

**TERMS AND CONDITIONS (T&C)**  
**ATS TRADE&SERVICE GMBH, AUSTRIA (ATS)**

§ 1

Applicability

- 1.1 These terms and conditions apply to all business transactions between the customer and ATS. Conflicting or divergent conditions are in no way recognised by ATS unless explicitly stated so in writing.
- 1.2 Modifications, amendments and subsidiary agreements to these T&C as well as warranties of any kind must be in writing to be effective. This also applies to agreements suspending these formal requirements.
- 1.3 These T&C also apply to all future business transactions between the aforementioned parties, even if transactions occur without reference to these T&C, until ATS issues new T&C.

§ 2

Orders

- 2.1 Offers by ATS are non-binding and subject to change. When ordering from the online shop, the customer enters an obligation to pay for the goods in the shopping cart by clicking the “order” button. In any case, contracts for customer orders do not come into effect until a written order confirmation has been sent or goods have been delivered by ATS. Confirmed orders bind the customer to ATS for seven days from the receipt of order.
- 2.2 If the customer is a business operator and the order confirmation differs from the actual order, the customer has to object in writing immediately and at the latest within seven days from the receipt of confirmation. Otherwise, the contract corresponding to the conditions stated in the order confirmation shall go into effect.
- 2.3 Obvious errors as well as mistakes in print, calculation and writing are not binding for ATS and do not entitle the customer to compensation.

2.4 The dimensions, weights, illustrations, descriptions and other information stated in catalogues, brochures and other documents or on the website are only approximate and subject to change, unless the nature of such information is stated as absolute explicitly and in writing. During the delivery period, ATS reserves the right to make changes to design or form that are attributable to technological improvements or legal requirements (especially of law and jurisdiction), provided these adjustments are fair to the customer.

### § 3

#### Delivery, Delivery Times, Transfer of Risk

3.1 If not expressly agreed upon otherwise, goods are sold ex works (EXW). ATS delivers goods or makes goods available from its Wörgl headquarters (A-6300), any of its branch offices or seats of affiliated companies. Partial deliveries and partial services by ATS are admissible if not unreasonable for the customer.

3.2 If arranged that the goods be picked up by the customer, and the customer fails to do so by the agreed time at the latest, the risk passes to the customer with the end of the collection period.

3.3 If compliance with a binding delivery period is not possible due to unjustifiable conditions or circumstances out of the control of ATS, especially in the event of operational disruptions, strikes, public unrest, lockouts, total or partial closure of the supplier plant, war, administrative orders or force majeure by ATS or ATS suppliers, a binding (delivery) period shall be automatically suspended for the duration of the disruption as well as the correction of ensuing consequences. Such events, if they last longer than three months, entitle both parties to withdraw from the contract in whole or in part without any obligations to pay damages due to non-fulfilment.

3.4 If a certain time or period for delivery or service by ATS has been stipulated, default goes into effect only after notice has been given and a reasonable grace period of at least two weeks has expired without result. The customer is entitled to withdraw from the contract or seek damages only after default goes into effect and an additional grace period, set by ATS, expires without result.

3.5 Unless expressly stated otherwise in writing, the delivery period commences with the latest of events given below:

- a) Date of order confirmation;
- b) Date of fulfilment of all technical, commercial and financial requirements, especially payment;
- c) Date ATS receives an advance payment ahead of (service) delivery or a letter of credit is opened.

3.6 Shipment of goods to a customer or a location outside the European Union occurs only severally and on the basis of a prior written agreement.

## § 4

### Pricing

4.1 Prices are indicated in applicable price lists by ATS and in the web shop. Prices are non-binding until the day of completion of contract (§ 2.1), are net and apply from the loading or shipping point specified by ATS. Customs, freight, shipping packaging and transport insurance, etc. are not included in the price and additionally charged and indicated. VAT is calculated and shown separately in accordance with legal regulations and at the rate applicable at the time.

4.2 If the customer is a business operator, changes made to the producer prices, factory prices or list prices by ATS suppliers authorise ATS to apply corresponding changes to ATS prices even after the completion of contract or order. If the stipulated delivery period is longer than one month after the completion of contract, ATS is entitled to charge prices according to the ATS price list valid after the day of delivery.

4.3 ATS reserves the right, especially in respect to permanent business relations, to make customer orders subject to a minimum order value or surcharge for small order quantities.

4.4 Specially negotiated services, such as the attaching of the customer's advertising material or special packaging, always constitute additional charges.

## § 5

### Payment and Default

5.1 Invoices are issued on the day of completion of contract (§ 2.1). Unless otherwise agreed upon in the order confirmation, stipulated payments must be made in advance, in cash and immediately upon receipt of invoice, at the latest within 14 days of the invoice date and without deduction. ATS is entitled to make deliveries dependent on advance payment.

5.2 Payment is considered punctual if received in cash by ATS or credited to the ATS account without recall and free of fees by the due date or the last day of the payment period.

5.3 Upon expiration of the 14-day payment period, the customer shall be deemed in default of payment automatically and without notice. If the customer is in default with as much as one payment, ATS is entitled

- a) to charge EUR 40.00 (net) in reminder fees per notice,
- b) to charge all costs of third party operations thereby incurred (e.g. attorney fees or collection agency fees) according to legal regulations,
- c) to count payments first towards the covering of default interest and thereafter towards other related costs and finally towards the longest-standing debt (other payment dedications by the customer are hereby deemed irrelevant).
- d) to charge default interest for default at the legal rate (this rate must be set correspondingly higher if ATS is proven to be subject to a higher interest rate) without prejudice to the right of assertion of further default damages.
- e) to invoke an appropriate extension of the delivery period, whereby the default period in any case constitutes an appropriate extension period (this applies to cases in which the delivery period would have commenced prior to the receipt of full payment on the basis of an agreement to such effect. For the commencement of the delivery period in general, see § 3.7),
- f) to withhold further deliveries,
- g) to make all outstanding instalments payable immediately,
- h) to withdraw from contract and assert claims for compensation if the deadline of an appropriate grace period is not met.

5.4 ATS is entitled to charge the customer with all costs incurred in connection with the outstanding liability.

5.5 The set-off and retention of payments due to any counterclaims is permissible only if acknowledged by ATS or law.

## § 6

### Warranty

6.1 The legal warranty rights of customers who are recognised as KSchG-conforming consumers remain unaffected. The warranty period is therefore 2 years. Consumers must communicate faults to ATS in writing.

6.2 Customers who are business operators must inspect goods for faults immediately on arrival and notify ATS promptly and in writing if ATS is to recognise faults as such. Faults that remain undetected even after thorough checking or do not manifest until a later time have to be announced to ATS immediately upon discovery. The risk of access to the claim lies with the customer. If the customer fails to comply with inspection and notification obligations in a timely

manner, the goods shall be deemed to have been accepted, invalidating any claims filed by the customer from that point onwards (especially in regards to warranty, compensation and fallacy). § 377 par. 5 UGB remains unaffected.

6.3 In the event of a defect, ATS is entitled to eliminate any such defects or supply a defect-free item (replacement delivery). Whether a rectification of defects or replacement delivery is appropriate shall be decided on a case-by-case basis and varies from product to product. The right of ATS to refuse rectification or replacement delivery under the corresponding legal prerequisites (compare § 932 par. 4 T&C) shall remain unaffected.

6.4 The customer must give ATS the necessary time and opportunity to rectify mistakes or carry out replacement deliveries. If the supplementary performance fails, is impossible, does not occur in a timely manner, is refused or deliberately delayed by ATS, the customer is entitled to withdraw from contract (redhibition), provided the defect is not minor, or to demand a price reduction.

6.5 ATS may request that faulty goods be sent to an address specified by ATS at the expense of ATS or that the customer keep the goods, enabling ATS or a third party commissioned by ATS to rectify mistakes or make exchanges directly with the customer.

6.6 For minor defects, warranty claims are inadmissible. Partially faulty shipments do not constitute the right to reject the item as a whole.

6.7 Standard wear and tear of goods does not constitute a warranty claim. ATS expressly refers to the enclosed operating, maintenance and cleaning instructions. If the customer or a third party chooses not to follow these instructions or make unauthorised changes to a product, ATS does not, under any circumstances, accept warranty claims or, in any way, assume liability.

6.8 ATS may refuse to repair or replace goods while the customer's payment obligations relative to the defect-free part of the goods remain unfulfilled or if the goods are of interest to the customer (for instance in the case of independent usability).

6.9 ATS does not assume liability for the fulfilment of regulations in the destination country.

## § 7

### Liability, Damages

7.1 Unless otherwise stated in these T&C, the liability of ATS is determined by legal regulations.

7.2 Liability on the part of ATS for slight negligence shall be excluded by mutual agreement. This does not apply to warranty claims or cases of personal injury. If the customer is a business operator, claims for compensation become statute-barred 6 months after knowledge of the

damage and the damaging party. For business operators, this disclaimer also applies to consequential damage and loss of profit due to delayed delivery, faulty delivery or non-delivery. The customer's right to warranty remains unaffected in accordance with § 6.

7.3 Disclaimers pertain to ATS as well as ATS employees, ATS representatives and ATS subcontractors.

## **§ 8**

### **Right of Revocation of Consumers**

**8.1 If the customer is a consumer and has entered into a contract with ATS via distance selling (e.g. website) or outside the business premises, the consumer may object to the contract without justification within 14 days of the consumer or a non-carrier third party appointed by the consumer receiving the goods. The right of revocation is nullified if goods are manufactured according to consumer specifications or clearly tailored to consumer needs.**

**8.2 In order to exercise the right of revocation, the consumer must inform ATS trade&service GmbH (Bahnhofstraße 21, A-6300 Wörgl, email: info@ats-tradeandservice.com) of the decision to withdraw from contract by means of a clear declaration (e.g. a letter sent by post or an email). The consumer may use the revocation template available on the ATS website but is not obligated to do so. The consumer shall be deemed to have complied with the withdrawal period if a notification of the intention to withdraw is sent before the withdrawal period expires.**

**8.3 If the consumer withdraws from contract, ATS will refund all payments already received, including delivery costs (with the exception of delivery surcharges due to a consumer-chosen delivery option different from the cheapest standard delivery option offered), immediately and at the latest within fourteen days from the of receipt of notice for the revocation of contract. ATS may refuse refunds until goods have been returned or evidence of return has been received, whichever occurs first.**

**8.4 The consumer must return the goods to the address stated above immediately and no later than 14 days from the notification of revocation of contract. The deadline is met if the consumer ships the goods before the aforementioned 14-day period expires. Return costs are to be paid by the consumer.**

## **§ 9**

### **Revocation in the Event of Breach of Contract**

**9.1 The customer's right to withdraw from contract is waived if ATS is blameless for the breach of contract.**

9.2 This applies neither if special agreements (e.g. short sales) authorise the customer to withdraw regardless of culpability nor if goods are faulty, in which case the provisions of § 6 come into effect.

## § 10

### Retention of Title and Forfeiture

10.1 Sold goods remain the sole property of ATS until full payment has been made. The retention of title is equally applicable to the forwarding agent entrusted with the goods at the instigation of ATS or the customer.

10.2 The customer is entitled to the resale of goods prior to full payment only if ATS consents to the resale in writing. The authorisation to resell goods lapses automatically if the customer is in default or suspends payment. The customer is not authorised to dispense goods in any other way than set out in the agreement, especially in regards to pawning or security assignments, until payment is made in full. The customer must reject third party intervention or seizure of reserved goods. The customer is furthermore obligated to communicate the proprietorship of ATS and immediately notify ATS of this in writing.

10.3 ATS is entitled to demand the surrender of delivered, unpaid goods if the customer does not make payments punctually and in full, the customer's assets are involved in insolvency proceedings, the customer suspends payment or the customer approaches creditors due to out-of-court settlements. The repossession of goods by ATS does not constitute a withdrawal from contract unless explicitly and severally stated in writing. Even in the event of repossession of goods sold under retention of title, ATS retains the right to damages for non-performance.

## § 11

### Intellectual Property & Prohibition of Imitation

11.1 The customer agrees not to partially or entirely imitate or duplicate ATS goods and/or make imitations in identical or modified form available to third parties. This obligation applies in any case and regardless of whether ATS can invoke the respective commercial property rights.

11.2 The customer must not make changes to the goods without express consent from ATS. ATS may counteract with copyright claims, reversal of contract and/or retrieval of goods. ATS reserves the right to make further claims.

11.3 The customer agrees to neither duplicate nor pass on to third parties texts, sketches, drawings, pictures, photographs and other ATS content unless explicitly marked for general distribution by ATS (e.g. catalogue).

## § 12

### Data Protection

12.1 For the completion of contract with customers who are business operators, ATS saves and processes the first and last or company name of the customer, the customer's title, the customer's address (postal and email), the customer's telephone number, the goods and services ordered by the customer as well as the price and VAT identification number (hereinafter jointly referred to as "data"). Provided no other explicit consent is given by the customer, this data is processed only for the purpose of the contractual handling and the provision of ordered goods and ordered services. Data is lawfully collected in accordance with Art. 6 Para. 1 lit b of the Basic Data Protection Regulation (hereinafter referred to as "DSGVO") out of necessity for the fulfilment of the contract between ATS and the customer. Without this data, provision of ordered goods or services is not possible. After the order has been completed and the warranty period has expired, collected data will be deleted unless legal grounds require continued use (especially in regards to express customer consent and legal retention periods). Personal data shall be passed on to payment/delivery service providers only to the extent that is absolutely necessary for the fulfilment of contract. The contract is saved for completion of order.

#### Information pursuant to Art. 13 GDPR:

If the customer is a natural person, the customer has the following rights regarding personal data:

- Right of Access (Art. 15 GDPR): ATS must provide the customer with information on the personal data processed and the purpose of data processing upon request.
- Right to Rectification (Art. 16 GDPR): If data is incorrect or incomplete, the customer may request rectification.
- Right to Erasure (Art. 17 GDPR): ATS must erase data if the data is unnecessary for the purpose of processing, the customer has revoked consent (provided no other additional permit of processing exists) or the data has been unlawfully processed.
- Right to Restrict Processing (Art. 18 GDPR): The customer may request the restriction of processing if, for instance, personal data is used only for specific purposes.



- Right to Data Portability (Art. 20 GDPR): The customer may request to receive personal data in a structured, common and machine-readable format and that this version be transferred to other responsible parties.
- Right to Object (Art. 21 GDPR): The customer may object to data being processed on the basis of public interest or the legitimate interest of ATS.
- Right to Withdraw (Art. 7 para. 3 GDPR): The customer may revoke consent at any time and without justification by sending an email to [info@ats-tradeandservice.com](mailto:info@ats-tradeandservice.com) or a letter to the ATS postal address.

A German version of the GDPR for further reference is available to the customer under: <http://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32016R0679&from=DE>

For questions regarding data protection, the following email can be used: [dataprotection@ats-tradeandservice.com](mailto:dataprotection@ats-tradeandservice.com)

12.2 If a customer who is a natural person believes that ATS is in violation of data processing regulations, the customer may file a complaint with the Austrian Data Protection Authority or with the supervisory authority of the pertinent country of residence.

## § 13

### Choice of Law, Place of Jurisdiction and Other Final Clauses

13.1 The place of execution for deliveries and services equals the registered seat of the supplying plant. The place of execution for payments equals the registered office of ATS.

13.2 The contractual relationship between ATS and the customer is subject to the laws of the Austrian Republic with the exclusion of all bi- and/or multilateral agreements regarding the purchase of moveable property, the United Nations Convention on Contracts for the International Sale of Goods (=“UN Sales Convention / “CISG” / “Vienna Convention on the International Sale of Goods) as well as the conflict of laws between the International Private Law (IPL) and Rome I. If the customer is a consumer and resides outside of Austria, the laws and legal system of the consumer’s country of residence shall apply (Article 6 Rome I Regulation).

13.3 For all disputes arising from the aforementioned contractual relationship, only the court responsible for the registered office of ATS, is competent if the customer is a business operator,

a legal entity under public law or a special fund under public law or if the customer has a domicile or business headquarters outside of Austria. ATS is also entitled to choose any other legally permissible place of jurisdiction.

13.4 If the customer is a consumer, the internet ombudsman (<https://www.ombudsmann.at/>) or the conciliation board for consumer transactions ([www.verbraucherschlichtung.or.at](http://www.verbraucherschlichtung.or.at)) shall act as the out-of-court conciliation board. The consumer can contact this conciliation board in the case of a dispute. The consumer acknowledges that ATS is not obligated to involve or submit to this board for the purpose of dispute resolution and that, in the event of a dispute, ATS will decide whether to agree to an out-of-court arbitration procedure or not.

13.5 Should certain regulations stated in these T&C be partially or wholly invalid, effectiveness of the remaining regulations shall remain intact. In this event, invalid regulations will be replaced by new provisions corresponding or closest to the original economic purpose of the ineffective provision.

13.6 These T&C are available in German and English. In the event of a discrepancy, the German version applies.