

GENERAL TERMS AND CONDITIONS

ATX Hardware GmbH West – Carl-Zeiss Str. – 71093 Weil im Schönbuch

1. GENERAL PROVISIONS

- (1) Our terms and conditions for sales are the only ones applicable; any terms and conditions of clients to the contrary or deviating from ours will not be recognised unless explicitly agreed by us in writing. Our terms and conditions for sales shall be applicable even if we should make an unconditional delivery to the customer in awareness of terms and conditions which are contrary to or deviating from ours.
- (2) Our General Terms and Conditions shall be applicable for all consecutive transactions, even if not referred to specifically again upon conclusion.
- (3) Any agreements between us and the client with regard to performance of the respective agreement will be set forth in text form in the respective contract.
- (4) Our terms and conditions for sales are applicable only in relation to entrepreneurs as defined in Sec. 310 (1), German Civil Code (BGB).

2. CONCLUSION OF A CONTRACT

- (1) All of our bids are subject to alteration unless a binding time limit has been stated explicitly.
- (2) An order from the client constituting an offer pursuant to Sec. 145 German Civil Code (BGB) can be accepted within 2 weeks.
- (3) A contract will be created only if we accept an order in text form.
- (4) Only the order confirmation is relevant for the scope of our deliveries and services.

3. PRICES

All prices are in Euro plus the VAT applicable at the time the invoice is issued. Freight, packaging and travel expenses will be billed separately. Any taxes, customs duties, fees and import/export levies imposed after delivery has begun shall be borne by the client.

4. DELIVERY

- (1) The commencement of a delivery time indicated by us requires clarification of all technical questions.
- (2) Compliance with our obligation to deliver further requires due and timely performance of the client's obligations. We reserve the plea of a contract not fulfilled.
- (3) In the event that the client should be in default of acceptance or culpably violate other obligations of cooperation, we are entitled to demand compensation for any resulting damages including possible additional expenditures. Further claims or rights are reserved.
- (4) In the event that the prerequisites of paragraph (3) have been met, the risk of accidental loss or accidental deterioration of the merchandise shall pass to the client on the date default of acceptance or debtor's default started.
- (5) In the event that the client should be in default concerning payment of an earlier delivery, we are entitled to hold back deliveries without any obligation to pay compensation for resulting damages.
- (6) We are entitled to make and invoice partial deliveries to the extent the part delivered is a self-contained service.
- (7) We accept statutory liability to the extent the underlying purchase agreement is a firm bargain as defined in Sec. 286 (2), no. 4, German Civil Code (BGB) or Sec. 376, German Commercial Code (HGB). We also accept statutory liability in cases where the client legitimately asserts that its interest in further performance of the agreement has lapsed as a result of a delivery delay we are responsible for.
- (8) Other than that, paragraph 9 shall be applicable for our obligation to pay damages.

5. PASSING OF RISK

Unless otherwise stated in the order confirmation, delivery "ex factory" is agreed.

6. PAYMENT TERMS

- (1) Invoices will be issued on the delivery date or on the date the delivery is ready for shipment in the event of a default in acceptance caused by the client. Unless otherwise agreed, the invoice amount

is payable without deduction within 14 days from the invoice date. Payments are deemed to have been made on the day we have the amount at our disposal. Any submission of promissory notes requires our approval. Promissory notes and cheques are accepted on account of payment only; payment is deemed to have been made only after they have been cashed. Any discount and collection expenses are payable by the client. The foregoing terms of payment are also applicable for partial invoices.

- (2) Offsetting counter-claims of any kind is ruled out unless such a counter-claim is undisputed or has been declared valid by a court-of-law.

7. RESERVATION OF TITLE

- (1) We reserve the title to any merchandise until all payments under the delivery agreement have been received.

(2) Moreover, we reserve the title to any merchandise until all payments under the business relationship with the client have been received.

- (3) If the client is in breach of contract, especially in case of default of payment, we are entitled to take back the merchandise. Taking back the merchandise constitutes rescission of the contract. After we have taken back merchandise, we are entitled to realise it; any revenue of realisation shall be offset against the client's obligations minus appropriate realisation costs.

(4) The client is obliged to treat any merchandise with care; in particular, the client shall insure such merchandise against damages by fire, water or theft at the original value. Any maintenance and inspection work that may be required shall be done in good time by the client at its own expense.

- (5) In the event of seizure or other third-party interference, the client is obliged to inform us in writing without delay to enable us to take legal action pursuant to Sec. 771, German Code of Civil Procedure (ZPO). In the event that such a third party should be unable to reimburse us for the court and out-of-court expenses of legal action pursuant to Sec. 771 ZPO, the client shall be liable for any losses incurred by us.

(6) The client is entitled to sell the merchandise as part of its regular business; however, any claims resulting from the sale to its customers or third parties shall be assigned to us even now in the amount of the invoice total (including VAT) owed, irrespective of whether the merchandise was sold without or after processing. The client is entitled to collect such a receivable even after it has been assigned. The foregoing is without prejudice to our right to collect the receivable ourselves. However, we agree to refrain from collection as long as the client meets its payment obligations from any proceeds received, is not in default and - especially - no request for instigation of settlement or insolvency proceedings has been filed or payments have ceased. If this should be the case, however, the client shall inform us who the debtors of the assigned receivables are, provide any other details required for collection, surrender the pertinent documentation and communicate the assignment to the debtors (third parties).

(7) Any processing or reshaping of the merchandise by the client shall always be performed on our behalf. If the merchandise is processed together with other objects not owned by us, we acquire co-ownership of the new article on a pro-rata basis of the value of the article (invoice total including VAT) vis-à-vis the other processed objects at the time of processing. Other than that, the same shall apply for articles resulting from processing as for merchandise delivered subject to retention of title.

- (8) We undertake to release any collateral we are entitled to at the request of the client to the extent the realisable value of the collateral exceeds the claims to be secured by more than 10 %. The selection of the collateral to be realised shall be at our discretion.

8. WARRANTY

- (1) Recognition of warranty claims requires that the client has duly met its obligations concerning

inspection and notification owed under Sec. 377 HGB.

(2) In the event that the merchandise is defective, we shall, at our choice, either rectify the defect or deliver a new article free of defects. In case of rectification or delivery of a replacement, we agree to pay for any expenditures required for rectification, especially the cost of shipping, travel, work and material, provided such cost is not increased due to the fact that the merchandises was taken to a location which is not the place of performance.

- (3) If rectification should fail, the client is entitled to either rescind the agreement or ask for a price reduction.

(4) If the objection should turn out to be unjustified, the client shall pay any costs resulting from us taking action.

9. DAMAGE CLAIMS

(1) We accept the statutory liability in the event the client lodges claims for damages resulting from intent or gross negligence including intent or gross negligence of our representatives or agents. If we are not accused of breach of contract with intent, the liability for damages shall be limited to the predictable damage that typically occurs in such cases.

(2) We accept statutory liability in the event that we should culpably act in breach of a material contractual obligation; again, the liability for damages shall be limited to the predictable damage that typically occurs in such cases.

(3) We cannot accept any obligations of safe storage for circuit boards or other materials provided in connection with an order.

(4) The foregoing is without prejudice to the liability for culpable injuries to life, body or health; this also applies for mandatory liability under the Product Liability Act.

(5) Unless specifically agreed otherwise, any liability not set forth above is ruled out.

10. JOINT AND SEVERAL LIABILITY

(1) Any additional liability for damages other than that set forth in Sec. 9 is ruled out irrespective of the legal nature of the asserted claim. This shall especially apply for damage claims based on negligence when entering into the agreement, other breaches of obligations or claims for damages to property for tort pursuant to Sec. 823 BGB.

(2) The limitation pursuant to Subsection (1) shall be applicable also if the client should demand reimbursement for useless expenditures instead of performance when making a claim for damages.

(3) Any limitation or exclusion of our liability for damages shall also apply with regard to the personal liability for damages of our employees, workers, associates, representatives and agents.

11. PLACE OF PERFORMANCE, JURISDICTION

(1) The place of performance for any claims under the contractual relationship shall be Weil im Schönbuch.

(2) In case of legal disputes, the Court of Stuttgart shall have jurisdiction.

(3) The present Terms and Conditions are governed by the laws of the Federal Republic of Germany to the exclusion of the UN CISG.

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