

## § 1 Scope of these General Terms and Conditions, Hierarchy

1. The following General Terms and Conditions of Delivery and Service (“**Ts&Cs**”) of ATC Armoloy Technology Coatings GmbH & Co. KG (“**ATC**”) apply to all business transactions between ATC and the customer, in particular to all services provided by ATC (hereinafter also referred to as “**Services**”) and to all payments by the customer. ATC, hereby, rejects any terms of business of the customer that deviate from or supplement these Ts&Cs, unless ATC confirms such terms of business in writing. The provision of services or acceptance of payments by ATC without reservation may not be interpreted as acknowledgement of deviating or supplementing terms of business of the customer, even if ATC does not explicitly object to such terms of business.
2. If other contractual provisions, in particular provisions contained in individual agreements (e.g. in an offer, order confirmation or supply agreements) conflict with these Ts&Cs, such other provisions take precedence over these Ts&Cs. Otherwise, the various provisions apply cumulatively.

## § 2 Formation of an agreement

All offers provided by ATC are generally not binding. An agreement is formed by the acceptance of a customer order by ATC. Acceptance may also be effected by conclusive conduct, e.g. provision of services or acceptance of payment.

## § 3 Scope of services

1. The scope of services to be provided by ATC is exclusively subject to the expressly agreed service characteristics and specifications. ATC only assumes a warranty exceeding this service quality, in particular for a certain purpose or fitness of the services, period of use or durability, if such warranty is expressly agreed; otherwise, the customer exclusively bears the risk of fitness and use.
2. Information contained in catalogues and prospects, as well as information provided in documents associated with an offer are mere descriptions (indications) and as such not binding, unless such descriptions are expressly designated as binding. Public statements or advertising by ATC does not represent any quality specification of the services under the agreement.
3. Undertakings and guarantees are only effective, if expressly warranted by ATC in writing.
4. ATC may possibly not know the actual location of use. For this reason, the customer is obliged to examine itself, if the use or application of the services infringes intellectual property rights or other rights at the location of use.

## § 4 Supply, shipment, pick-up, passing of the risk

1. The customer supplies the goods to be coated at its own risk and cost. The customer is obliged to mark the goods to be supplied to ATC for coating purposes by precise drawings indicating all required technical data on ATC forms or other equivalent appropriate certificates of ATC. The condition of the goods supplied to ATC must conform to any prepared workshop certificates. The customer is liable to the full extent for damages to operating equipment or ATC personnel caused by

discrepancies, foreign substances or harmful residues. Delays in delivery or other negative effects resulting from such discrepancies, foreign substances or harmful residues are to be borne by the customer.

2. Goods supplied for coating purposes may not be contaminated.
3. ATC will visually inspect goods supplied for coating purposes without guarantee as to correctness regarding number of items and grave damages. If the inspection causes an increased investment in time and material, ATC may charge a handling flat-fee based on the actual investment in time and material. ATC is generally not required to doubt the provided coating data concerning the properties of the supplied goods. If due to specific orders for aviation and military technology, nuclear industry etc. detailed goods receipt controls are required, such controls will be limited to the inspection of the number of items, as well as a visual inspection of the supplied goods' condition. ATC will take out a fire insurance policy for the customer goods to be coated. This policy will cover at a maximum the customer's basic prices [Herstellungspreise], provided the customer accurately declares the basic prices on the waybill.
4. If pick-up or shipment of the coated goods is delayed at the customer's wish or request, ATC is authorised in its fair judgement to store the goods at the customer's risk and to charge the goods to the customer as delivered ex works, as well as to the charge storage costs to the customer, at a minimum, however, 0.5% of the invoice amount for each month or part thereof from the readiness for shipment date.
5. Upon transfer of the coated goods to the first carrier the risk passes to the customer. The coated goods are also deemed transferred, if the customer is in default of acceptance.

## § 5 Pricing, price adjustment

1. Agreed prices exclusively cover the contractually agreed scope of services and are generally ex works. Payable statutory VAT, as well as additional expenses for e.g. transportation, is generally not included in the prices.
2. Goods supplied for coating purposes must be delivered with reusable packaging. If such packaging is missing or damaged, ATC will package the goods at the expense of the customer.

If ATC is willing to remove contaminations on the supplied goods, removal costs must be additionally compensated.

3. If sampling is requested or required, ATC will charge a sampling flat-fee based on the actual investment in time and material, however at minimum € 180.00.
4. In the case of coatings for small parts and mass-produced parts, the customer does not have a claim to a price adjustment in the case of scrap or shortfalls of up to 3 % of the supplied total quantity. In this case, ATC is only liable, if the conditions of Section 10 of these Ts&Cs are met.
5. ATC reserves the right to charge a cost flat-fee of € 180.00 in the case of orders of less than € 180.00. Furthermore, ATC charges all additional works (e.g. preparatory treatments of the goods to be coated, as well as use of tools and clamps) that turn out to be necessary in accordance with the order.

6. If the underlying costs, in particular for personnel, materials, raw materials, transportation or energy - also caused by exchange rate fluctuations - change by at least 5 % after the conclusion of the agreement, ATC will apply a price adjustment. Such price adjustment must be applied in accordance with ATC's price costing by maintaining the calculated profit. ATC is obliged to promptly notify the customer of such price adjustment and provide understandable reasons for the price adjustment.

A price increase may not be applied, if the underlying cost change is caused by a fact or circumstance for which ATC is responsible and which conflicts with the due care of a prudent business person.

If a price increase exceeds 10 %, the customer has the option to cancel the respective order at no charge within two weeks from receipt of the notification from ATC. Cancellation requires the written form to be effective.

ATC is not obliged to take measures or look for measures that will result in a price decrease.

#### **§ 6 Invoice, payment, sett-off**

1. ATC's invoices are in Euro and payable immediately without any deduction. Discounts are only allowed if expressly agreed. A discount arrangement becomes and remains only effective, as long as the customer is not in arrears with another payment.
2. If the customer does not object to an invoice in writing and giving reasons for the objection within a period of one month after receipt of the invoice, the respective invoice is approved by the customer as regards its content (in particular as regards the ordered services). The customer's statutory claims, in particular in the case of defects, remain unaffected.
3. The customer is in default without a reminder being required, if the customer fails to pay an issued invoice within a period of 10 days after the invoice date, unless the issued invoice is not serviced on this date, incorrect, not yet due for payment or not enforceable. Otherwise, default may also occur in accordance with statutory requirements. If the customer is in default, ATC may demand payment of statutory default interest. ATC's right to claim greater damage caused by default remains unaffected.
4. The customer may not offset any of its claims against ATC's payment claims or exercise any right of retention, unless the customer claim or the customer's reciprocal right is uncontested, recognized by declaratory judgement or at a minimum ready for a decision. Offsetting or the exercise of a right of retention is, however, possible, if the customer claim and ATC's claim is based on a legal relationship requiring reciprocal performance / counter-performance.

#### **§ 7 Passing on of costs in the case of unfounded defect complains**

If and to the extent a defect complain of the customer is unfounded, the customer does not have any warranty claims or rights. If, based on such a complaint, ATC provides services at the customer's request or demand, ATC may invoice these services according to the applicable prices of ATC and ATC may also invoice any incurred expenditures caused by these

services (in particular expenses for analyses, repairs, transports and travel).

#### **§ 8 Acceptance, delivery dates, partial performance, delay of performance**

1. In the case of insignificant defects, the customer may not refuse acceptance of services.
2. Agreed performance dates or deadlines are to be understood as approximate dates, unless such dates or deadlines are expressly designated as binding. The period for the performance of services begins at the earliest on the day on which all agreed basics and all commercial and technical requirements for the performance of the order are agreed and clarified.
3. Partial performance of services that is reasonable to the customer is permitted. A partial performance of services is unreasonable, if the customer is not interested in such partial performance or if such partial performance increases the customer's investment in time and material in an unreasonable manner, e.g. because prior to or after the provision of such partial performance only a small portion of the services is still to be provided.
4. In the case of delay of performance ATC's liability for damages is exclusively governed by Section 10 of these Ts&Cs.

#### **§ 9 Liability for defects**

1. The customer is obliged to inspect the goods after delivery without undue delay. If the inspection identifies a defect, the customer is obliged to notify ATC of such defect without undue delay, at the latest, however, 8 working days after receipt of the goods. If a defect is identified at a later date, the customer is also obliged to notify ATC of such defect without undue delay, at the latest, however, 3 working days after the discovery of the defect. If notification is not given within the above periods, any defects are deemed to be accepted. Otherwise, the provision in Section 377 German Commercial Code [HGB] applies.
2. In the case of a defect in performance in terms of the law, the condition for a warranty claim is met. In the case of a warranty claim, the following provisions take priority over the statutory provisions.

The conditions for a defect in terms of the law are not met in particular in the following cases: Inappropriate or improper, incorrect or careless treatment or use by the customer or third parties, normal and customary wear and tear, excessive load, use of inappropriate supplies. The conditions for a defect are also not met, if a claimed coating defect is not demonstrably caused by a defective service of ATC, but e.g. solely originates from the base material.

ATC generally only coats the outer surfaces of hollow parts, unless agreed otherwise with the customer. Immediate occurrence of corrosion/oxidation on non-coated surfaces is possible and does generally not establish a warranty claim.

Due to the surface structure (Nodularity), the coating may exhibit colour variances and varied gloss levels. These effects

are not defects and for this reason do not give rise to a warranty claim, because they do not affect the functionality or the quality of the coating. The same applies to any rinsing spots.

3. In the case of a defect in performance in terms of the law, ATC is obliged, at its option, to remedy the defect or to provide a defect-free service (subsequent performance). Should one or both kinds of subsequent performance be impossible or inadequate (unreasonable), ATC has the right to refuse subsequent performance.

ATC may refuse subsequent performance, as long as the customer fails to meet its payment obligations to ATC to an extent that corresponds to the defect-free portion of the provided services, unless the customer is not interested in the defect free portion of the services.

ATC bears the necessary expenditures for subsequent performance, in particular cost of transportation, travel, work and materials. Bearing of costs by ATC is excluded, if and to the extent additional costs arise through the relocation of the service to another location than the place of performance.

4. Should subsequent performance be expendable or impossible, fail or wrongfully refused or delayed by ATC, the customer may enforce its rights in accordance with the law. Damage claims are exclusively subject to Section 10 of these Ts&Cs.
5. The customer may not withdraw from the entire agreement, if a defect of a partial performance of services cannot be remedied, unless the customer is not interested in the partial performance of services.
6. Warranty claims become time-barred within one year from the statutory commencement of the statute of limitations.

The above provision does not apply to structures and works, whose successful performance is defined as the provision of a planning or monitoring service for such structures; in this case the limitation period is five years. The statute of limitations also applies only after five years in the case of a sold thing (product) that has been used for a structure in accordance with its customary use and caused the defectiveness of the respective structure.

The statutory limitation period applies in the case of wilful concealment of a defect.

If ATC is liable for damages due to warranty in accordance with Section 10 of these Ts&Cs, the limitation period regarding the claim for damages is subject to the statutory provisions.

#### **§ 10 Limitation of ATC's liability for damages**

1. If ATC, its legal representatives, employees or vicarious agents violate a duty with intent or gross negligence, regardless of the kind of duty and regardless of the legal grounds, in particular based on the contractual relationship or in the case of tort committed with intent or gross negligence, ATC is liable for the customer's damage arising from such violations in accordance with the statutory provisions.
2. If ATC, its legal representatives, employees or vicarious agents violate a duty with simple negligence, regardless of the kind of

duty and regardless of the legal grounds, in particular based on the contractual relationship or in the case of tort committed with simple negligence, any damage claims of the customer against ATC are excluded, unless a material contractual obligation has been violated with simple negligence. In this case, ATC's liability is limited to the foreseeable damage that is typical for such agreements. A material contractual obligation within this meaning, is an obligation, whose performance is a prerequisite for the proper execution of the agreement and on whose compliance the customer routinely relies on and may rely on.

3. The above exclusions and limitations of liability do not apply in the case of intentional or negligent injuries to life, body or health, in the case of wilful concealment of a defect and they do also not apply, if and to the extent a warranty of condition is not fulfilled and they do also not apply, if and to the extent ATC is liable under the German Product Liability Act [Produkthaftungsgesetz].
4. Statutory rules of the burden of proof remain unaffected from the above provisions.

#### **§ 11 Intellectual property rights, reservation of title**

1. Any and all copyrights, design rights, trademark rights, patent rights, utility model rights and other proprietary rights to documents, concepts, texts, drawings, drafts developed by ATC, as well as to the services (hereinafter referred to as "**Objects**") remain the exclusive property of ATC. The customer undertakes to refrain from claiming any rights in relation the Objects that relate to the application of proprietary rights, prior use or licensing and to refrain from supporting any third parties in claiming such rights.
2. All Objects that are delivered to the customer and to which ownership is to be transferred to the customer under this agreement remain the property of ATC until all claims of ATC against the customer under this business relationship are paid in full. ("**Goods subject to the reservation of title**"). If the customer's conduct is in violation of this agreement, in particular in the case of default in payment, ATC has the right, after reminding the customer, to take back the Goods subject to the reservation of title and the customer is obliged to return the Goods subject to the reservation of title.

#### **§ 12 Place of performance, place of jurisdiction, governing law**

1. Place of performance for all services provided by ATC and the customer is the seat of ATC.
2. Exclusive international place of jurisdiction for all disputes arising from this business relationship is the Federal Republic of Germany. Exclusive local place of jurisdiction is the seat of ATC, if the customer is a business person or a legal person or a special fund under public law. ATC may also sue the customer at another court having jurisdiction under the law.
3. This business relationship between ATC and the customer is exclusively governed by the laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods.