

atg Luther & Maelzer GmbH
General Terms and Conditions

I. Scope

- (1) All business transactions with the Customer are subject to the present General Terms and Conditions. The General Terms and Conditions also apply to future business even in absence of any further express agreement to that effect.
- (2) The General Terms and Conditions apply exclusively. Save atg Luther & Maelzer's express written consent, conflicting or deviating customer conditions will not be recognized. The General Terms and Conditions apply even if atg Luther & Maelzer unreservedly fulfils the contract while being aware of the existence of conflicting or deviating customer conditions.
- (3) Unless otherwise provided herein, the terms and definitions of INCOTERMS 2000 are applicable.

II. Amendments and supplements

- (1) All agreements reached between atg Luther & Maelzer and the Customer shall be set out in writing, if need be in an amendment agreement.
- (2) atg Luther & Maelzer's staff is not authorised to enter into oral agreements that extend beyond the scope of the written agreement.

III. Conclusion of contracts

- (1) atg Luther & Maelzer's offers are non binding. Technical descriptions and other information contained in offers, brochures or other documentation are initially also non binding.
- (2) atg Luther & Maelzer reserves all property rights and copyrights to any figures, drawings, calculations or other supporting documents. Such documents may not be disclosed to third parties; this applies also to any information on atg Luther & Maelzer's products or services acquired by the Customer since commencement of contract negotiations. The Customer may not divulge such information to third parties without atg Luther & Maelzer's express consent in writing.
- (3) Where an order qualifies as an offer within the meaning of § 145 BGB (German Civil Code), atg Luther & Maelzer has 12 business days, or 21 business days in the case of grid tester systems or flying probes, to accept it. The same applies, if the order differs from an earlier offer of atg Luther & Maelzer.
- (4) Information within the meaning of paragraph 1, as well as any information released publicly by atg Luther & Maelzer, the manufacturer or its assistants (§ 434(1) sentence 3 BGB) shall only be considered part of the contractual description of goods, work performance or services if specific reference to such information is made in the contract.

IV. Prices and payment terms

- (1) Prices are stated in Euro and do not include VAT at the applicable legal rate; in the case of deliveries, prices are ex works in Wertheim and do not include packaging, transport and insurance.
- (2) atg Luther & Maelzer reserves the right to adjust its prices accordingly where the costs for materials, fuel or salaries and wages on which its calculations are based vary after conclusion of the contract.
- (3) Unless otherwise expressly agreed, the prices valid on delivery date shall apply.
- (4) Invoices are payable in cash or by bank transfer within 30 days of invoice date. The payment term in sentence 1 does not apply to orders for grid tester systems or flying probes where the purchase price is payable as follows:
1/3 immediately upon receipt of the order confirmation,
1/3 prior to shipment,
1/3 within 30 days of shipment date.
Payments are considered received on the date the payment amount is freely disposable for atg Luther & Maelzer.
- (5) Any other payment terms are subject to special written agreement. The Customer shall carry all corresponding costs on both sides.
- (6) Discounts may not be deducted save specific written agreement.
- (7) The Customer shall only be entitled to set off or retain amounts due if it has an undisputed counterclaim or a counterclaim recognized by a non-appealable decision of a court.

V. Performance and duty to co-operate

- (1) atg Luther & Maelzer's written order confirmation is authoritative for the scope of atg Luther & Maelzer's contractual performance obligations. Construction, form or colour differences stemming from technological improvements or legal prescriptions are reserved as long as such differences are insignificant or otherwise reasonably acceptable to the Customer.
- (2) Partial performances are admissible and may be invoiced provided they are reasonably acceptable and do not affect the projected scope and timing of delivery.
- (3) Performance time limits are conditional to the Customer's co-operation in accordance with the contract. Compliance with contractual performance terms presupposes the due and timely fulfilment of the Customer's obligations. Should the Customer be in default of payment in respect of any earlier service or delivery, atg Luther & Maelzer will be entitled to hold back performance. The Customer cannot derive any rights from justified withholding.
- (4) If atg Luther & Maelzer itself does not receive delivery as and when required of orders placed in good time with reliable suppliers, it shall be released from its obligation to perform and may withdraw from the contract.
- (5) If, after a contract is concluded, it should appear that atg Luther & Maelzer's claim to payment is at risk due to the Customer's insufficient ability to perform its obligations under the contract, in particular to pay, atg shall be entitled to refuse performance until such time as the Customer makes payment or provides security for payment. Should payment not be made nor security provided within 12 business days of the corresponding request, atg Luther & Maelzer shall be entitled to withdraw from the contract and may demand compensation for expenses in an amount equivalent to 5% of the order. This does not prejudice atg Luther & Maelzer's right to claim higher damages. The Customer is entitled to prove that the expenses or damages do not exist at all or are considerably lower than the lump sum.
- (6) Should the Customer fail to retrieve, accept or collect a service or delivery or should the Customer request or occasion a delay in shipment or in the provision of service, atg Luther & Maelzer shall be entitled to charge a lump sum for costs of 0,5% per month of the invoice amount from the date that readiness for service or delivery is notified, regardless whether the goods are stored in atg Luther & Maelzer or third-party warehouses and without prejudice to further claims. The Customer is entitled to prove that the expenses or damages do not exist at all or are considerably lower than the lump sum. On fruitless expiry of an appropriate time limit, atg Luther & Maelzer may dispose of the goods otherwise and will be entitled to an appropriately extended time limit for effecting performance.

VI. Delay / interference with performance and their consequences

- (1) Where atg Luther & Maelzer is unable to meet a time limit on ground of temporary hindrances (eg. inadequate supply, force majeure, power and raw material shortages, labour unrest, disturbance of traffic) beyond its control affecting the company itself or its suppliers, the time limit shall be extended accordingly. In such cases, atg Luther & Maelzer shall inform the Customer promptly. Should the hindrances still be ongoing one month after expiry of the original time limit, either side may withdraw from the contract in writing. Any further claims against atg for time-limits overstepped through no fault of its own are excluded. This rule also applies if such hindrances occur during a pre-existing default situation.
- (2) In case of default, the compensation payable to the Customer is limited to the actual damages suffered; for this purpose only the foreseeable damages typically linked to the pertinent kind of contract shall be taken into account. The Customer may also set atg Luther & Maelzer an appropriate additional time limit in writing of no less than 15 business days. After fruitless expiry of the aforesaid time limit, the Customer may give written notice of withdrawal from the contract. The same applies correspondingly in case of partial performance by atg Luther & Maelzer.
- (3) Claims of the Customer arising from an exclusion of the obligation to perform or from hindrances to performance at conclusion of the contract are limited to the actual damages suffered; for this purpose only the foreseeable damages or costs typically linked to the pertinent kind of contract shall be taken into account. The same applies correspondingly in case of partial performance by atg Luther & Maelzer.
- (4) In the cases referred to in paragraphs 2 and 3, the legal liability shall apply to damages from loss of life, physical injury or illness caused by infringements for which atg Luther & Maelzer is responsible and to other damages provided the infringement was intentional or the result of gross negligence. atg Luther & Maelzer's liability is limited to foreseeable, contractually typical damages where the infringement constitutes a breach of an essential contractual obligation. Sentences 1 and 2 apply correspondingly to infringements occasioned by atg Luther & Maelzer's legal representatives or all other persons which atg Luther & Maelzer involves into the performance of its obligations.

VII. Passing of risk and forwarding in the case of deliveries

- (1) Unless otherwise stated in the order confirmation, deliveries shall be ex works in Wertheim. All shipments, including returns, travel at the Customer's risk.
- (2) atg Luther & Maelzer is under no obligation to conclude insurance cover. Where the Customer so requires, shipments will be insured against the risks indicated by the Customer in writing.
- (3) Unless otherwise agreed, atg Luther & Maelzer shall be free to choose the means of transport and the transport route and has no responsibility for ensuring that its choice is the fastest or cheapest.

VIII. Liability for defects and/or deficiencies in title

- (1) atg Luther & Maelzer's liability for defects presupposes due compliance by the Customer with its obligation to examine the goods and to complain promptly after delivery in accordance with §§ 377, 381 (2) HGB (German Commercial Code). To that effect, the Customer shall: (a) communicate defects in writing; (b) notify visible defects promptly but no later 8 days of delivery. The same applies correspondingly in respect of any other services provided by atg Luther & Maelzer, including pure work performance in particular.
- (2) The Customer cannot derive any rights from defects or deficiencies in title which do not affect, or do not materially affect, the value, fitness or merchantability of the goods or services for the agreed, required or customary use.
- (3) atg Luther & Maelzer is not liable for defects caused by the improper use, storage, handling or maintenance, or the unsuitable alteration, of its goods and services nor is it liable for defects resulting from the use of inappropriate parts, equipment etc.. The same applies to normal use and wear and tear. It is for the Customer to evidence, and if need be prove, that goods or services are deficient on the passing of the risk. The defects and deficiencies for used goods are also excluded from our liability for defects, unless the liability for breach of warranty or for fraudulent intent and unless paragraphs 7 to 10.
In this context atg Luther & Maelzer gives the Customer notice of the fact that counterfeited spares for its goods and products are being provided in the market worldwide. These counterfeited spares frequently do not meet the quality and performance requirements and, therefore, can cause damage to and deficiencies in atg Luther & Maelzer's goods and products and/or the goods, products and services produced with atg Luther & Maelzer's goods and products. atg Luther & Maelzer is neither liable for deficiencies of these counterfeited spares nor for damage caused by these. Any such liability is hereby expressly excluded. Some of the counterfeited spares are identifiable as counterfeites, others are not. The latter is often the case when fake marks or signs of atg Luther & Maelzer are attached to the counterfeites. Atg Luther & Maelzer, therefore, strongly advises the Customer not to use counterfeited spares and to buy spares solely and directly from atg Luther & Maelzer itself.
- (4) If, when the risk passes, the goods, work performance or services have inherent defects or deficiencies in title, atg Luther & Maelzer is initially entitled and obliged only to remedy. Remedy means either subsequent improvement or substitute delivery, at atg Luther & Maelzer's choice. atg Luther & Maelzer shall bear the necessary costs for remedy, in particular the transport, mileage, labour and materials costs, provided that such costs are not increased by the fact that after delivery, the goods or work were moved to a location other than the Customer's business establishment. Replaced parts become the property of atg Luther & Maelzer.
- (5) Where remedy is unsuccessful and subject to the legal requirements and the additional requirements of sentence 2 hereafter, the Customer shall be entitled at its choice to withdraw from the contract or to demand a price reduction. The setting of a time limit as well as the right to withdraw from the contract or to obtain a price reduction presuppose corresponding written notice.
- (6) Unless otherwise provided below (paragraphs 7 to 11), all further claims on the part of the Customer – whatever the underlying legal basis – are precluded. In particular, atg Luther & Maelzer assumes no responsibility for damages other than to the delivered goods, work performance or services themselves (eg. lost profit or other financial losses), without prejudice to liability for breach of warranty or for fraudulent intent.
- (7) atg Luther & Maelzer is liable as provided by law for damages in cases of death, physical injury or illness caused by a breach of duty on its part.
- (8) atg is liable as provided by law for any other damages caused by a deliberate or grossly negligent breach of duty on its part.
- (9) Where the damages result from a breach by atg Luther & Maelzer of an essential contractual obligation, which in the case of a sale cannot be a defect in the goods sold, atg Luther & Maelzer's liability is limited to foreseeable, contractually typical damages. That does not affect paragraphs 7 and 8.
- (10) Paragraphs 7 to 9 apply accordingly to breaches of duty for which atg Luther & Maelzer's legal representatives, bodies, managers or all other persons which atg Luther & Maelzer involves into the performance of its obligations are responsible.
- (11) The preceding rules are without prejudice to the legal and customary burden of proof.
- (12) With the exception of the cases referred to in paragraphs 7 to 10 and save for §§ 438 (1) N° 2, 479, 634a (1) N° 2 BGB, claims for defects and for deficiencies in title are subject to a limitation period of one year from the commencement of the legal limitation period. Work performance is deemed accepted in the meaning of § 640 BGB at the latest 15 business days after the date of notice of its completion. Where „final acceptance“ is required for goods, the limitation period commences with such acceptance; if the Customer fails to make final acceptance within a reasonable time limit specified by atg Luther & Maelzer, final acceptance shall be deemed to have been made on expiry of that time limit. Claims for breach of warranty, fraudulent intent, tort or product liability remain unaffected.

IX. Other liability for damages

- (1) Unless otherwise provided below (paragraphs 2 and 3), the provisions of section VIII, paragraphs 6 to 11 apply correspondingly in respect of all other claims for damages on any legal ground whatsoever. Therefore, those provisions apply in particular to atg Luther & Maelzer's liability for tort or for breach of its pre-contractual obligations.
- (2) Paragraph 1 does not apply to claims for product liability.
- (3) Where atg's liability is precluded or limited, the same applies to the personal liability of atg Luther & Maelzer's staff, employees, associates, representatives and all other persons which atg Luther & Maelzer involves into the performance of its obligations.

X. General limitation period

All claims of the Customer – whatever the underlying legal basis – become statute-barred one year after they come into existence. In the cases of sentence 1 of this section the limitation period starts running at the end of the calendar year in which the claim comes into existence. Claims for breach of a guarantee, fraudulent intent, tort or claims based on the Product Liability Act remain unaffected. Section VIII. paragraphs 7 to 10 apply accordingly, as well as §§ 438 (1) N° 2, 634a (1) N° 2 BGB.

XI. Security

An order of goods, work performance or services worth more than € 50,000.00 requires a Letter of Credit and will only be accepted by atg Luther & Maelzer upon receipt of such a Letter of Credit. Letters of Credit shall be payable in the amount of full purchase price plus all handling, freight, shipping, customs, tax, tariff and insurance charges and import duties. The Customer shall assume responsibility for any bank and/or interest charges incurred for processing such Letter of Credit.

XII. Retention of title

- (1) Notwithstanding delivery and the passing of risk, or any other of these provisions, atg Luther & Maelzer retains the title to the contract goods until settlement of all accounts resulting from the pertinent contract. Until such time as the property in the goods passes to the Customer, the Customer shall hold the goods as atg Luther & Maelzer's fiduciary agent and shall handle the goods with care and keep them properly protected and insured against the standard risks (fire, water, electricity, theft and breakage).
- (2) Until such time as the property in the goods passes to the Customer, the Customer shall be at all times obligated to give atg Luther & Maelzer, at its request, immediate and detailed information regarding the goods. Furthermore, until that time, the Customer shall not be entitled to vest, pledge or otherwise dispose of or encumber the goods without atg Luther & Maelzer's previous written consent. Financial agreements (e.g. leasing transactions), that include the passing of title in the goods, shall not be made by the Customer without atg Luther & Maelzer's previous written consent, unless the finance agreement expressly provides that the finance company is obligated to pay the equivalent of the still unpaid part of the sales price directly to atg Luther & Maelzer.
- (3) If the Customer is in breach of contract, in particular if the Customer is in default of payment, atg Luther & Maelzer shall be entitled - if required by law, after having granted an additional period of grace of reasonable length - to rescind the contract and take back the goods. In this case the Customer shall be obligated to return the goods to atg Luther & Maelzer immediately at its own costs. The Customer hereby grants atg Luther & Maelzer its irrevocable permission to enter its business premises for the purpose of taking back the goods.
- (4) The Customer shall at its own costs immediately notify atg Luther & Maelzer in writing, if a third party takes steps to pledge or otherwise dispose of or encumber the goods, or if the Customer's assets deteriorate, in particular if an insolvency petition is filed or if an analogous measure under corresponding proceedings of other legal systems is taken, including composition and re-organization proceedings. The Customer shall at the request of atg Luther & Maelzer and at its own costs assist atg Luther & Maelzer in taking any measure to protect atg Luther & Maelzer's title to the goods. If the Customer fails to do any of the above in due time, he shall be liable to atg Luther & Maelzer for any damage caused.

(5) If the above retention of title is void under the governing law, a valid security corresponding to the retention of title shall be deemed as agreed by the parties.

XIII. Other provisions

(1) The Customer's rights are non transferable.

(2) The present General Terms and Conditions and the entire legal relationship with the Customer are exclusively subject to the law of the Federal Republic of Germany, to the exclusion of the rules of the German International Private Law and the UN Sales Convention (CISG).

(3) The place of exclusive jurisdiction for all disputes arising hereunder is Wertheim, atg Luther & Maelzer 's registered place of business; nevertheless, atg Luther & Maelzer may also file proceedings against the Customer at the latter's general place of jurisdiction.

(4) Should any provision of the General Terms and Conditions be invalid, or should there be omissions in or the General Terms and Conditions, the other provisions shall remain in full force and effect. The invalid provision shall be deemed replaced with a valid provision meeting the intent and purpose of the invalid provision. In the case of omissions, the parties agree to apply such valid provision as they would have reasonably adopted in view of the intent and purposes of the General Terms and Conditions if they had considered the matter at the outset.

XIV. Disposal in the end-of-life case

atg Luther & Maelzer and the Customer agree that Customer is obliged to dispose old equipment in the end-of-life case in a professional way and according to the prevailing local legal regulations.