

**1. Scope**

- 1.1. These General Terms and Conditions (GTC) apply to all our business relations with our Customers, insofar as the Customer is an entrepreneur, a legal entity under public law or a special legal entity under public law. They apply, in particular, for
- agreements on the sale and/or delivery of movable things, whether we manufacture them ourselves or purchase them from suppliers or subcontractors, such as measurement equipment and installations;
  - all services and works, e.g. testing, engineering, consulting and development services.
- 1.2. The GTC shall also apply to all future business transactions without the need to refer to the GTC again in each individual case.
- 1.3. Our GTC apply exclusively, even if we accept orders without reservation with knowledge of the Customer's general terms and conditions, render performances or directly or indirectly refer to a letter or the like containing the Customer's general terms and conditions.
- 1.4. Conflicting, deviating or supplementary general terms and conditions of the Customer shall only become valid if and to the extent that we have expressly agreed to their validity.

**2. Contract Formation**

- 2.1. Our offers are subject to confirmation and are non-binding, unless they are expressly marked as binding or contain a specific acceptance period.
- 2.2. The contract on the performance to be rendered by us shall be concluded
- in the event of offers with an acceptance period, upon receipt of the Customer's order within the acceptance period specified in the offer, unless we object within 7 calendar days from receipt of the order. If the order deviates from our offer, the content of the offer shall be deemed to be agreed;
  - in the event of offers without an acceptance period with our order confirmation. If the Customer's order deviates from our offer, the content of the offer shall be deemed to be agreed. If our order confirmation deviates from the Customer's order, the content of the order confirmation shall be deemed to be agreed unless the Customer objects to it in writing within 10 calendar days from receipt of the order confirmation.
- 2.3. The order by the Customer shall be deemed a legally binding offer to conclude a contract.

**3. Industrial Property Rights/Know-How/Utilization Rights**

- 3.1. The Customer acknowledges our know-how and our industrial property rights. Upon proper fulfillment of its contractual obligations, the Customer shall be granted the right to use our performances in accordance with the contract concluded. All copyrights, patent rights or other industrial property rights shall remain with us unless expressly agreed otherwise in writing.
- 3.2. We reserve all property rights, copyrights, patent rights and other industrial property rights to all documents, materials and other items handed over by us to the Customer (e.g. offers, catalogs, price lists, cost estimates, plans, drawings, illustrations, calculations, product descriptions and specifications, samples, models and other physical and/or electronic documents, information, software). The mere provision of performances to the Customer does not constitute the granting of any rights of use or other authorizations to the components of the offer which are protected by industrial property rights.
- 3.3. The Customer may not make the above items accessible or communicate them to third parties, exploit them, duplicate them or change them without our prior consent, unless this is contrary to mandatory law. The Customer must use them exclusively for the contractual purposes and return them to us in full at our request and destroy or delete any existing (including electronic) copies unless this conflicts with statutory storage obligations.
- 3.4. Insofar as inventions worthy of protection by industrial property rights are created by us within the framework of contract performance, we will grant the Customer a non-exclusive and non-transferable right of use to such inventions on reasonable terms.
- 3.5. Insofar as the Customer requires protected know-how from us in order to use the ordered performance, we will on reasonable terms and to the extent possible, grant the Customer a non-exclusive and non-transferable right of use to this know-how. As far as

we recognize any necessity of such use before or during our performance, we will point out this necessity and the conditions of the right of use.

**3.6. Development services**

- 3.6.1. If the Customer has ordered development services and paid for them in full, we will grant the Customer an unlimited and simple, i.e. non-exclusive, non-transferable and non-sublicensable, right of use to the results produced within the scope of the specific development order, irrespective of whether these results are protected, can be protected or cannot be protected ("Foreground").
- 3.6.2. The Customer shall be granted a simple, i.e. non-exclusive, non-transferable and non-sublicensable right of use to pre-existing rights or know-how, which we have acquired before or outside the respective development contract ("Background"), insofar as this is absolutely necessary for the use of the results in accordance with Clause 3.6.1.

**4. Rights of Use and Industrial Property Rights of Third Parties**

- 4.1. In the provision of our performances we will strive to avoid infringing the industrial property rights of third parties. However, we do not check any third-party industrial property rights when executing orders, unless this has been expressly agreed in writing. We shall only be liable for the freedom of our performances from third party industrial property rights if this has been expressly agreed in writing. In all other cases, the Customer shall indemnify us against claims by third parties arising from the infringement of industrial property rights.
- 4.2. Each party shall immediately inform the other party if they become aware of any conflicting industrial property rights. In such an event, the parties shall jointly agree on how to proceed in such cases.
- 4.3. In all cases our liability for the infringement of third-party industrial property rights is limited to such industrial property rights which were positively known to us at the time of the infringement or which were grossly negligent not known to us.
- 4.4. Insofar as we are liable for the infringement of third-party industrial property rights under the above provisions, subsequent performance shall be performed, at our discretion, by setting up an equivalent bypass solution ("Workaround") or by acquiring a license.
- 4.5. Our liability is excluded insofar as the infringement of the industrial property rights of third parties occurs through (i) the combination of the performance provided by us with other services or products, (ii) changes or modifications to our performance by the Customer or third parties, (iii) specifications of the Customer and services and products of third parties or (iv) unforeseeable use or operation of the performances provided by us.
- 5. Description of Performances/Place of Performance**
- 5.1. Information and references in connection with our performances to DIN or ISO standards, to guidelines or other domestic or foreign quality standards as well as to analyses or descriptions of physical properties made available shall not constitute any assurance of a property unless we have made an express written declaration to this effect prior to conclusion of the contract.
- 5.2. We provide the performance owed under the contract on the basis of the rules and the state of the art recognized at the time of conclusion of the contract.
- 5.3. Place of performance for both contracting parties is Alsdorf.
- 6. Payment Terms**
- 6.1. The invoice amount is due, immediately and without deductions, upon receipt of the invoice. Only receipt of payment, regardless of how it is made, shall be authoritative for the timeliness of the payment.
- 6.2. The Customer shall only be entitled to set-off and claim a right of retention only insofar as its counterclaim is either undisputed or has been legally established as final and absolute.
- 6.3. The Customer shall not be entitled to assign any claims against us, or to have such claim collected by third parties without our prior written approval. In the event that the Customer assigns any claims or allows such claims to be collected by third parties without our written approval, we shall be entitled to continue making payments to the Customer with discharging effect.
- 7. Special Conditions for the Provision of Works and Services ("Werk- und Dienstleistungen")**

The following terms and conditions shall apply additionally to the provision of works and services

**7.1. Obligations of the Customer to Cooperate**

- 7.1.1.** The Customer shall support us in the performance of our works or services at their own expense and to the extent necessary. In particular, the Customer is obliged to provide us with all components, documentation, information and data required or useful for our performance in a timely and complete manner. Our obligation to inspect the delivered components, documentation, information and data is limited to the suitability of the provided items or documents for the execution of the order. There shall be no further obligation to inspect the items or documents provided for freedom from defects.
- 7.1.2.** If the Customer fails to comply with his obligation under 7.1.1. and as a result, we are unable to perform our obligations, (i) we shall not be in default with the provision of our performance, (ii) the Customer shall nevertheless pay the agreed remuneration and (iii) the capacities required for the works or services to be performed by us shall only be kept available for the Customer for the originally agreed period.
- 7.1.3.** If our performance is to be provided at the Customer's business premises, the Customer shall take any special measures necessary to protect persons and property at the place of work and service. If necessary, the Customer shall provide special protective clothing free of charge. The Customer shall inform our employees of any existing special safety regulations to the extent that these are of significance for our employees and the works or services to be provided by us. If our employees violate such safety regulations, the Customer shall notify us immediately. Where works or services cannot be performed without endangering the life and health of the employees due to non-compliance with occupational safety regulations, either sufficient preventive measures must be taken or the work must be suspended until the time when occupational safety is guaranteed. If the Customer is responsible for ensuring occupational health and safety, the regulations of clause 7.1.2 shall apply accordingly.
- 7.1.4.** If our performance is to be rendered abroad and our employees require a residence and/or work permit for this purpose, the Customer shall support us free of charge vis-à-vis the local authorities in applying for, extending or changing the permit required for our performance to the extent necessary.
- 7.1.5.** The Customer undertakes to provide technical assistance to the required extent at his own expense. The Customer shall make a copy of its own documentation, information, items and data before handing them over, or shall additionally keep identical components on stock, so that reconstruction is possible in the event of loss or damage. The Customer is responsible for the provided information, documents etc. with regard to correctness and rights of third parties.
- 7.1.6.** We reserve the right to demand reasonable compensation within the meaning of Section 642 BGB (German Civil Code) if we incur additional expenses as a result of the Customer's failure to cooperate. The option to assert further rights remains unaffected by this.
- 7.2. Prices**
- 7.2.1.** If our performances are invoiced on the basis of time and material expenses in accordance with our hourly rates plus material costs, travel time shall be invoiced as working time. Unless otherwise agreed, travel costs and additional catering expenses shall be charged in accordance with the lump sums under tax law. Accommodation costs shall be invoiced according to a separate agreement.
- 7.2.2.** Insofar as remuneration for our performances has been agreed at a fixed price, we shall be entitled to reasonable part payments for the completion of self-contained parts of the performance or after completion of a project phase (e.g. commencement of the agreement, first partial performance, provision for acceptance, acceptance).
- 7.2.3.** Our prices are net prices plus the statutory value added tax applicable at the time of invoicing and other country-specific levies. Insofar as the Customer or we incur taxes or levies on the performance rendered by us (withholding tax), the Customer shall indemnify us against these taxes and levies.
- 7.3. Warranty**
- If our work performance ("Werkleistung") is defective, we can choose ourselves whether we render subsequent performance by remedying the defect (subsequent improvement) or whether we

render the work performance anew. We are entitled to at least two (2) attempts at rectification. In all other respects, the statutory provisions shall apply.

**8. Special Conditions for the Sale and/or Delivery of Movable Things**

The following additional conditions apply to the sale and/or delivery of movable things:

**8.1. Prices/Terms of Delivery**

- 8.1.1.** Our prices are net prices plus the statutory value added tax applicable at the time of invoicing and other country-specific levies. Insofar as the Customer or we incur taxes or levies on the performance rendered by us (withholding tax), the Customer shall indemnify us against these taxes and levies.
- 8.1.2.** Unless otherwise expressly agreed, EXW (Incoterms 2010) shall apply to all our deliveries, i.e. in particular without packaging, freight, insurance and customs duties. If we or a third party commissioned by us carry out the transport at the request of the Customer, this shall be done in the name of and on behalf of and for the account of the Customer. The risk of accidental loss and accidental deterioration during the transport shall be borne by the Customer.
- 8.1.3.** The packaging and the type of dispatch shall be at our discretion. Special protective devices shall only be supplied if expressly agreed.
- 8.1.4.** If dispatch is delayed due to circumstances for which we are not responsible, the risk of accidental loss and accidental deterioration shall pass to the Customer upon receipt of notification of these circumstances by the Customer.
- 8.1.5.** In the case of deliveries to EU member states ("intra-Community deliveries of goods"), the Customer must immediately cooperate in an appropriate manner in providing evidence of the intra-Community delivery of goods. If the Customer does not comply with this obligation to cooperate, he shall be liable for the resulting damage to us, in particular for the turnover taxes incurred by us.

**8.2. Retention of Title**

We reserve title to all movable things delivered by us until full payment of all claims arising from the respective underlying legal transaction.

**8.3. Warranty**

- 8.3.1.** In the event of defective movable things, the statutory provisions shall apply unless otherwise stipulated below.
- 8.3.2.** Our performances must comply exclusively with the legal requirements applicable in the Federal Republic of Germany. The Customer is solely responsible for the integration of the products into the existing technical, structural and organizational conditions of the Customer.
- 8.3.3.** The provisions of Section 377 of the German Commercial Code (HGB) shall apply. Our initiation measures to remedy defects shall not constitute a waiver of the objection to the delayed notification of defects. If a defect asserted by the Customer is not confirmed within the framework of an inspection carried out by us, the Customer shall bear the internal and external costs incurred by us as a result.
- 8.3.4.** If the movable thing is defective, we may choose ourselves whether to render subsequent performance by repair or by new delivery or manufacture. It shall be up to us whether the subsequent performance is carried out at the Customer's place of use or at our premises.
- 8.3.5.** In addition to the cases provided for by law, warranty shall in particular be excluded if (i) the Customer does not use the goods in accordance with the agreed specifications, (ii) the Customer changes the goods without our express written consent, (iii) the defect is attributable to materials supplied or other advance services provided by the Customer, unless the defectiveness of the advance performance was obvious to us upon receipt and we did not inform the Customer of it, (iv) the defect arises on the basis of the Customer's manufacturing instructions, unless the cause of the defectiveness by the manufacturing instructions was obvious to us and we did not inform the Customer accordingly.

**9. Statute of Limitations**

The limitation period for claims against us shall be 12 months from the statutory beginning of the limitation period, unless longer limitation periods exist according to mandatory statutory provisions.

**10. Liability**

- 10.1. Unless expressly agreed otherwise and unless another legally mandatory liability applies, our liability, for whatever legal reason, shall be governed by the following provisions on the scope of liability.
- 10.2. In the event of a grossly negligent or intentional breach of duty either by us or by one of our legal representatives or vicarious agents (“Erfüllungsgehilfe”), as well as for damages resulting from injury to life, body or health, we shall be liable without limitation. This liability shall not be limited by the following regulations.
- 10.3. In the event of a simple or slightly negligent breach of duty by us or by one of our legal representatives or vicarious agents, we shall be liable, subject to a lower liability under the law, only for damages arising from the breach of essential contractual obligations (“wesentliche Vertragspflichten”).
- 10.4. Essential contractual obligations are obligations, the fulfillment of which is essential for the proper execution of the contract and on the observance of which the Customer regularly relies on and may rely on. In such cases, our liability shall be limited to the damage typical for the contract and foreseeable at the time of conclusion of the contract.
- 10.5. We assume that in the event of a negligent breach of an essential contractual obligation the contract-typical damage foreseeable when the contract was concluded does not exceed the order value. In the case of divisible performances, the partial order value for the part of the performance in the context of which the contractual obligations were breached shall be authoritative. Insofar as the Customer does not share this understanding, he must expressly point this out to us before concluding the contract.
- 10.6. In the event of a simple or slightly negligent breach of obligation by us or by one of our legal representatives or vicarious agents, liability for indirect and unforeseeable damage, loss of production and use, loss of profit, loss of savings and financial loss due to third-party claims shall be excluded.
- 10.7. If our performance is used for the manufacture of a product or for the development of a new or novel product, we are not responsible for the success of the manufacture or development at the Customer. Such responsibility exists exclusively insofar as this has been expressly agreed between the parties.
- 10.8. We shall only be liable for damages to items provided to us by the Customer for the execution of the contract if the damage was caused by gross negligence or intent on our part, on the part of our legal representatives or vicarious agents.
- 11. Default and Impossibility**
- 11.1. Liquidated Damages and Limitation of Liability**
- 11.1.1. In the event of default due to a circumstance for which we are responsible, the Customer shall be entitled, from the third week of default onwards, to demand liquidated damages in the amount of 0.5% for each completed calendar week of default, but no more than a total of 5% of the order value agreed, including all supplements. For the first two completed calendar weeks of the default, there is no claim to liquidated damages. In the case of divisible performances, the partial order value for the part of the performance with the provision of which we are in default shall be decisive.
- 11.1.2. Our liability for damages arising from default caused by us or by a legal representative or vicarious agent of ours, simple or slightly negligent, is limited to the typical contractual damage foreseeable at the time of conclusion of the contract.
- 11.1.3. We assume that in these cases the typical contractual damage foreseeable when the contract was concluded does not exceed the liquidated damages determined in Clause 11.1.1. Insofar as the Customer does not share this understanding, he must expressly point this out to us before concluding the contract.
- 11.1.4. The limitation of liability in Clause 11.1.2 shall not apply in the event of grossly negligent or intentionally caused default by us or by a legal representative or vicarious agent of us, as well as in cases of mandatory statutory provisions.
- 11.1.5. If our performance cannot be rendered by us for actual reasons or can only be rendered with disproportionately great expense, we shall be entitled to refuse the performance. In such cases, we shall not be liable for damages incurred by the Customer as a result of our non-performance. This shall not apply if we already knew or if we did not know through gross negligence at the time of conclusion of the contract that the performance could not be rendered as agreed. A disproportionately large expenditure is to be assumed if the financial means to be used by us to provide the performance will exceed the order value. In the case of divisible performances, the partial order value for the part of the performance not to be rendered shall be decisive in each case.
- 11.1.6. We shall not be liable for the impossibility or default of our performances insofar as these circumstances are due to force majeure or other events unforeseeable at the time of conclusion of the contract and for which we are not responsible (in particular operational disruptions of all kinds, fire, natural catastrophes, weather, floods, war, insurrection, terrorism, transport defaults, strikes, lawful lockouts, shortage of labor, energy or raw materials, defaults in the issuance of necessary official permits, official/sovereign measures). Such an event shall also constitute an incorrect or untimely delivery by one of our suppliers if we are not responsible for it in each case. In the case of such events, the performance periods are automatically extended by the duration of the event plus an appropriate start-up time. We will inform the Customer about such events.
- 12. Confidentiality**
- The Customer shall treat any knowledge about us, our business and information from our sphere as confidential and shall not pass it on to third parties unless our express written consent has been given. This shall not apply to publicly known or publicly accessible information. If a non-disclosure agreement has been concluded with the Customer, this shall have priority.
- 13. Export Control**
- 13.1. The Customer strictly complies with all applicable European Union (hereafter “EU”), United States of America (hereafter “US”) and other export control and sanction laws and regulations (hereafter “Export Control Regulations”).
- 13.2. The Customer shall notify us beforehand and disclose any information (incl. end-use) necessary for us to comply with Export Control Regulations in case our products, technology, software, services or any other goods (hereinafter “ATESTEO Items”) are specifically ordered for use in connection with
- any country, territory, person or entity that is subject to any restrictions or prohibitions under the EU, US or any other applicable export control and sanction regulations or
  - design, development, production or use of military or nuclear goods, chemical or biological weapons, rocket, space or air vehicle applications and means of transportation.
- 13.3. We inform the Customer (i) that the US Department of the Treasury’s Office of Foreign Assets Control (OFAC) treats us as a US Person under the sanction regulations on Iran (“ITSR”) and Cuba (“CACR”), and therefore (ii) that ATESTEO items shall not – without prior authorization by the competent US governmental authorities and subject to any applicable anti-boycott regulations – (a) be used in any country or territory that is subject to any restrictions or sanctions of the US government or by any person or entity on any sanction list maintained by the U.S. government, or (b) be supplied, exported, re-exported, sold or otherwise transferred, directly or indirectly, to any country or territory that is subject to any restrictions or sanctions of the US government or to any person or entity on any sanction list maintained by the U.S. government.
- 13.4. The fulfilment of our contractual obligations by us is subject to the provision that the applicable Export Control Regulations do not contravene. In such a case, we are, in particular, entitled to refuse or withhold the contractual fulfilment without any liability towards the Customer.
- 14. Compliance**
- 14.1. The Customer shall refrain from actions or omissions that, regardless of the form of participation, may lead to administrative fines or criminal prosecution, in particular for corruption or a violation of antitrust or competition law, of the Customer, of employees of the Customer or of third parties engaged by the Customer (hereinafter referred to as “Violation” or “Violations”). The Customer shall be obligated to take all steps necessary to avoid Violations. For this purpose, the Customer shall be responsible for the compliance and proper performance by its employees and its sub-contractors with all relevant laws and shall conduct appropriate trainings.
- 14.2. The Customer shall be obliged, upon written request of us, to submit information about the above measures, in particular regarding

the content and status of implementation. For this purpose, the Customer shall completely and accurately answer a compliance questionnaire issued by us and will provide us with the documents related to such questionnaire.

- 14.3. The Customer will inform us without undue delay of the commencement of official investigations by any authority regarding a Violation. Additionally, if there are any indications of a Violation by the Customer, we are entitled to request written information about the Violation and all steps taken by the Customer for rectification and future compliance.
- 14.4. In the event of a breach of one of the afore-mentioned obligations, the Customer shall immediately cease such actions, shall compensate us for any and all damage suffered by us due to such breach and/or we shall have the right to terminate in writing any Individual Agreement for cause without notice. We shall have the right to demand indemnification from any third party claims or damages that have been caused by a breach of the aforementioned obligations by the Customer, his sub-contractors or their respective subcontractors.
15. **Data Protection**  
The Customer is advised that we process its personal data in the IT systems in connection with the execution of the order transferred to us. Further information in accordance with the requirements of articles 12 et seqq. EU-GDPR can be found at [www.atesteo.com/en/dataprovacy](http://www.atesteo.com/en/dataprovacy).
16. **Final Provisions**
  - 16.1. The contractual relationship shall be governed by the law of the Federal Republic of Germany excluding the conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
  - 16.2. The exclusive place of jurisdiction for all disputes arising out of or in connection with this contractual relationship shall be Aachen, subject to any deviating exclusive place of jurisdiction. However, we shall also be entitled to sue the Customer at another competent court.
  - 16.3. Should any provision of these GTC be or become invalid or ineffective in whole or in part, this shall not affect the effectiveness of the remaining provisions. Within reason, the parties shall be obligated in good faith to replace an ineffective provision with an effective provision that most closely reflects the commercial intention of the parties.