

General Terms and Conditions of Sale and Services of  
ATS – Advanced Technology Solutions (Pty) Ltd.  
(04/15)

**I. Application**

1. Our services and deliveries will be effected exclusively in accordance with our General Terms and Conditions of Sale and Services set forth herein below. We do not recognize any conditions of the contracting partner conflicting with or deviating from our General Terms and Conditions of Sale and Services; the application of such conditions is hereby expressly opposed. Our General Terms and Conditions of Sale and Services shall apply even if we, notwithstanding our knowledge of conflicting or deviating conditions of the contracting partner, execute delivery or render the service without reservation.
2. The following General Terms and Conditions of Sale and Services apply only with respect to entrepreneurs and to legal persons governed by public law and special funds governed by public law.

**II. Concluding the contract, written form, deviating agreements, guarantees**

1. Our brochures and advertisements do not constitute a legally binding offer to enter into a contract.
2. The mutual written statements given by both parties are authoritative with respect to the contents of contracts entered into with us. If a contract is entered into without any such mutual written statements, our written order confirmation alone shall be authoritative.
3. Deviating, ancillary or supplementary agreements are only binding following our written confirmation in each individual case.
4. For the assumption of a guarantee by us, an explicit, written declaration is required in this respect, which is to be entitled "Guarantee". Our product descriptions do not constitute a guarantee within the meaning of Section 443 German Civil Code (BGB).

**III. Quotation documents and business secrets, costs**

1. The documentation belonging to the quotation such as illustrations, drawings, details of weights and measurements are only approximations unless they are expressly indicated as binding.
2. We reserve the unrestricted rights of exploitation under property and copyright law in accordance with Section XI with respect to the cost estimates, drawings and other documentation; they may be made available to third parties only with our prior consent. We are under obligation to only allow third parties access to plans marked as confidential by the customer if the customer gives its consent.
3. No charge shall be levied for designs of plant or products, drawings, specimens, models or cost estimates if the respective order is placed with us; otherwise we have the right, at our discretion, to demand the return of the submissions we provide and to charge for the costs incurred in accordance with the table of fees of the German Engineers' Association. The cost of travel undertaken at the specific request of the customer shall also be charged in accordance with this table of fees. Design drawings shall not be provided as a matter of principle.

#### **IV. Scope of delivery and of the services to be rendered**

1. The scope of delivery and of the other services to be rendered by us shall be determined solely in accordance with our written order confirmation – unless a special written agreement has been reached. Additional parts delivered as a precautionary measure and any parts left over are our property.
2. If the order is amended in retrospect, we shall charge for the additional services rendered.
3. Protective devices shall only be included in the delivery insofar as is agreed.
4. Our delivery does not include the following at any event, even if we assume responsibility for assembly in one lump sum amount: earthwork, masonry and carpentry work, lifting gear, scaffolding, auxiliary teams, roof guards, attachments and support for pipes, frames for dust separators, steam and condensed water pipes, valves, steam driers, back gears, driving belts, nor does our delivery include supplying the goods delivered with electricity, water or compressed air, or the pipes therefor. Nor does our delivery include transporting the parts of the delivery from the unloading point to the installation site.
5. If we nonetheless render such services, they will always be charged separately and shall be paid by the customer on top.
6. Our plant/products comply with the safety requirements of the relevant European standards (EN). In addition the respective international standards (ISO/IEC) are taken into consideration as state of the art.

#### **V. Prices and payments, off-set and right of retention**

1. Prices are ex works prices as defined in the latest version of the INCO Terms; they do not include assembly, packaging or insurance, nor do they include Value Added Tax, which is always to be paid in the statutory amount prevailing on the invoice date in addition to our prices.
2. If assembly and commissioning are included in the price, this shall only apply in case of uninterrupted work; in case of any interruption which is not our fault, the customer shall bear the extra costs arising as a result (travel, wages etc.).
3. Payments are to be effected to us in full on the due date with no deduction for charges, e.g. bank charges, in accordance with the terms of payment agreed in writing.
4. The customer may only off-set such claims which are undisputed or recognized by final and binding judgment; off-set is not permissible in any other case. No right of retention may be exercised with respect to counterclaims which are not acknowledged or recognized by final and binding judgment insofar as such claims do not result from the same contractual relationship.

#### **VI. Delivery period**

1. The delivery period is set forth in the agreements reached by the contracting parties. Delivery periods indicated by the customer are only binding on us if we have explicitly confirmed them in writing. The precondition for our compliance with delivery periods is that we receive punctually all of the documentation to be supplied by the customer such as any official permits and clearances required, particularly plans, and the compliance by the customer with payment terms agreed upon and with other obligations, including any collaboration obligations. If these preconditions are not met on time, the delivery period shall be extended accordingly. This shall not apply if we are responsible for the delay.
2. If non-compliance with the delivery period is due to force majeure or to other events outside our sphere of influence, for instance labour disputes, the delivery period shall be reasonably extended. We shall advise the customer without delay of the commencement and end of such impediments.

3. If we are in default, the customer may – provided that the customer proves that it incurred damage as a result thereof – demand damages in an amount of 0.5 % but not exceeding, on aggregate, 5 % of the value of the delivery for each complete week of delay with respect to that part of the overall consignment which cannot be used on time or in accordance with the contract as a consequence of the delay. Further-reaching claims to compensation for damage due to default are excluded. In all other respects claims to damages by the customer on account of delayed delivery shall be governed solely in accordance with Section XII / XIII of these Terms and Conditions. No claims to damages shall arise on account of delayed delivery.
4. The customer may rescind the contract within the framework of the applicable statutory provisions insofar as we are accountable for the delayed delivery.

## **VII. Passing of risk, partial performance**

1. Unless otherwise agreed in writing, a sale by dispatch is contracted between the customer and us. The risk shall pass to the customer when the goods being delivered are shipped from the respective ATS site even if part shipments are effected or if we have assumed responsibility for other services, for instance for shipment costs or delivery and installation. We shall insure the shipment against customary transport risks at the customer's request and expense.
2. If shipment is delayed for reasons for which the customer is accountable, risk shall pass to the customer on the date of our notification of readiness for shipment. We undertake to take out the insurance requested by the customer at the request and expense of the customer.
3. Part shipments are admissible if the customer can be reasonably expected to accept them.

## **VIII. Assembly**

1. Our terms and conditions of assembly shall apply, in addition to any special agreements reached, to the provision of our assembly mechanics for the installation of machinery, apparatus, plant etc.
2. The customer is obliged to provide, at its own expense, the necessary auxiliary staff required by the assembly mechanic appointed by us. If the customer does not comply with this obligation and if, as a result, we are compelled to provide our own staff to support the assembly mechanics, we shall charge for the costs thereof separately.

## **IX. Acceptance**

1. Acceptance of plant must be effected immediately after completion in the presence of our assembly mechanic and must be certified on the special form which the assembly mechanic has on him. If, through no fault of our own, plant cannot be accepted immediately after completion of the installation, the customer shall bear any costs or risks arising as a result of the delayed acceptance.
2. The customer may not refuse acceptance in case of minor defects.

## **X. Reservation of title**

1. All of the products delivered by us shall remain our property pending payment of all our claims stemming from the business relationship with the customer.
2. Pending transfer of title, the customer is obliged to treat the goods delivered with care; the customer is obliged in particular to adequately insure these goods at its expense for their replacement value against fire and water damage and against theft. If maintenance or inspection work is necessary, the customer must have this work effected at its own expense.

ATS or operations recognized by ATS undertake to offer maintenance and inspection work at customary market prices.

3. In case of default in payment by the customer, we shall be entitled to demand the restitution of the goods supplied with reserved title following the expiry to no avail of a reasonable deadline set to the customer for performance; the applicable statutory provisions under which the setting of a deadline is not required shall remain unaffected. If the goods delivered are resituated or if reserved title is asserted due to default in payment, this shall constitute the rescission of the contract unless we expressly determine otherwise. Similarly we may demand the restitution of the goods delivered if the customer treats our property improperly or otherwise acts in breach of contract. In this case our demand for restitution of the goods does not constitute the rescission of the contract.

4. In case of recovery of the goods delivered pursuant to para 3 above, any payments for such goods already effected by the customer will only be repaid in the amount of the current market value thereof less our damage, the decrease in value, compensation for use in the time during which the goods delivered were used by the customer, recovery costs, e.g. transport costs, and our lost profits.

5. The customer is entitled to on-sell the complete plant and the products supplied by us during the normal course of business given due compliance with all the safety precautions and accident prevention regulations to be adhered to in each specific instance. The customer shall, however, assign to us now already all of the claims to which it will be entitled from its customers or third parties from such sale in the amount of the final invoice value (including Value Added Tax) of our claim, irrespective of whether the goods delivered are on-sold with or without any further processing. The customer shall remain entitled to collect this claim even after the assignment thereof. Our authority to collect the claim ourselves shall remain unaffected hereby. We undertake, however, not to collect the claim if and as long as the customer complies with its payment obligations, is not in default in payment and, in particular, no petition for the initiation of insolvency proceedings has been filed and payments are not suspended. If this is the case, however, we may demand that the customer notify us of the claims assigned to us and of the respective debtors, provide all of the details required to collect the claim, deliver to us all of the respective documentation and notify the debtors of the assignment.

6. Any re-working or processing of the goods with reserved title shall be effected on our behalf, without establishing any obligation for us. The processed goods are deemed to be goods with reserved title within the meaning of these Terms and Conditions. If the goods with reserved title are processed together with or indivisibly mixed with other items not belonging to us, then we acquire joint ownership in the new thing in the same proportion as the proportion between the invoice value of the goods with reserved title and the invoice value of the other goods used at the time of the processing or mixing. The joint ownership rights thus created shall be deemed to constitute goods with reserved title within the meaning of these Terms and Conditions. If our goods are connected to or indivisibly mixed with other movables to form a new, uniform product and if this new product is to be regarded as the principal product, it is deemed agreed that the customer assigns to us proportionate joint ownership to the extent that the principal product belongs to the customer. In all other respects the same shall apply to a product created by processing, connection and mixing as applies to goods with reserved title.

7. We undertake to release security to which we are entitled at the customer's request to the extent that the realizable value of our security exceeds the claims to be secured by more than 10%. The selection of the security to be released in this respect is at our discretion.

## **XI. Industrial property rights**

1. If we have to supply in accordance with drawings, models, specimens or by using parts provided by the customer, the customer guarantees that no third party protective rights are infringed in the country of destination of the products. We shall advise the customer of any rights known to us. The customer shall indemnify us against claims by third parties and shall

compensate us for any damage incurred. If the customer is forbidden from manufacturing or supplying by a third party claiming a protective right belonging to the third party, then we are entitled, without examining the legal position, to discontinue the work pending clarification of the legal situation by the customer and the third party. If we cannot be reasonably expected to continue to execute the order due to the delay, then we are entitled to cancel the contract.

2. Upon request we shall return drawings and specimens provided to us which did not result in an order, otherwise we have the right to destroy those three months after making a quotation. This obligation applies analogously to the customer. The party entitled to destroy such items must inform the other party in good time of its intention to destroy them.

3. We hold the copyright and, if applicable, other ownership and industrial property rights, in particular all rights of use and exploitation, in the models, moulds and devices, drafts and drawings used by us or third parties commissioned by us.

4. Section III shall remain unaffected.

## **XII. Liability for defects in the delivery**

1. In the case of a commercial transaction, the precondition for the assertion of claims on account of defects by the customer is that the customer complies with the duties owed by the customer to examine the goods and give notification of any defect. Complaints on account of incomplete or defective delivery must be notified to us in writing immediately, but no later than 5 working days after taking receipt of the goods, in case of concealed defects immediately after discovery thereof.

2. We shall be liable as follows with respect to defects in the goods delivered existing at the time of the passing of risk:

a) We warrant that the goods are free of defects for a period of one year with effect from the time of delivery of the goods.

b) We shall bring defective goods into conformity with the contract of sale (subsequent performance), at our discretion either by supplying goods free of defects or by repairing the goods. We must be given adequate time and opportunity to effect the subsequent performance. If we are refused this possibility, we shall be released from the obligation to effect subsequent performance to this extent and from further claims on account of defects in the goods delivered to this extent.

c) Claims by the customer with respect to expenses required for the purpose of subsequent performance, in particular transport, travel, labour and materials costs, are excluded insofar as such expenses are increased due to the fact that the goods delivered have been removed to a location different from the contractually agreed place of delivery.

d) Within the framework of the applicable statutory provisions, the customer has the right to rescind the contract or reduce the purchase price if we allow a reasonable deadline set by the customer for delivery of a replacement or a repair to expire to no avail or if the subsequent performance definitively fails or is impossible (failure of subsequent performance). If subsequent performance fails in the event of an only minor defect, the customer shall only have the right to reduce the purchase price. Any claims other than the foregoing claims on account of defects shall be excluded – save as provided in Section XII. 2. and 3. Of these Terms and Conditions.

e) No warranty is given with respect to defects caused by circumstances which are within the customer's sphere of influence, including, in particular, the following cases: natural wear and tear of the goods delivered, unsuitable or unprofessional use of the goods delivered, faulty assembly or commissioning by the customer or third parties, except where we are responsible for this, faulty or negligent treatment of the goods delivered, defects due to thermal, chemical, electro-chemical, electrical or other special external influences following the passing of risk which are not provided for under the terms of the contract.

f) Furthermore there is no entitlement to claims on account of defects if modifications or repair work have been effected by the customer or third parties without our written consent and where such modifications or repair work caused the defect, which shall be assumed.

- g) Furthermore there is no entitlement to claims on account of defects if the goods delivered are operated with inappropriate accessories of third parties.
- h) Furthermore no warranty is given for any public statements given, in particular advertising statements which we make to the general public with respect to any qualities in the goods.
- i) If protective devices are included in the delivery, the customer undertakes to have examined, without delay, whether such protective devices comply with the requirements of the competent authority (e.g. trade supervisory office) and with the accident prevention regulations to be adhered to in that particular instance.

### **XIII. Overall liability**

1. If due to our fault, the customer cannot use the goods delivered in accordance with the contract due to omitted or defective information or advice or due to a violation of other ancillary contractual obligations, the provisions of Section XII. and of the two following subsections shall apply accordingly excluding any further claims by the customer.
2. We shall be liable for damage not caused to the goods delivered themselves, irrespective of the legal grounds, in case of fatal and physical injury and damage to health (personal injury). The same shall apply in case of other damage insofar as it is due to an intentional or grossly negligent violation of a duty by us or by a statutory representative or an agent employed in the performance of an obligation or by a vicarious agent. In addition, we shall be liable in case of the mandatory application of statutory liability provisions subject to the terms and scope of such provisions with respect to damage, in particular personal injury and damage to privately used property. Further-reaching liability by us is excluded save as provided in para 3 below.
3. Insofar as we violate a material contractual obligation by slight negligence, and provided that there is no personal injury as defined in paragraph 2 above, our duty to provide compensation is limited to damage which can be reasonably forecast and is typical of the type of contract.

### **XIV. Our right of rescission**

In case of unforeseen events within the meaning of Section VI. of these Terms and Conditions, insofar as they considerably change the economic significance or content of performance or have a considerable effect on our operation and in the event that performance becomes impossible in retrospect, the contract shall be appropriately adjusted. Insofar as this is not reasonable from an economic viewpoint, we shall have the right to rescind the contract in whole or in part. If we desire to exercise this right of rescission, we must inform the customer thereof immediately upon realization of the implications of the event even if it had been initially agreed with the customer that the delivery period be extended.

### **XV. Place of performance, jurisdiction and venue**

1. If the customer is a registered merchant, a legal person governed by public law or a special fund governed by public law, the respective ATS location shall be the place of performance for all obligations from the contractual relationship with us.
2. If the customer is a registered merchant, a legal person governed by public law or a special fund governed by public law, it is deemed agreed that the courts with jurisdiction at our principal place of business shall have jurisdiction and venue in the event of any disputes arising from or in connection with our deliveries and services or with a claim raised under any bank guaranties. In derogation here from we shall also be entitled to take legal action at the courts with jurisdiction at the principal place of business of the customer.

**XVI. Applicable law**

The contractual relationship shall be governed by and construed in accordance with the laws of South Africa.

**XVII. Data protection**

We advise that our accounting department operates using IT equipment and that in this connection we compile, process and use the data obtained on the basis of the business relationship with the customer using automatic processes, to the respective extent necessary to establish, develop or amend the contractual relationship.

**XVIII. Partial invalidity**

If one of the provisions of this Agreement should prove to be ineffective, this shall not affect the effectiveness of the remaining provisions of the Agreement.