

**General Terms and
Conditions
for Product Sales and
Services
of ACTIA IME GmbH**

towards entrepreneurs, legal entities under pub
law, or public-law special funds ("B2B").

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Dokumentenreferenz

Index	Kapitel	Datum	Kommentar	Name
A	alle	20.05.2022	Erstellung des Dokuments	Maik Luschtinetz

Notice

on the terms used in these General Terms and Conditions ("GTC"):

- In the following GTC, ACTIA IME GmbH will be referred to as "Seller"; "we" as well as any forms of "us" shall always refer to ACTIA IME GmbH.
- The contracting partners to whom ACTIA IME GmbH as Seller renders or is to render services will be referred to as the "Purchasers".

§ 1 Scope

- 1.1 These GTC shall apply within the meaning of § 310 (1) of the German Civil Code (*Bürgerliches Gesetzbuch*; "BGB") exclusively towards entrepreneurs, legal entities under public law, or public-law special funds ("B2B"). We hereby object to any terms and conditions of Purchaser that are contrary to or deviate from our general terms and conditions, or we shall only accept such terms and conditions if we explicitly agree to their validity in writing.
- 1.2 These GTC shall apply to all our offers, sales, deliveries, and services; they shall also apply to any future similar transactions with Purchaser.
- 1.3 Individual agreements made with Purchaser from case to case (including any collateral agreements, supplements, and amendments) shall take precedence over these GTC in any case. Subject to proof to the contrary, a written contract or our written confirmation shall be essential for the content of such agreements.

§ 2 Offers, conclusion, of contract/content

- 2.1 Except if our offers are explicitly designated as binding in writing, our offers are subject to change without notice and shall, therefore, be non-binding. If our offer is explicitly designated in writing as binding, the contract shall be entered into by acceptance of the unmodified offer by Purchaser. If our offer is non-binding, an effective contract shall only be entered into by our order confirmation or by delivery of the goods.
- 2.2 Any content in our non-binding offers – such as in particular dimensions, weights, illustrations, drawings, etc. – shall be for illustrative purposes only and shall, therefore, only be approximates. Such contents shall only become binding parts of the contract if we explicitly confirm this in writing.
- 2.3 If an order addressed to us is to be regarded as an offer in accordance with § 145 BGB, we may accept it within two weeks.
- 2.4 If the object of the contract between Seller and Purchaser refers to any services, the contracting parties do not intend to establish a contractual relationship based on an employment contract, nor is such a relationship established by the contract between Seller and Purchaser. Either contracting party shall be responsible for its own social security contributions or taxes and shall indemnify the respective other contracting partner against any liability or damages. The contracting parties shall also be free to act on behalf of third parties.

§ 3 Provided documents and objects

- 3.1 We reserve title and copyrights in any documents and objects (also in electronic form) provided to Purchaser in connection with the placement of the order – e.g., in particular, calculations, drawings, material samples, etc. Purchaser must not use such documents and items for its own purposes, and it must not make them accessible to any third parties except if we give Purchaser our explicit written consent to do so.
- 3.2 As far as we do not accept Purchaser's offer within the period stipulated in § 2, item 2.3 of these general terms and conditions, the documents and items provided to Purchaser shall be returned to us without undue delay. Otherwise, the documents and items shall be returned to us without undue delay upon request by Seller.

§ 4 Prices, price changes

- 4.1 Except if otherwise agreed in writing, our prices shall apply
- ex works ("EXW"),
 - without packaging,
 - plus value added tax at the legally applicable rate.

The cost of packaging shall be invoiced separately. The statutory value-added tax not included in our prices shall be indicated separately on the invoice at the statutory rate applicable on the date of invoicing.

- 4.2 If any services or work are performed, the price shall be determined based on the actual time and material incurred for the service rendered. Estimates given by us, in particular in cost estimates, based on estimated expenditure of time and materials for such services to Purchaser shall not be binding; quantity estimates on which such estimates are based shall be based on an evaluation of the scope of services rendered to the best of our knowledge.
- 4.3 Seller reserves the right to make reasonable price changes due to changes in the costs of raw materials/materials, *production, personnel, energy, rents/licenses, administration and government levies* for any deliveries and services or work of Seller that do not take place any earlier than four months after conclusion of the contract due to delays for which Seller is at fault – except if a written fixed price agreement has been entered into between Seller and Purchaser.

§ 5 Payments, default, set-off, retention

- 5.1 Except if otherwise agreed in writing, the amounts invoiced by Seller from Purchaser shall be settled within 21 days from the date of the invoice to an account specified by Seller in the invoice. Deduction of a discount shall only be permissible with a special written agreement.
- 5.2 Purchaser shall be in default even without a reminder from Seller if it fails to pay the invoiced amount within three further days after the due date within the meaning of the above item 5.1. Seller shall have the right to charge default interest in the amount stipulated by law (currently in

the amount of nine percentage points above the respective base interest rate, § 288 (2) BGB) from this time of default onwards. Seller reserves the right to claim higher damages for delay. If Purchaser defaults on a payment, all its payment obligations arising from the business relationship between Seller and Purchaser shall fall due immediately.

- 5.3 Purchaser shall only have a right of set-off if the counterclaims have been legally established, have been acknowledged by Seller, or are undisputed even if any notices of defects are issued or counterclaims are asserted. Purchaser shall only have the right to exercise a right of retention as far as its counterclaim is based on the same contractual relationship.

§ 6 Reservation regarding advance payments

- 6.1 Seller reserves the right to make further deliveries to Purchaser dependent on advance payment by Purchaser for the goods to be delivered if there are any circumstances that give rise to doubts as to the solvency of Purchaser. Such doubts regarding Purchaser's solvency shall be considered present in particular if an application for opening insolvency proceedings is filed against the assets of Purchaser or if Purchaser does not make its payments to Seller or any third parties on time.
- 6.2 In the cases of the above item 6.1, Seller may set Purchaser a reasonable deadline for the advance payment of the goods and withdraw from the contract if the advance payment is not received by Seller within that deadline; Purchaser may provide security by bank guarantee instead of the advance payment. If Seller has already delivered the goods, the purchase price shall be due at once and without deduction, irrespective of any other payment periods.

§ 7 Delivery times

- 7.1 Commencement of the delivery times stated by us shall initially be subject to timely and proper compliance with Purchaser's obligations. The defence of non-performance of the contract is reserved.
- 7.2 Delivery times and delivery dates stated by us shall only be for the information of Purchaser. They shall, therefore, be non-binding, unless the delivery times or delivery dates have been explicitly designated by us in writing as binding. A delivery to Purchaser within five days of the stated delivery date shall, therefore, in any case still be deemed to be on time in cases of non-binding delivery times and delivery dates.
- 7.3 The delivery times stated by us shall assume timely delivery on the part of our upstream suppliers. We cannot be held responsible for any delays due to untimely material availability on the part of the upstream suppliers.
- 7.4 If we are culpably unable to comply with any explicitly agreed delivery times or are in default with the delivery for other reasons, the client shall grant us a reasonable grace period that shall commence upon expiry of the agreed delivery time. Purchaser shall have the right to withdraw from the contract after unsuccessful expiry of a reasonable grace period set by Purchaser.
- 7.5 If performance is temporarily impossible or considerably impeded, wholly or in part, due to force majeure or other extraordinary circumstances for which we are not responsible, delivery times

explicitly agreed as binding, deadlines set by law, or deadlines set by Purchaser (such as those from the above item 7.4) shall be extended in particular by the duration of the impediment to performance. Seller shall inform Purchaser of the occurrence of such an event in text form without undue delay after the event has become known to Seller. Purchaser shall neither have the right to withdraw from the contract nor to claim damages due to the delivery time extended in this manner. If the impairment to performance lasts for more than 22 weeks, both Purchaser and we shall have the right to withdraw from the contract as far as the contract has not yet been performed.

If Purchaser is contractually or legally entitled to rescind the contract (e.g. due to loss of interest) without granting a grace period, this right shall remain unaffected.

- 7.6 As far as any delay in delivery by Seller is not due to intent or gross negligence, claims for damages of any kind shall be excluded.
- 7.7 If Purchaser has entered default of acceptance or culpably violates any other obligations to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to assert further claims. If the above conditions are met, the risk of accidental loss or accidental deterioration of the goods shall pass to Purchaser at the time at which Purchaser is in default of acceptance or debtor's default.

§ 8 Transfer of risk in case of shipment, partial deliveries

- 8.1 If the goods are shipped to Purchaser at Purchaser's request, the risk of accidental loss or accidental deterioration of the goods shall pass to Purchaser when the goods are loaded onto the means of transport, but no later than when the goods leave our factory/warehouse. The shipment shall be performed for the account of Purchaser. We shall not be obligated to provide transport insurance. (EXW)
- 8.2 Except if explicitly agreed otherwise in writing, we shall have the right to make partial deliveries in consultation with Purchaser, which shall be invoiced individually.

§ 9 Retention of title

- 9.1 We retain title in the goods/items purchased from us by Purchaser until full payment of all claims arising from the purchase contract ("Retained Goods"). Retained Goods shall not become the property of Purchaser until Purchaser has entirely met its obligations arising from its business relationship with Seller, including ancillary claims and claims for damages against Seller.
- 9.2 As long as title in the goods has not yet passed to Purchaser, Purchaser shall be obligated to treat the Retained Goods with care and to keep them in working order at its own expense. As long as title has not yet been transferred, Purchaser must inform us in writing without undue delay if any Retained Goods are seized, exposed to other interventions by third parties or other, also actual, impairments. Purchaser shall compensate us for any damage and costs incurred as a result of a breach of this obligation and the failure to take the necessary measures to protect the Retained Goods from access by third parties or actual impairments. As far as the third party is not in a position to reimburse us

for the court and out-of-court costs of a lawsuit in accordance with § 771 of the Code of Civil Procedure (*Zivilprozessordnung*; ZPO), Purchaser shall be liable for the loss incurred by us.

- 9.3 Purchaser shall have the right to resell the Retained Goods in its ordinary course of business. Purchaser hereby assigns any claims against its buyer arising from resale of the Retained Goods to us in the amount of the invoiced amount agreed with us (including value added tax). This assignment shall apply no matter if the Retained Goods have been resold without processing or thereafter. Purchaser shall remain authorised to collect the claim even after the assignment. Our right to collect the claim ourselves shall not be affected by this. However, we shall not collect the claim as long as Purchaser meets its payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or there is no cessation of payments.
- 9.4 The processing or transformation of the Retained Goods by Purchaser shall always be performed in our name and on our behalf. In this case, Purchaser's expectant right to the Retained Goods shall continue to apply to the transformed object. If the Retained Goods are processed with any other objects do not belong to us, we shall acquire shared title in the new object at the ratio of the objective value of our reserved goods to the other processed objects at the time of processing. The same shall apply in case of mixing. If mixing takes place so that the object of Purchaser is to be considered the main object, it shall be deemed agreed that Purchaser shall transfer shared title to us on a prorated basis and shall keep the sole or shared title thus created for us. Purchaser also assigns such claims to us that accrue to it against any third party from combination of the Retained Goods with real property to secure our claims against Purchaser; we hereby accept this assignment.
- 9.5 We commit to releasing securities to which we are entitled at Purchaser's request as far as their value exceeds the claims to be secured by more than 20%.
- 9.6 We shall have the right to take back the Retained Goods if Purchaser acts in breach of contract. Any transport costs incurred in taking back the goods shall be borne by Purchaser. Taking back of the Retained Goods shall always also constitute withdrawal from the contract with Purchaser. We shall have the right to utilise the Retained Goods that have been taken back. The proceeds of the sale shall be set off against our outstanding claims against Purchaser.

§ 10 Warranty, notice of defects, recourse

- 10.1 Warranty rights of Purchaser shall require that Purchaser has duly complied with its obligations to inspect the goods and to give notice of defects pursuant to § 377 of the Commercial Code (*Handelsgesetzbuch*; HGB). Purchaser must inspect the goods for completeness, transport damage, obvious defects, condition, and their properties without undue delay.
- 10.2 Purchaser must report any obvious defects to us in writing within one week of delivery of the subject of the contract. We shall not be obligated to provide a warranty as far as Purchaser has not notified us of an obvious defect in a timely manner in writing.
- 10.3 Claims for defects shall expire 12 months after delivery of the goods to Purchaser. The statutory period of limitation shall apply to any claims for damages in cases of intent and gross negligence as

well as in cases of injury to life, limb, and health that are based on an intentional or negligent breach of duty by the user.

As far as the law requires any longer periods in accordance with § 438 (1), number 2 BGB (buildings and objects for buildings), § 445b BGB (recourse claims) and § 634a (1) BGB (construction defects), these periods shall apply.

- 10.4 If the delivered goods show any defect that was already present at the time of the transfer of risk in spite of all due care, we shall, at our discretion, either repair the goods or supply replacement goods, subject to timely notification of defects by Purchaser. Purchaser shall provide us with a detailed description of the complaint for each individual defect and shall always give us the opportunity to remedy the defect within a reasonable period of time. Our consent shall be required prior to any return of the goods.

Claims subject to a right of recourse shall remain unaffected by the above provision without restriction.

- 10.5 If the supplementary performance fails, Purchaser may – irrespective of any claims for damages – withdraw from the contract or reduce the remuneration. Rectification shall be deemed failed at the second unsuccessful attempt.

- 10.6 There shall not be any claims for defects in cases of merely insignificant deviations from the agreed quality, in the case of only insignificant impairment of usability, in the case of natural wear and tear, or in the case of damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive strain, unsuitable operating materials, defective construction work, unsuitable building ground, or due to special external influences that are not assumed under the contract. If Purchaser or any third parties perform improper repair work or modifications, there shall also be no claims for defects for these and the resulting consequences.

- 10.7 Claims by Purchaser for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour, and material costs, shall be excluded as far as the expenses increase because the goods delivered by us have subsequently been taken to a location other than Purchaser's branch, except if the transfer is in accordance with their intended use.

- 10.8 Purchaser shall only have a right of recourse against us as far as Purchaser has not entered into any agreements with its buyers exceeding the statutory mandatory claims for defects. Furthermore, item 10.7 above shall apply accordingly to the scope of Purchaser's right of recourse against the deliverer.

§ 11 Liability

- 11.1 Purchaser must only assert any claims for damages due to a defect if subsequent performance has failed or if we refuse subsequent performance. Purchaser's right to assert further claims for damages under the following conditions shall remain unaffected.

- 11.2 Seller shall be liable without limitation for intent and gross negligence.

- 11.3 Seller shall only be liable for ordinary negligence – except in the case of injury to life, body, or health – if any essential contractual obligations (cardinal obligations) are violated. Liability shall be limited to the foreseeable damage typical for the contract.
- 11.4 Liability for indirect and unforeseeable damage, loss of production and use, loss of profit, loss of savings, and financial losses due to claims by third parties shall be excluded in cases of simple negligence – except in the case of injury to life, limb, or health.
- 11.5 Any further liability of Seller shall be excluded – no matter the legal nature of the asserted claim. However, the above limitations and exclusions of liability shall not apply to any strict liability prescribed by law (in particular, for example, pursuant to the Product Liability Act (*Produkthaftungsgesetz*)) or to liability under a strict warranty.
- 11.6 This shall also apply to the personal liability of Seller's employees, workers, representatives, bodies, and vicarious agents as far as liability is excluded or limited in accordance with items 11.3 and 11.4.
- 11.7 As far as we have given any quality and/or durability guarantee regarding the goods or parts of them, we shall also be liable within the scope of this guarantee. However, we shall only be liable for damage based on the absence of the guaranteed quality or durability, but which does not occur directly to the goods, if the risk of such damage is obviously covered by the guarantee of quality and durability.

§ 12 Miscellaneous

- 12.1 This contract and the entire legal relationship between Seller and Purchaser shall be subject exclusively to the laws of the Federal Republic of Germany – also excluding the UN Convention on Contracts for the International Sale of Goods ("CISG").
- 12.2 As far as this is permitted by law, the place of performance and exclusive place of jurisdiction for any disputes arising from the contract with Seller shall be Braunschweig, Germany, unless otherwise stated in the order confirmation. However, Seller shall also have the right to sue Purchaser at Purchaser's general place of jurisdiction.
- 12.3 Purchaser shall not have the right to assign any claims arising from the contract with Seller without the prior written consent of Seller.
- 12.4 Purchaser agrees that Seller may pass information about Purchaser that becomes known to Seller within the scope of the contractual relationship on to any suppliers or affiliated companies, provided that this is done within the scope of the purpose of the contract with Purchaser and there is no reason to assume that the interests of Purchaser to be protected are not ensured.

Seller shall process personal data that becomes known to it due to a request from Purchaser or through the contractual relationship with Purchaser as far as necessary for implementation of pre-contractual measures or for compliance with the contract (point (b) of Article 6 (1) GDPR).