

# General Terms and Conditions

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## 1 General provisions

These General Terms and Conditions are part of all declarations of intent, offers, contracts, warranty commitments, deliveries and services of ATRON electronic GmbH.

ATRON in the sense of these terms and conditions always refers to the company

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Value added tax identification number: DE129291176

ATRON is a service and commercial company with its key focus on equipment of public transport.

Business partner always refers to the company or the companies which are the recipients of declarations of intent, warranty commitments, contracting parties or recipients of deliveries and services.

These General Terms and Conditions were published on August 1, 2011 and represent the current version of these General Terms and Conditions. They replace all previous versions and are valid in place of the previous version.

Offers, declarations, contracts, deliveries and services by ATRON are exclusively subject to the following terms and conditions. Opposing terms and conditions of the business partner are revoked unless ATRON and the business partner have agreed upon their validity in writing.

Confirmations to the contrary of the business partner with reference to their own terms and conditions are herewith explicitly revoked.

## 2 Copyright and nondisclosure

Results of the personal intellectual creation by ATRON, including the form, i. e. their composition, structure and presentation, are completely and in parts (word orders of more than 11 words, images, graphics, etc.) subject to the copyright and other rights for the protection of intellectual property. Only ATRON is entitled to copy, distribute, utilise, redesign these results, or to publish and utilise edited versions. Copying (including digitalisation) and distribution (offering to the public or placing on the market) of these results as a whole or partially require previous written permission by ATRON. The right to copying for personal use by a natural person is not limited by this. The right to copying for personal use does not include copying for in-house purposes of a company.

The business partner is obligated to treat the results of personal intellectual creation disclosed by ATRON in verbal, written or other (e. g. electronic) form, such as data, drawings, drafts, sketches, concepts, descriptions, specifications, measurement results, calculations, experiences, processes, samples as well as secret technical know-how as confidential and not to pass them or parts of them on to third parties. Should there be no order or cooperation between ATRON and the business partner, the business partner is to immediately return all personal intellectual creations to ATRON.

### **3 Offers**

Offers by ATRON are not binding, unless binding is explicitly and specifically defined in the offer. Price quotations for hardware and software are always excluding installation, training and other supplementary services, unless these supplementary services are explicitly and in writing included in the offer.

## 4 Conclusion of contract

Agreeing declarations of intent result in a contract with ATRON. An order by the business partner based on an offer by ATRON represents a binding declaration of the business partner, unless the business partner has explicitly and in writing excluded the binding effect. ATRON is entitled to accept the binding declaration of the business partner within two weeks, unless the business partner has explicitly and in writing specified another binding period in the declaration.

The business partner is responsible for the completeness and accuracy of his information. The business partner is obligated to keep his information correct. ATRON is entitled to bill the business partner for costs which incurred for completing and correcting the business partner's information.

## 5 Contract structure

If ATRON owes a certain action, which does not consist of acquiring ownership of an item or a right or granting a certain right, a contract for service between ATRON and the business partner is concluded. If the obligation contains, besides a service, an obligation to create a work, a separate contract is to be concluded on creating a work. If a obligation is not explicitly owed as a contract for work, it is always to be assumed that the obligation is owed as a delivery contract for work.

ATRON reserves the right to employ subcontractors to meet its contractual obligations. ATRON has to be notified of objections concerning the subcontractors on the first day of the job execution or immediately after the reason for the objection becomes known. If the business partner does not meet this obligation to file a complaint, he cannot derive any rights from this reason for objection.

If, besides the obligation to acquire ownership of an item or a right or to grant a certain right, an obligation exists to perform a certain action (e. g. assembly, training, etc.) which is also connected with this obligation, the fulfillment of the individual obligations is regulated separately, i. e.: the obligation to acquire ownership of an item or to grant a right is not only met when the action is performed.

## 6 Periods and dates

Periods and dates mentioned in the contract to fulfil the obligation are non-binding information, unless ATRON specifically and in writing determines these periods and dates as binding. If ATRON is prevented from adhering to periods and dates by circumstances for which ATRON is not solely responsible, these periods and dates are extended appropriately.

Adhering to the periods and dates always requires complete receipt of all documentation, drawings, templates, plans, permissions, releases which require co-operation, adherence to conditions of payment agreed upon as well as the provision of materials, information and facilities, which are necessary to successfully and completely render the service. If the business partner does not meet his obligations to cooperate, the periods and dates are extended by the period of the respective delay. If ATRON starts fulfilling its obligations before the business partner has completely met his obligations to cooperate, this does not mean that ATRON forgoes the right to extend possible periods and dates due to this delay.

If the business partner does not meet his obligations to co-operate, ATRON can separately bill the business partner for the cost incurred due to this delay. These costs for example include, but not conclusively, standby costs for personnel and machinery, recurring travel expenses, or resumption costs, if ATRON diverts its resources in order to keep the standby costs for the business partner as low as possible. Claiming these costs does not mean that ATRON waives the possibility to extend possible periods and dates due to the delay.



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## 7 Price quotations, conditions of payment and compensation

Price quotations are ex works excluding packaging plus the current value-added tax.

If ATRON assumed responsibility to set up or assemble the goods, the business partner bears all required additional costs, besides the compensation agreed upon, such as travel or transport expenses, as well as allowances, unless ATRON specifically and in writing determined otherwise.

Payments shall be made without any deductions and free of transaction charges to the ATRON's designated account.

The business partner can only offset claims which are undisputed and legally binding.

## 8 Accounting

Invoices are always due immediately, if not specifically and in writing determined otherwise. Errors in an invoice by ATRON have to be declared in writing within a month of accounting. If errors in an invoice have not been declared within this period, the invoice is regarded as accepted by the business partner.

The business partner is in default at the latest if no payment is made within 14 days after maturity and receipt of the invoice.

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## 9 Delivery

Partial deliveries are permitted if reasonable for the business partner.

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## 10 Place of performance

In general, ATRON's headquarters are the place of performance for all of ATRON's obligations, unless ATRON specifically and in writing determined another place of performance.

## 11 Transfer of risk

Should ATRON be obligated to acquire ownership of an item, the risk of loss or deterioration of the item is transferred to the business partner as soon as the item is transferred to a logistics company. An agreement on carriage paid delivery only represents a cost regulation and has no effect on how the transfer of risk is regulated. Should ATRON be obligated to perform certain actions besides the obligation to acquire ownership of an item, this does not change the basic regulations regarding the transfer or risks, unless the persons which are to perform the certain action are also the persons to deliver the items.

If shipping, delivery, the beginning, the setup, the assembly, the acceptance at the own company or test operation is delayed for reasons for which the business partner is responsible or if the business partner is in default regarding acceptance, the risk is transferred to the business partner immediately.

The business partner is not allowed to refuse acceptance of deliveries due to insignificant defects. If a formal acceptance is necessary for meeting an obligation, a commissioning by the business partner - possibly after completing an agreed test phase - is equal to an acceptance. If ATRON requests an acceptance of the delivery after completion, the business partner has to perform the acceptance within two weeks. If this does not happen, the acceptance shall be deemed to have taken place.

## 12 Set up and assembly

The following provisions are valid unless otherwise agreed upon in writing:

The business partner has to bear the costs and provide the following on time:

- a) all excavation, construction and other additional work from outside the industry, including all required expert and assistant staff, construction material and tools,
- b) all materials and articles required for assembly and commissioning, such as scaffolds, lifting equipment and other devices, fuels and lubricants,
- c) energy and water at the area of use, including the connections, as well as heating and lighting,
- d) for storing of machine parts, devices, materials, tools, etc, sufficiently large, suitable, dry and lockable work and common rooms including sanitary facilities appropriate to the circumstances. Furthermore, the business partner has to take measures which he would take to protect his own possessions to protect the possessions of ATRON and the assembly staff on the construction site,
- e) sufficient insurance coverage for the place of storage,
- f) protective clothing and protective devices, which are required due to special circumstances at the assembly site,
- g) complying with all public and private preconditions, such as possible authorisations, which are required for setup and assembly.

Before the assembly work is started, the business partner has to provide the necessary information on the location of hidden power, gas and water lines and similar equipment as well as the required static specifications without being prompted.

Before setup or assembly begins, provisions and items required for commencing the work shall be at the setup or assembly site and all preliminary work shall be advanced before the beginning of the setup in a way that setup or assembly can be started according to the agreement and without interruptions. Transport routes and setup and assembly site have to be levelled and cleared.

Should the setup, assembly or commissioning be delayed due to circumstances for which ATRON is not solely responsible, the business partner has to bear the cost for wait time and additionally required travel of the assembly staff to a reasonable extent.

The business partner has to certify the duration of the work time of the assembly staff as well as the termination of the setup, assembly or commissioning to ATRON on a weekly basis.

## 13 Reservation of proprietary rights

ATRON retains ownership of the deliveries (reserved goods) until the business partner meets all claims which ATRON is entitled to resulting from the business relation. If the value of all security interests which ATRON is entitled to is more than 10% higher than all secured claims, ATRON shall release part of the security interests upon request. ATRON can choose which security interests are to be released.

While a reservation of proprietary rights exists, the business partner is not allowed to pledge or assign the goods as security. Resale is only permitted to resellers within their normal course of business and only under the condition that the reseller receives payment from his customer or that he makes the reservation that the customer only obtains ownership of the goods after meeting his financial obligations.

In cases of pledging, confiscation or other disposals of the goods or interventions by third parties, the business partner has to inform ATRON immediately.

If the business partner does not meet his obligations, especially in case of default of payment, ATRON is entitled to withdraw from the contract as well as to take back the goods if the business partner does not deliver the service within a reasonable period of time. The statutory provisions concerning the dispensability of setting a deadline remain unaffected. The business partner is obligated to return the goods. Taking back the goods, claiming the reservation of proprietary rights or pledging the reserved goods does not entail a withdrawal from the contract unless specifically declared by ATRON.

## 14 Default damage

After a certain period of time set in a warning has passed unsuccessfully, ATRON is in default regarding its obligations. A warning is a written request sent to ATRON to fulfil contractual obligations after the obligation was due. The service has to be able to be determined by means of the warning. A warning has to be given in writing. A written warning before the obligations are due is invalid and does not become effective when the obligation is due. If the service cannot be determined by means of the warning, it also is invalid.

ATRON is not in default if it is not solely responsible for the circumstances due to which the obligation is not met on time. A responsibility due to slight negligence is excluded unless the business partner is significantly limited in his rights based on this exclusion.

If ATRON is in default, the business partner can demand a compensation of 0.5% for each completed week of default, at maximum a total of 5% of the price for the part of the deliveries, which could not be put in operation according to the purpose of the contract due to the default.

Claim for indemnity of the business partner due to delays of the delivery as well as claim for indemnity instead of the service, which go beyond the limits quoted in no. 1, are excluded in all cases of delayed deliveries, also after expiration of a period for delivery set for ATRON. This is not applicable if liability is mandatory in cases of intent, gross negligence or due to harm to life, body or health, or due to breach of essential contractual duties. The business partner can only legally withdraw from the contract, if ATRON is responsible for the delay of the delivery. This does not constitute any change in the burden of proof to the disadvantage of the business partner.

Upon ATRON's request, the business partner is obligated to explain within a period of 14 days if, because of the delay of the delivery, he wants to withdraw from the contract or insist on the delivery. If the business partner does not deliver this explanation to ATRON within this period, ATRON is entitled to choose between withdrawal or delivery.

If the business partner is responsible for delay of shipping or delivery by more than one month after indicating readiness for shipment, the business partner can be charged storage fees of 0.5% of the cost of the items of the delivery, at maximum a total of 5%, per month or part thereof. The contracting parties are free to bring proof of higher or lower storage costs.



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## 15 Limitation of liability

ATRON excludes liability for slightly negligent breaches of obligations, if damages do not include harm of life, body or health, or guarantees or claims according to the German Product Liability Act. Furthermore, liability for breach of obligations, which have to be met in order for the contract to be fulfilled lawfully and whose adherence the customer can trust regularly, remain unaffected. The same is true for breaches of obligations of subcontractors, which ATRON uses to fulfil its obligations.

The business partner cannot claim any damage due to lost profits, unless the damage is caused by intentional actions or by a breach of an essential contractual duty on ATRON's part.

## 16 Warranty

A fault or defect is every significant deviation of the current status from the target status, or the current performance from the target performance. The target status or the target performance of the service owed is determined according to the user manuals (BHB), administrator manuals (AHB) and the instruction manual (BAL) by ATRON and is limited by the scope of delivery and service. A deviation is significant if the business partner cannot realise its business processes shown in the manuals or instructions, or if the business partner can only realise them with considerable additional effort.

The warranty period for obtaining ownership of an item, for delivering a movable item which is to be produced or generated, or for creating a site is a year, unless ATRON explicitly agreed otherwise in writing. To maintain possible warranty claims, the business partner has to properly take care of the item. Components, assembly groups and accessories, which are subject to wear, are excluded from the warranty. Wear parts are all components, assembly groups and accessories, which move or which are touched by persons during operation.

In order to assert warranty claims, the business partner has to immediately and in writing notify ATRON of the defect. ATRON actively working to correct defects based on an oral defect notification does not release the business partner from the obligation to send a written complaint.

If a complaint was filed on time and in correct form, ATRON is only liable for defects of the delivered goods as follows:

At ATRON's choice, all components or services, which have a material defect, shall be repaired at no cost, delivered again or rendered again, if the cause of this material defect already existed at time of transfer of risk. Furthermore, ATRON can also repair single components of an item and reinstall them.

The business partner is only entitled to a withdrawal or price reduction if ATRON was not able to provide ownership of a non-defective item after three futile attempts, unless the defect was fraudulently concealed by ATRON or consists of non-adherence to an assured feature or a guarantee of delivery. Statutory regulations on suspended expiry, expiry and restart of the periods remain unaffected.

If defect complaints are made in due time and form, payments of the business partner may be retained to an extent which is in adequate proportion to the material defects incurred. The business partner can only retain payments if a defect complaint was asserted, whose justification cannot be doubted. The business partner does not have the right to retain payment if his defect claims are barred. If a defect complaint was made wrongfully, ATRON is entitled to compensation from the business partner for expenses incurred.

ATRON shall be granted opportunity to supplementary performance within an appropriate period of time.

Claims for defects can not be made for insignificant deviations from the agreed condition, for insignificant impairment of the fitness for use, for natural wear or for damages, which were caused after the transfer of risk due to wrong or negligent handling, excessive use, unsuitable equipment, defective construction work, unsuitable subsoil or which are caused by special outer influences, which are not expected according to the contract, as well as for non-reproducible software errors. If the business partner or third parties perform improper changes or maintenance work, no claims for defects can be made for this or its consequences.

Claims of the business partner for the expenses required for the purpose of supplementary performance, especially transport, infrastructure, labour and material costs, are excluded, if the expenses are increased because the subject of the delivery has been moved to a different place other than the site of the business partner, unless the moving corresponds with its use for the intended purpose.

Claims for compensation by the business partner due to a material defect are excluded. This is not valid in case of fraudulent concealing of a defect, non-adherence to a guarantee of delivery, for harm to life, body, health or freedom and in case of an intentional or grossly negligent breach of obligations on ATRON's part. This does not constitute any change in the burden of proof to the disadvantage of the business partner. Further or other claims of the business partner, which are not covered here, due to a material defect are excluded.

## 17 Special regulations regarding software

The business partner has the non-exclusive right to use standard software and firmware with the features agreed upon in unchanged form and on the devices agreed upon. The business partner is allowed to create a backup copy of the standard software without explicit permission.

The business partner is obligated to perform data backup himself and furthermore to ensure that the saved data can be restored. The business partner is obligated to save the daily data on a daily basis, the weekly data on a weekly basis and to monthly save the complete data in a complete data backup process. The business partner is obligated to save the daily data, the weekly data and the complete data backup in different places.

If the business partner operates a back-end system by ATRON, he is obligated to operate a test system parallel with the real system on an identical hardware. The business partner is furthermore obligated to maintain the background system for both systems in an identical manner; both background systems have to consist of the same components and the components have to have the same version status. The business partner has to provide ATRON with a complete list of all components of his background system.

The business partner is obligated to first play patches, hotfixes, updates and upgrades provided by ATRON on the test system and then run a complete function test on the test system. The business partner is obligated to document this process. The business partner is only allowed to play the patches, hotfixes, updates or upgrades on the real systems after successful completion of the function test. For risk minimising purposes, the business partner is obligated to perform step-by-step migration.

## 18 Industrial property rights and copyrights; defects in title

Unless agreed otherwise, ATRON is obligated to only provide the delivery free of industrial property rights and copyrights (hereafter called: property rights) of third parties in the country of the place of delivery. If a third party raises a justified claim against the business partner based on an infringement of property rights by a delivery provided by ATRON which was used in accordance with the contract, ATRON is liable towards the business partner within a reasonable period of time as follows:

- a) At its own discretion, ATRON shall either obtain a right of use for the deliveries concerned at its own cost, or change the delivery so it does not infringe property laws or exchange the delivery. If this is not possible for ATRON under appropriate conditions, the business partner is entitled to the right to withdraw from the contract or the right to a price reduction.
- b) ATRON's obligation to provide compensation complies with the provisions of these General Terms and Conditions, especially the liability limitations defined herein concerning the reason and the amount.
- c) The previously mentioned obligations of ATRON are only valid if the business partner informs ATRON immediately and in writing of the claims raised by a third party, does not acknowledge an infringement of property rights and if all defensive measures and settlement negotiations are reserved to ATRON. If the business partner ceases use of the delivery for mitigation or other important reasons, he is obligated to inform the third party that ceasing use is not an acknowledgement of a breach of property rights.

Claims of the business partner are excluded if he is responsible for the breach of property rights.

Furthermore, claims of the business partner are also excluded if the breach of property rights is caused by special requirements by the business partner, by a use that ATRON could not have foreseen, or if the business partner changed the delivery or used it in combination with products not supplied by ATRON.

In case of infringements of property rights, the claims of the business partner defined in no. 1 a) are valid; the regulations of these General Terms and Conditions shall apply in all other respects.

In cases of other defects in title, the provisions are valid according to this figure.

Further or other claims of the business partner against ATRON and its agents due to a defect in title, which are not covered in this figure, are excluded.

## 19 Impossibility; Adjustment of contract

If delivery is impossible, the business partner is entitled to demand compensation, unless ATRON is not responsible for the impossibility. However, the claim for compensation of the business partner is limited to 10% of the value of the part of the delivery which cannot usefully be put in operation due to the impossibility. This limitation is not applicable if liability is mandatory in cases of intent, gross negligence or due to harm to life, body or health; this does not constitute any change in the burden of proof to the disadvantage of the business partner. The right of the business partner to withdraw from the contract remains unaffected.

If unpredictable events significantly change the economic meaning or the content of the delivery or have a significant effect on ATRON, the contract shall be adjusted in good faith. If this is not economically feasible, ATRON is entitled to withdraw from the contract. If ATRON wants to use this right to withdraw, ATRON has to inform the business partner immediately after recognising the impact of the event, even if an extension of the delivery data was agreed upon with the business partner.

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## 20 Other claim for indemnity; limitation period

Claim for indemnity from the business partner, regardless of the legal reason, especially for breach of duties from contractual obligations and for unlawful acts, is excluded.

This is not applicable if liability is mandatory, e. g. according to the German Product Liability Act, in cases of intent, gross negligence or due to harm to life, body or health, or due to breach of essential contractual duties. The claim for indemnity for breach of essential contractual duties is limited to typical, predictable damage, except for cases of intent or gross negligence or if liability is based on to harm to life, body or health. This does not constitute any change in the burden of proof to the disadvantage of the business partner.

If the business partner is entitled to claims for indemnity, they fall under the statute of limitations after the limitation period. The same is valid for claims of the business partner in connection with measures to prevent damage (e. g. product recalls). For claims for indemnity according to the German Product Liability Lay, the legal statutes of limitation are valid.

## 21 Data protection

Person-related data of the business partner, their bodies, their employees as well as data of the sub-contractors of the business partner and their bodies and employees are only electronically saved by ATRON and its business partners for the purpose of justification, configuration or modification of the contract relation. The following data is saved: names, addresses, telephone and fax numbers, e-mail addresses, bank account information and notes or comments. The person-related data is treated in accordance with the regulations on data protection. Furthermore, person-related data on the use of services is only collected, processed or used if they are required to enable the user to use services (user data) or to charge services rendered (accounting data).



## **22 Subject to modifications**

Should ATRON intend to change their General Terms and Conditions, ATRON will communicate this to the business partner. If the business partner does not appeal this in writing, the changed Terms and Conditions become effective two calendar weeks after receipt of the notifications with the beginning of the new calendar week. The appeal is only in good time and with due form if made with ATRON in writing within two calendar weeks after receipt of the notification. ATRON will explicitly inform the business partner of the possibility to appeal, its form and time period and the legal consequences of an appeal not filed in good time and due form.

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## 23 Place of jurisdiction and applicable law

ATRON's headquarters are the sole place of jurisdiction for all disputes which result directly or indirectly from the contractual relation. ATRON however is also entitled to sue at the headquarters of the business partner.

German material law is applied to the legal relations in connection with this contract excluding the United Nations Convention on Contracts on International Sale of Goods (CISG).

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## **24 Binding force of the contract and of these General Terms and Conditions**

The contract and these General Terms and Conditions remain valid even if individual paragraphs become legally ineffective. This is not applicable in those cases where adhering to the contract would present an unreasonable hardship to one party.