the leased property if the contracting parties agree a fixed term of lease. The rent and other costs shall be invoiced to the customer at the end of the lease with a time allowed for payment of 10 days after receipt of invoice.
- (4) If the contracting parties do not agree a fixed end of lease, ATP is entitled to invoice advance payments to a reasonable extent which shall become due and payable upon conclusion of the lease agreement and shall be settled prior to the provision of the leased property. The outstanding rent and other costs shall be invoiced separately to the customer after the end of the lease with a time allowed for payment of 10 days after receipt of invoice.
- (5) Permanent lessees with terms of lease of longer than 1 month shall pay the rent each month in advance.
- (6) The customer is only entitled to offsetting rights if his counterclaims have been declared legally valid by a court of law, are uncontested or have been acknowledged in writing by ATP. Furthermore, he is only authorised to exercise a right of retention if his counterclaim is based on the same contractual relationship.

§ 6

Use of ATP Facilities • Duty to Make Premises Safe for Persons and Vehicles

- (1) ATP facilities are available to the customer and the group of persons working on his behalf to the extent agreed, on the days agreed, at the times of use agreed solely for the type of use agreed.
- (2) Before using a technical facility or a technical device for the first time, the customer and the group of persons working on his behalf shall receive instruction from an employee of ATP. The customer shall point this out to the group of persons working on his behalf and impose such an obligation on them accordingly.
- (3) During the term of contract the customer shall fully assume the duty to make premises safe for persons and vehicles for ATP facilities used exclusively.
- (4) The customer is only entitled to transfer rights of use and access to third parties with the consent of ATP; third parties are thus all those persons who are not employed by the customer. The customer and the group of persons attributable to him (also guests and suppliers) are expressly prohibited from entering ATP facilities which are not included in the agreed scope of use.

§ 7

Liability of ATP

- (1) The liability of ATP is limited to its essential contractual duties. These are the provision of the leased property for use as per contract, access to the leased property and compliance with the duties to make premises safe for persons and vehicles to the extent that these relate to the ATP proving grounds, the building and building systems and are not assumed by the customer.
- (2) In other respects the liability of ATP for other breaches of duty, tortious acts and culpa in contrahendo is limited to gross negligence and intent.
- (3) In case of simple negligence the liability of ATP is limited to the reimbursement of direct damage even in the event of a breach of essential contractual duties; in particular lost profit is thus not compensated.
- (4) ATP is liable to the extent to which its fault contributed to the occurrence of the damage in relation to the other causes.
- (5) The description of the building in brochures and models is not an agreed quality. ATP may make changes relating to the design of the building and the division of the inside of the building provided that the building does not lose its character as a result thereof.
- (6) All limitations of liability shall not apply to the extent they refer to death, physical injury or an impairment of health.
- (7) The no-fault liability of ATP in case of initial defects is excluded. ATP is thus liable only in case of gross negligence or intent.
- (8) Furthermore, the provisions on the waiver of liability in connection with insurance apply to the extent specified in the lease agreement.
- (9) To the extent liability for damages vis-à-vis ATP is excluded or limited, this also applies to the personal liability for damages of the salaried employees, workers, staff, representatives and vicarious agents of ATP.

§ 8

Duties of Care and Liability of the Customer during the Term of Lease • Insurance

- (1) The customer, his employees and other vicarious agents must observe the house rules as well as the regulations on use and safety of ATP.
- (2) The customer, his employees and other vicarious agents must treat the leased property and the inventory with care.
- (3) The customer is obliged to immediately inform ATP in the event of any damage to the leased property or the inventory.

- (4) If the customer, his employees or other vicarious agents damage the leased property, the inventory or other ATP facilities by an action (e.g. improper use) or by the failure to take reasonable precautions against damage, ATP may demand compensation for the damage caused in such manner. This does not apply if the damaging party acted neither intentionally nor negligently.
- (5) The customer is obliged to take out the following insurance with reasonable cover and to maintain such insurance during the term of the contract: employer's liability insurance and environmental damage insurance.

§ 9

Extraordinary Termination

- (1) ATP is entitled to give notice of termination for good cause with immediate effect without observing a notice period. A good cause has occurred particularly if the customer, irrespective of a written warning given by ATP, continues to use the leased property contrary to contract (e.g. unauthorised subletting, endangering the leased property through unreasonable use or neglecting his duty of care) which infringes the rights of ATP not only to a minor extent.
- (2) Any notice of termination of this contract must be in text form.
- (3) Section 580 of the German Civil Code [BGB] is excluded.

§ 10

Return of the Leased Property

- (1) The customer is obliged to return the leased property and inventory on the last day of the lease without fault and clean-swept and to hand over to the contact of ATP responsible all the keys to the leased property. The customer must restore the leased property and the inventory to their original state.
- (2) If the lease ends through the instant termination of ATP, the customer shall also be liable for the damage which ATP suffers as a result of leased property remaining vacant or being let at a cheaper rate after clearance and return by the customer (damage due to loss of rent). If at the end of the lease the clearance and return of the leased property is delayed, the customer shall be liable to ATP for all the damage arising from the delay in its clearance and return, whereby the customer shall owe at least the rent owed as a fee for use under this contract subject to proof of greater damage.

§ 11

Secrecy

- (1) Secrecy obligations are defined in a separate confidentiality agreement.
- (2) ATP is entitled to name the fact that a customer relationship exists for reference purposes if the customer gives his consent thereto.

§ 12

Deliveries of Goods

- (1) If the customer wishes to have goods delivered to the leased property on the ATP proving grounds, he must register such deliveries of goods with ATP in due time, grant access to the leased property on the date of delivery and ensure the processing of customs and delivery formalities. If deliveries of goods are not registered, the respective supplier or transporter/forwarding agent shall be refused access to the ATP proving grounds and to deliver the goods; the customer shall pay the costs arising therefrom, unless he furnishes proof that he is not responsible for failing to register the delivery.
- (2) ATP shall not assume on behalf of the customer the task of accepting delivered purchased items or transport services by conducting a goods inspection and signing the delivery note and shall not store delivered goods on behalf of the customer, instead it shall inform the customer merely of the receipt of goods without delay. According to agreement, the lessor shall accept the delivery of the goods on behalf of the lessee (receipt of goods) and attend to delivery formalities; however, solely the customer is reserved the right without exception to inspect the goods and to approve the goods and transport service as performance in compliance with the contract (acceptance).
- (3) In case of goods collections which are to be coordinated by ATP, it is necessary to complete a goods and material pass and leave it at the gateway. Goods must be collected by the end of the contractual relationship.
- (4) Hazardous goods must be properly declared and may only be stored in containers and rooms designated for this purpose.

§ 13

Events

- (1) If the customer rents partial areas of the ATP proving grounds for the purpose of holding an event, the following contractual terms shall apply in addition, unless otherwise agreed.
- (2) ATP and the customer shall cooperate constructively for the purpose of holding the event as scheduled and shall give each other all relevant information. Despite this solely the customer is responsible for holding the event in accordance with the purpose of the lease. There is thus consensus between ATP and the customer that the customer must fulfil the following duties at his own expense:
 - (a) Obtaining the special permits and building permits required to hold the event.
 - (b) Compliance with all requirements imposed by the authorities determined by the purpose of the lease.
 - (c) Ensuring that the event goes smoothly and in due form through compliance with all public law regulations and by taking the required safety measures. In particular, the customer assumes the obligations under Section 38 (1) to (4) of the Regulations on Places of Assembly of the State of Lower Saxony [*VstättVO - Versammlungsstättenverordnung - Niedersachsen*].
 - (d) Registration of the event with GEMA, if legally required, and payment of the fees and charges.The customer shall indemnify ATP from all third-party claims which are asserted against ATP based on non-compliance with legal provisions.
- (3) The customer shall give ATP an exact description of the kind and content of the event which is the purpose of the lease; in particular the number of visitors must be stated.
- (4) The customer must be stated on all printed matter, posters, entrance tickets, invitations etc. as the organiser in order to clearly show that there is a legal relationship between the visitors of the event and the customer, not between the visitor and ATP.
- (5) The customer shall give ATP names of people responsible who are present during the event and must be able to be reached at any time by ATP.
- (6) The advertising for the event is solely the responsibility of the customer. The design of text and graphics of the advertising must be coordinated with ATP; this also applies to the decision on the advertising media in the rooms and on the grounds of ATP.
- (7) Any assembly and dismantling required for the event may only be carried out and completed after consulting ATP and after approval by ATP outside the term of lease.
- (8) The customer must comply with any request of ATP to carry out an inspection of the leased rooms or the event area before the commencement and after the end of an event.
- (9) The customer is liable for all personal injuries, property damage and financial losses including any consequential damage which is culpably caused by him, his employees, guests, visitors or other third parties in connection with the event. If further use of the rooms or grounds is hindered or prevented, the customer shall also be liable for the damage arising from the loss of profits.
- (10) The customer shall indemnify ATP from all claims for damages which are asserted in connection with the event. This shall not apply to the breach of the duty to safeguard the premises for persons and vehicles of ATP.
- (11) The customer is obliged to take out a comprehensive and adequate organisers' liability insurance for the area of the event. Suitable proof must be submitted to ATP at the latest two weeks before the commencement of the event.

D. Test station operations and engineering services

§ 1

Typical Contractual Duties

- (1) Through the contract ATP is obliged to provide the promised engineering services and the customer to pay the agreed remuneration.
- (2) The test stations required to provide the services shall be specified in the contract.
- (3) The subject of the contract can be engineering services of any kind. Engineering services are defined as all services in connection with the testing, examination and repair of motor vehicles and motor vehicle parts as well as the results to be achieved through such services and items to be produced or modified through technical services.

§ 2

Scope of Performance

- (1) The type and scope of performance which ATP is required to provide for the customer is described in the offer of ATP. ATP issues the offer based on a performance description prepared by the customer which must be complete and accurate.

- (2) If ATP takes over the results of the work of third parties as a basis or an integral part of its performance with the customer's consent, ATP may take these results as a basis of its continued performance without checking them, unless the customer expressly orders ATP in writing to also check the work results taken over.
- (3) ATP shall render its performance based on the generally recognised rules of engineering respectively applicable at the time of execution and in compliance with the care usually exercised in the sector. According to the rules of engineering it is, however, not usually possible to discover all the faults or deviations in products and systems in all conditions of application. In view of this fact ATP assumes a guarantee for the proper processing and documentation of the performance agreed with the customer without guaranteeing that ATP can thus determine all product and system faults or deviations. If the customer gains knowledge of product or system faults or deviations during the period of performance, he shall inform ATP thereof without delay in writing.
- (4) Should additional performance requirements or change requests result in a change of the scope of performance, this performance shall be confirmed by ATP in writing stating the expected additional costs and shall be invoiced separately.
- (5) ATP is entitled to engage third parties to process orders, unless expressly objected to by the customer.

§ 3

Acts of Co-operation by the Customer

- (1) The provision of documents, records, hardware and software and all other items required for rendering performance as well as the delivery and collection of a specimen for testing (vehicle, vehicle component) is the responsibility of the customer and the times of such provision, delivery and collection shall be arranged with ATP. If the customer does not collect the specimen, documents, records, hardware and software as well as other items after being requested to do so by ATP, the return transportation or return dispatch shall be arranged for the customer's account.
- (2) ATP shall carry out vehicle or vehicle component tests if the customer furnishes proof that comprehensive insurance has been taken out at reasonable sums insured in each case which cover personal/passenger injuries, property damage, environmental damage and the financial losses of ATP and the employees of ATP in connection with the specimens insured against damage and destruction. Until proof is furnished ATP may refuse to provide engineering services without falling into delay.
- (3) The scope and quality of the performance of ATP depend crucially on the scope and quality of the cooperation of the customer and if applicable of the product manufacturer and/or the product user. The customer shall thus carry out all the acts of co-operation required on his part or on the part of his vicarious agents in due time and free of charge for ATP.
- (4) The customer pays the costs of the additional effort incurred as a result of performance by ATP having to be repeated or being delayed due to delayed, incorrect or incomplete particulars or other acts of co-operation not provided properly. In particular, ATP is entitled to additionally invoice this extra effort even if a binding fixed or maximum price has been agreed.
- (5) ATP does not pay any compensation for damage or expenses caused due to faulty or incomplete preliminary work or incomplete acts of co-operation by the customer. To the extent that such preliminary work/acts of co-operation are not provided in due time, the agreed periods shall be extended accordingly.
- (6) The customer is obliged to immediately notify ATP of the damage and losses for which ATP must pay and to have it documented by ATP itself or by a third party appointed by it upon demand.

§ 4

Use of ATP Facilities • Duty to Make Premises Safe for Persons and Vehicles

- (1) ATP facilities are available to the customer and the group of persons working on his behalf to the extent agreed, on the days agreed, at the times of use agreed solely for the type of use agreed.
- (2) The customer is only entitled to transfer rights of use and access to third parties with the consent of ATP; third parties are thus all those persons who are not employed by the customer. The customer and the group of persons attributable to him (also guests and suppliers) are expressly prohibited from entering ATP facilities which are not included in the agreed scope of use.

§ 5

Prices • Terms of Payment • Advance Payments

- (1) Prices are shown in the latest offer or price list for the use of test stations in each case.
- (2) The statutory value-added tax is not included in the prices stated by ATP; it is reported separately at the statutory level in the invoice.
- (3) The claim to remuneration becomes due and payable upon using the test station and/or after provision of the engineering services. The remuneration and other costs shall be invoiced to the customer with a time allowed for payment of 10 days after receipt of invoice.
- (4) ATP is entitled to demand advance payments to a reasonable extent, taking the concerns of the customer into account.

- (5) The customer is only entitled to offsetting rights if his counterclaims have been declared legally valid by a court of law, are uncontested or have been acknowledged in writing by ATP. Furthermore, he is only authorised to exercise a right of retention if his counterclaim is based on the same contractual relationship.

§ 6

Periods • Deadlines

- (1) The commencement of the periods stated by ATP and compliance with deadlines requires the binding clarification of all technical issues and a binding order.
- (2) Compliance with the obligation of ATP also requires the fulfilment of the obligation of the customer in due time and in due order. The right is reserved to raise the defence of non-performance of the contract.
- (3) If during the execution of the order it can be foreseen that ATP cannot comply with deadlines for reasons beyond its control (e.g. strikes and lockout, interruption of operations and delays by suppliers and cases of force majeure), the deadlines agreed shall be extended accordingly. This applies particularly if the customer increases the scope of performance during the term of contract, has other change requests or if delays arise which are based on inaccurate or incomplete particulars or other acts of co-operation not carried out properly by the customer. ATP shall immediately coordinate any postponements of deadlines arising from this with the customer.
- (4) If the customer delays acceptance or if he culpably acts in breach of other duties to co-operate, ATP is entitled to claim damages, including any additional expenses. The right is reserved to assert further claims or rights.
- (5) Provided that the requirements of § 6 paragraph (4) are met, the risk of accidental loss or of the accidental deterioration of the work passes to the customer at the time in which he came to be in default of acceptance or in debtor's delay.
- (6) If the delay is based on a grossly negligent breach of a contractual duty for which ATP is responsible, its liability for damages is limited to foreseeable, typical damage.
- (7) ATP is liable in accordance with legal provisions to the extent that the delay for which it is responsible is based on a culpable breach of an essential contractual duty; in this case, however, the liability for damages is limited to foreseeable, typical damage.
- (8) In other respects, ATP is liable in case of delay for each completed week of delay as a lump-sum compensation for delay at 0.1% of the contract value, however not more than 5% of the contract value.
- (9) This is without prejudice to other statutory claims and rights of the customer.

§ 7

Acceptance

- (1) For deliverable performance, delivery is agreed "ex works", unless otherwise specified in the order acknowledgement.
- (2) Upon request by the customer, ATP shall take out transport insurance for the delivery; the customer shall pay the costs of such insurance.
- (3) If the performance is ready for acceptance and ATP demands the acceptance of performance after completion thereof, the customer shall carry out acceptance within 12 workdays; a different period may be agreed.
- (4) Upon demand by ATP, self-contained and independent partial performance shall be accepted separately.
- (5) Only in case of significant defects may acceptance be refused until rectification.
- (6) Acceptance shall be carried out in text form if demanded by a contracting party. The acceptance record shall include any reservations about known defects and about contractual penalties as well as any objections of ATP.
- (7) If acceptance is not demanded, the performance is considered accepted after 12 workdays have passed after written notification of the completion of performance.
- (8) Reservations about obvious defects or about contractual penalties shall be asserted at the time named in § 7 paragraph (7) at the latest. The customer shall assert claims for hidden defects without delay, at least within 5 days after discovery and ATP shall submit a logically understandable and exhaustive report on defects in this connection.
- (9) The risk passes to the customer upon acceptance.

§ 8

Liability for Defects

- (1) Claims based on defects by the customer require that he has properly fulfilled his obligations to examine and give notice of a complaint.
- (2) If the customer furnishes proof of a defect when the risk passed, ATP is entitled to render subsequent performance in the form of rectifying the defect or repeating performance at its option. In the event of rectification of the defect or substitute performance ATP is obliged to pay all the expenses required for the purpose of subsequent performance, particularly transport, road, labour

and material costs, unless these are increased by the project item having been transported to a place other than the place of performance.

- (3) If the customer's enforceable claim to subsequent performance is not fulfilled by ATP within a reasonable period the customer shall be entitled to demand withdrawal or a reduction of the purchase price at his option.
- (4) ATP is liable in accordance with legal provisions if the customer asserts claims for damages which are based on intent or gross negligence, including the intent or gross negligence of its representatives or vicarious agents. To the extent that ATP is not accused of an intentional breach of contract, any liability for damages is limited to foreseeable, typical damage.
- (5) ATP is liable in accordance with legal provisions if ATP culpably acts in breach of an essential contractual duty; but also in this case the liability for damages is limited to foreseeable, typical damage. A breach of an essential contractual duty has occurred if the breach of duty relates to a duty, the fulfilment of which the customer relied on and could rely on.
- (6) This is without prejudice to liability on account of culpability for death, physical injury or an impairment of health; this also applies to mandatory liability under the German Product Liability Act.
- (7) Unless otherwise specified above, ATP excludes its liability.
- (8) The customer shall pay the expenses required to determine any material defect or defect in title if the work was free of material defects at the time when the risk passed in spite of his claims to the contrary. The item is free of material defects particularly if proof cannot be furnished that the work was defective when the risk passed.
- (9) The claims and rights based on a defect described in this section shall become time-barred or shall lapse in 12 months, calculated from the time when the risk passes. The limitation period for claims based on an effectively declared withdrawal or a declared reduction of the purchase price is one year, calculated from the end of the year in which the claim arose.

§ 9

Total Liability

- (1) Any further liability for damages than defined in § 9 is excluded regardless of the legal nature of the claim asserted. This applies particularly to claims for damages based on culpa in contrahendo, based on other breaches of duty or based on tortious acts for the compensation of property damage in accordance with Section 823 of the German Civil Code [BGB].
- (2) The restriction defined in paragraph (1) also applies if the customer demands the reimbursement of futile expenses instead of asserting a claim to damages instead of performance.
- (3) To the extent that the liability for damages vis-à-vis ATP is excluded or limited, this also applies to the personal liability for damages of salaried employees, workers, staff, representatives and vicarious agents of ATP.

§ 10

Copyrights • Ownership • Exploitation

- (1) ATP retains all copyrights, rights of joint authorship and rights of ownership to methods, documentation, programmes, calculations, other presentations and similar developed by ATP.
- (2) The customer receives an exclusive right of exploitation to the results achieved under the contract for the purposes specified in the contract, otherwise to produce and/or to distribute the appropriate products without any restriction in the production or distribution area.
- (3) Each contracting party shall bear the costs of the registration of property rights created in the course of rendering performance which it registers itself. This also applies to remuneration for inventions for the respective employees. The contracting parties shall inform each other without delay of the submission of any registration for a property right and the countries in which it is deposited.
- (4) If employees of both the customer and ATP are involved in inventions which arise in the course of rendering the agreed performance, the contracting parties shall immediately agree on the party who is most suitable for preparing the joint patent application. The registration of joint inventions shall then be carried out jointly by both contracting parties; the costs incurred shall be borne by the contracting parties in equal shares, unless the customer receives an exclusive right of exploitation.
- (5) If one of the contracting parties is no longer interested in pursuing a property right, it shall offer its share to the other contracting party for it to take over.

§ 11

Third-party Rights

- (1) ATP is liable to the customer for the infringement of the industrial property rights of third parties in accordance with the rules set out below. ATP assumes liability for its performance being free of third-party property rights within the Federal Republic of Germany.

- (2) If a third party asserts existing claims based on property rights against the customer, the requirements for the liability of ATP vis-à-vis the customer are that the customer has immediately notified ATP thereof and acts in agreement with ATP when treating these claims and pursuing his rights. If an infringement of third-party property rights occurs for which ATP is liable according to the conditions and the customer is prohibited use of performance of ATP in whole or in part with legally binding force for this reason, ATP shall at its expense and at its option either:
 - (a) procure the right to use the performance for the customer (acquisition of a licence) or
 - (b) design its performance so that it is free of property rights or
 - (c) replace its performance with different performance of an appropriate quality which does not infringe property rights or
 - (d) take back its performance against reimbursement of the counterperformance.
- (3) If the customer makes changes to the performance of ATP or if he combines the delivered work with other devices or appliances and as a result thereof third-party property rights are infringed, any liability of ATP shall lapse.
- (4) ATP shall not be liable for infringements of third-party property rights for work produced based on the documents, development activities or other particulars of the customer or for any use not foreseeable by ATP. In these cases the customer shall indemnify ATP from third-party claims.
- (5) The customer is not entitled to further claims or other claims based on the infringement of third-party property rights. In particular, ATP does not compensate consequential damage, such as loss of production and loss of use or any lost profit. These limitations of liability do not apply to the extent that liability is mandatory in cases of intent or gross negligence or the infringement of essential contractual duties or the absence of warranted characteristics for typical damage foreseeable for the contract. This is without prejudice to the right of the customer to withdraw from the contract.
- (6) The customer shall not acquire any claims to the use of property rights of ATP which concern the interplay between the performance of ATP and third-party performance.

§ 12

Termination

- (1) If the customer does not perform the required acts of co-operation, if he does not ensure the co-operation required from the product manufacturer or the product user for the rendering of performance, if the information or particulars transmitted by the customer, product manufacturer and/or product user contain gaps or are unsuitable, incomplete or if change requests require an additional amount of work not included in the calculations, the additional costs of which are not borne by the customer, ATP is entitled to terminate the contract instantly after a reasonable period has passed by in vain for creating suitable prerequisites or for the customer to accept the additional costs.
- (2) The customer must reimburse the costs which ATP incurs as a result of instant termination. Partial performance as per contract may be provided until the end of the contractual relationship and shall be accepted and paid by the customer.

§ 13

Confidentiality

- (1) The contracting parties undertake to treat as confidential the conclusion, content and implementation of the performance offered as well as all information and documents which they receive from the other contracting party and undertake to use the information and documents only for their own operational purposes. In addition, the customer undertakes to impose this confidentiality obligation on each product manufacturer and/or product user who acts in an advisory or any other capacity in connection with the performance or provides the facilities and/or components required to render performance. If ATP engages subcontractors, it shall also oblige these to maintain confidentiality. The obligation also applies after handover/delivery and/or acceptance for a period of 2 years from such time.
- (2) The confidentiality obligation does not apply to information which was demonstrably known beforehand, which was legitimately notified or made accessible by third parties or becomes generally known or accessible without the fault of the respective other contracting party, which was demonstrably prepared in the course of the other contracting party's own independent developments or which must be disclosed based on legal provisions, requirements imposed by the authorities, court orders or inquiries by a supervisory authority.
- (3) ATP is entitled to name the fact that performance is rendered for the customer for reference purposes

§ 14

Prohibition of Poaching

- (1) During the provision of performance and in the first 2 years afterwards the customer shall not poach any employees of ATP involved in the respective performance, particularly engineers, advisers or managers, and employ them at his company. This applies likewise to work as a freelancer, as an employee or even as a temporary agency worker. If the customer poaches or takes

over in any other culpable manner an employee of ATP the customer shall pay compensation to ATP of €30,000 for each formerly employed employee. This is without prejudice to the assertion of further damage by ATP.

- (2) The customer undertakes to immediately notify ATP of any attempts by individual employees of ATP to provide unauthorised engineering services in their own name/for their own account of which he gains knowledge.

§ 15

Contractual Penalty

If a binding order is not observed by the customer, ATP is entitled to invoice the loss of profit at 25% of the contract value. This shall not apply if an adequate substitute order in terms of turnover and utilisation volume compared to the original order is agreed within 4 weeks. Cancellation costs for external services booked as agreed shall be invoiced separately to the customer in addition to a flat charge for expenses of EUR 100 (net) per item. The right is reserved to assert further statutory claims in this case. The customer has the right to furnish proof to ATP that as a result of the breach of contract no damage at all or considerably less damage has occurred. If ATP claims damages, the customer has the right to furnish proof that he is not responsible for the breach of duty.

E. Sale

§ 1

Typical Contractual Duties

- (1) Through the purchase contract ATP is obliged to hand over the contractual item to the customer and to transfer ownership of the item. ATP must provide the item to the customer with the agreed nature.
- (2) The customer is obliged to pay the agreed purchase price to ATP and to accept the purchased item.

§ 2

Prices • Terms of Payment • Advance Payments

- (1) Unless otherwise defined in the contract, prices apply "ex works".
- (2) The statutory value-added tax is not included in the prices stated by ATP; it is reported separately at the statutory level in the invoice on the date of the invoice.
- (3) Unless otherwise agreed in writing, the price is due and payable net (without deduction) upon conclusion of the contract and payable within 10 days from receipt of invoice. Periods for payment are considered observed if ATP can freely dispose of the amount within the period. Statutory regulations apply concerning the consequences of a delay in payment.
- (4) ATP is entitled to demand advance payments to a reasonable extent for practical reasons and taking the concerns of the customer into account.
- (5) The customer is only entitled to offsetting rights if his counterclaims have been declared legally valid by a court of law, are uncontested or have been acknowledged in writing by ATP. Furthermore, he is only authorised to exercise a right of retention if his counterclaim is based on the same contractual relationship.

§ 3

Periods • Deadlines

- (1) The commencement of the periods stated by ATP and compliance with deadlines requires the binding clarification of all issues.
- (2) Compliance with the delivery obligation of ATP also requires the fulfilment of the obligation of the customer in due time and in due order. The right is reserved to raise the defence of non-performance of the contract.
- (3) If during the execution of the order it can be foreseen that ATP cannot comply with deadlines for reasons beyond its control (e.g. strikes and lockout, interruption of operations and delays by suppliers and cases of force majeure), the deadlines agreed shall be extended accordingly.
- (4) If the customer delays acceptance or if he culpably acts in breach of other duties to co-operate, ATP is entitled to claim compensation for the damage it suffers, including the reimbursement of any additional expenses. The right is reserved to assert further claims or rights.
- (5) Provided that the requirements of paragraph (4) are met, the risk of accidental loss or of the accidental deterioration of the purchased item passes to the customer at the time at which he came to be in delay with acceptance or in debtor's delay.
- (6) ATP is liable in accordance with legal provisions if the underlying purchase contract is a fixed transaction within the meaning of Section 286 paragraph (2) No. 4 of the German Civil Code [BGB] or of Section 376 of the German Commercial Code [HGB]. ATP is also liable in accordance with legal provisions if as a consequence of a delay in delivery for which ATP is responsible the customer is entitled to assert that he is no longer interested in the implementation of the contract. If the delay is based on a

grossly negligent breach of contract for which ATP is responsible, its liability for damages is limited to the foreseeable, typical damage.

- (7) ATP is also liable in accordance with legal provisions if the delay in delivery is based on an intentional or grossly negligent breach of contract for which ATP is responsible; any fault of its representatives or vicarious agents shall be attributed to ATP. If the delay in delivery is based on a grossly negligent breach of contract for which ATP is not responsible, the liability for damages of ATP is limited to the foreseeable, typical damage.
- (8) Furthermore, ATP is liable in accordance with legal provisions to the extent that the delay in delivery for which it is responsible is based on a culpable breach of an essential contractual duty; in this case, however, the liability for damages is limited to foreseeable, typical damage.
- (9) In other respects, ATP is liable in case of delay for each completed week of delay as a lump-sum compensation for delay at 0.1% of the delivery value, however not more than 5% of the delivery value.
- (10) This is without prejudice to other statutory claims and rights of the customer.

§ 4

Passing of the Risk

- (1) Unless otherwise defined in the contract, delivery is agreed "ex works".
- (2) Upon request by the customer, ATP shall take out transport insurance for the delivery; the customer shall pay the costs of such insurance.

§ 5

Inspection of Defects • Burden of Proof • Claims and Rights Based on Defects • Limitation

- (1) The sale is transacted excluding any warranty. This is without prejudice to further claims in the event of a fraudulent concealment of defects or of the assumption of a guarantee for the nature of the purchased goods. This exclusion also does not apply to claims for damages against ATP based on warranty of quality on account of death, physical injury or an impairment of health and due to a grossly negligent or intentional breach of duty.
- (2) ATP is liable in accordance with legal provisions if the customer asserts claims for damages which are based on intent or gross negligence, including the intent or gross negligence of our representatives or vicarious agents. To the extent that ATP is not accused of an intentional breach of contract, any liability for damages is limited to foreseeable, typical damage.
- (3) ATP is liable in accordance with legal provisions if ATP culpably acts in breach of an essential contractual duty; but also in this case the liability for damages is limited to foreseeable, typical damage. A breach of an essential contractual duty has occurred if the breach of duty relates to a duty regarding the fulfilment of which the customer relied on and could rely on.
- (4) Unless otherwise specified above, ATP excludes its liability.
- (5) Claims and rights based on a defect become time-barred or lapse in 12 months, calculated from the time when the risk passes. The limitation period for claims based on effectively declared withdrawal or a declared reduction of the purchase price is one year, calculated from the end of the year in which the claim arose.

§ 6

Total Liability

- (1) Any further liability for damages than defined in § 5 is excluded regardless of the legal nature of the claim asserted. This applies particularly to claims for damages based on culpa in contrahendo, based on other breaches of duty or based on tortious acts for the compensation of property damage in accordance with Section 823 of the German Civil Code [*BGB*].
- (2) The restriction defined in paragraph (1) also applies if the customer demands the reimbursement of futile expenses instead of asserting a claim to damages instead of performance.
- (3) To the extent that the liability for damages vis-à-vis ATP is excluded or limited, this also applies to the personal liability for damages of salaried employees, workers, staff, representatives and vicarious agents of ATP.

§ 7

Safeguarding the Reservation of Ownership

ATP reserves the right of ownership to the purchased item until receipt of all payments from the underlying contract. In case of conduct by the customer contrary to contract, particularly in case of a delay in payment, ATP is entitled to take back the delivered item. The taking back of the item by ATP is considered withdrawal from the contract. After taking back the item, ATP is authorised to sell it and to offset the proceeds from the sale against the liabilities of the customer - less reasonable selling costs.