

## **General Terms and Conditions of Delivery (Industrial Services) of Atotech Deutschland GmbH**

### **I. Scope of Application**

1. Our deliveries of merchandise and performance of services are conducted solely and exclusively on the basis of these General Terms and Conditions of Delivery. We hereby object to any references by the customer to contrary terms and conditions of purchase. These General Terms and Conditions of Delivery also apply to any and all similar future business transactions. Any deviation from these General Terms and Conditions of Delivery is subject to our express written consent, even if we carry out the delivery without reservations, in knowledge of the customer's terms and conditions of purchase.
2. These General Terms and Conditions of Delivery apply solely in relation to entrepreneurs pursuant to Sec. 310 para. 1, Sec. 14 German Civil Code, legal entities under public law and special funds under public law.
3. These General Terms and Conditions of Delivery apply to maintenance and repair services as well as the performance of other services relating to equipment and systems ("Systems"), including modification and retrofitting of Systems ("Services"). The sale, delivery and installation of Systems are subject to our General Terms and Conditions of Sale and Delivery (Systems). The sale and delivery of chemical products, anodes, spare parts and devices are subject to our General Terms and Conditions of Sale and Delivery (Chemistry).

### **II. Offers, Orders, Conclusion of Contract**

1. Our offers are non-binding; they represent requests to the customers to submit to us an offer for the conclusion of a contract. Any and all documents and information related to the offer such as pictures, drawings, plans and system descriptions are merely approximate, unless explicitly designated by us as binding. They constitute solely an agreement on characteristics, and do not represent guaranteed characteristics.
2. The contract is concluded upon placement of a purchase order by the customer (offer) and our acceptance. Our acceptance is indicated by a written confirmation or by performance of the Services.
3. We reserve any and all rights to our know-how related to the Services and used for modification of Systems, processes, control devices and production with these Systems and processes (hereinafter "Know-how"). Unless we have given our prior written consent, the customer is not entitled to make public or to disclose to third parties the Know-how described in our offers. By concluding the contract, the customer does not acquire any rights to our Know-how, with the exception of the right to use the Know-how in conjunction with the operation of the Systems which are the object of our Services.

4. We retain any and all rights of ownership and copyrights to samples, cost estimates, drawings and other information of tangible and intangible nature, including those in electronic form; they may not be made accessible to third parties. Insofar as orders are not placed with us on the basis of our offers, our drawings and other documents must be promptly returned to us without our express request.
5. If we submit cost estimates upon request of the customer, the provided costs are based on non-binding estimations, unless agreed otherwise.
6. Insofar as we have agreed with the customer upon partial deliveries, each partial delivery shall be deemed to be a separate transaction. Complaints regarding a partial delivery do not influence the further processing of an order.

### **III. Prices**

1. In case the Services include the delivery of components or parts and unless otherwise agreed, our prices are shown "ex works", excluding value-added tax and packaging, which will be billed separately.
2. Unless otherwise agreed, we charge for our Services the prices in effect at the time of performance of the Services on a time-and-material basis. Customs fees and other charges, as well as travel and accommodation expenses for our employees will be charged against provision of appropriate documentation, used materials at the prices valid at the time. A proper receipt of acknowledgement is to be issued in case of a mutual supply of material. In case the Services or acceptance/takeover are delayed due to reasons beyond our control, waiting time and additionally required travel will be charged to the customer.

The duration of working time is subject to the applicable statutory provisions and collective agreements. Services performed outside normal working hours require our prior written consent; official notifications and authorizations are the responsibility of the customer.

3. Our prices are based on the costs in effect at the time of the order. If and when the costs, in particular costs for production materials, energy, operating materials, wages and salaries, change after the submission of the order, we are entitled to modify our prices accordingly.

### **IV. Delivery, Cooperation**

1. In regards to repair services, our indications concerning time limits for performance are based on estimates. They are non-binding unless the scope of work is clearly determined and we have subsequently agreed on a binding period of performance for the repair services.
2. Compliance with agreed delivery periods is subject to the timely receipt of any and all documents to be provided by the customer, of necessary approvals and releases, the fulfilment of the agreed conditions of payment and any and all other obligations of the customer. If these pre-conditions are not fulfilled in good time, the delivery period

shall be extended by a reasonable period; this shall not, however, have any effect on the agreed payment dates.

3. If and when a formal acceptance of our Services is to be performed, the agreed upon acceptance date shall be the relevant date for compliance with the delivery period, unless the customer is entitled to refuse acceptance. If no acceptance date has been agreed upon, the notification of readiness for acceptance shall be the relevant date.
4. Unforeseeable events such as force majeure, war, natural disasters, lock-outs, strikes, transport disruptions, governmental orders and court decisions, embargos as well as other unavoidable disturbances beyond our control release us from our obligation to deliver and render services for the duration of the events. We are not obligated in such cases to engage a third party to perform the Services. Any agreed periods and deadlines will be extended by the duration of the disruption; the customer will be notified by reasonable means of the disruption.
5. If we are in default of performing the Services, the customer may rescind the contract solely if we are accountable for the delay or if, in the case of Art. IV. para. 4., the delay exceeds 3 months.
6. The customer is responsible for ensuring that our employees have free access to the place of performance at the agreed times. The customer shall at his own expense provide all necessary technical assistance in order to ensure that performance of the Services can begin on time and be carried out smoothly under normal working conditions. Unless otherwise agreed, the customer will provide at his expense: plans and other documentation of the System, specialist and assistant personnel as well as tools, aids and lifting gear; excavation, foundation and construction work, chiselling, scaffolding and painting, including building materials; industrial power, water and waste water with connections to the place of use as well as heating; sufficiently large, suitable and lockable rooms for the storage of equipment, parts, other materials and tools for the performance of work and for the stay of our staff as well as suitable sanitary facilities; protective clothing and protective apparatus necessary due to special circumstances and not customary to our line of business.
7. We are responsible for observance of safety and other regulations not generally applicable in the electroplating industry as well as of foreign regulations only to the extent that such observance has been expressly agreed in writing. If our Services relate to installation supervision, our responsibility is limited to the instruction and supervision of the personnel provided by the customer; we are not responsible for the qualification and actions of such personnel.
8. If the beginning of performance, formal acceptance or completion of the Services is delayed for reasons for which the customer is responsible, or if the customer culpably fails to perform any act of collaboration, the customer shall compensate us for any resulting loss or damage, including additional expenses incurred. After a reasonable grace period set by us has elapsed without result, we may dispose otherwise of the Services, in particular to deploy our staff at other clients, and to

provide the Services to the customer within an appropriate extended time period.

## **V. Shipping, Transfer of Risk**

1. Unless otherwise agreed, deliveries of components or parts for our Services are made "ex works". Insofar as we undertake shipping, we will choose the route and method of shipping, but take into consideration express wishes of the customer where possible. The customer will bear any additional costs which are incurred.
2. When Services are performed, the risk transfers to the customer at the time the Services are completed. If and when a formal acceptance is to be performed, the risk transfers concurrently with the acceptance. In case of delivery of components or parts, the risk for accidental loss and accidental worsening transfers to the customer when the components or parts are handed over to the transport company or, in the event that the components or parts are collected by the customer, when those components or parts are made ready for collection. If and when shipment is delayed at the customer's request, the risk transfers to him upon notification of readiness for shipment. Subject to the regulations in Art. VII., the customer is obligated to insure the components or parts at replacement value for the period between the transfer of risk pursuant to this Art. V. para. 2. and the transfer of ownership pursuant to Art. IX.

## **VI. Order Amendment**

1. In case of repair services, we are entitled to request an amendment of the Services and prices if, during the performance of the Services, it becomes apparent that necessary spare parts are no longer available or that additional services need to be performed, in order for the customer's System to become fully functional again. This does not apply in the event that we knew that necessary spare parts would no longer be available or that additional services would need to be performed.
2. If the customer does not agree with the suggested amendments, both we and the customer are entitled to rescind the contract. In that case, we are entitled to demand payment by the customer of our Services pursuant to Art. III. para. 2.
3. We will inform the customer should the efforts for repair services turn out to possibly exceed the costs of replacement of the System or parts thereof, or in the event that the customer had agreed on cost limits with us at the time of conclusion of the contract. The cost information we provide in relation to repair services are based on evaluations of necessary actions and are therefore non-binding estimations. In such a case, the customer is entitled to terminate the contract. The services we provided until termination are to be remunerated pursuant to Art. III. para 2.

## **VII. Insurance, Duty of Inspection and Notification**

1. If we agreed upon shipment of components or parts, we will insure them at the customer's expense, without any

special instructions from the customer, against transportation risks, including normal breakage.

2. The customer shall inspect the delivered components or parts immediately upon receipt. The customer shall notify the transport company of any complaints of transport damage immediately following delivery, sending a copy to us, and shall act jointly with the transport company to create a written record of the damage.

### **VIII. Payment Conditions**

1. Unless otherwise agreed, payments shall be effected within 14 days of receipt of the invoice without any deductions.
2. If payment is effected by letter of credit, it is mandatory that the letter of credit be issued in accordance with our instructions and that we have approved the wording. The letter of credit must be issued no later than the scheduled commencement of our performance in order to avoid delays.
3. If and when it becomes apparent after conclusion of the contract that our claims are at risk, we are entitled to refuse performance and — as appropriate, after setting of a deadline — to rescind the contract (Sec. 321 German Civil Code).
4. The customer does not have any right to offset claims unless the customer's counterclaims are undisputed or have been finally adjudicated. The customer does not have a right of retention unless the customer's counterclaims are based upon the same contractual relationship and are either undisputed or have been finally adjudicated.

### **IX. Retention of Title**

1. We hereby retain title to all components or parts we have delivered until payment in full of all of our claims from the business relationship (main claim and ancillary claims) and settlement of any current account debit of the customer in our favour. This even applies if the purchase price is paid in respect of particular deliveries identified by the customer and performed by us.
2. In the event that components or parts are connected or combined with other objects belonging to the customer in a way that they become integral components of such other object, we shall acquire co-title to such object.
3. The customer may not dispose of the components and parts or pledge the same or provide them as securities. The customer is obligated to inform us immediately of any seizure by third parties, in particular of a legal execution, regarding the components or parts under retention of title, and in the case of a legal execution to lodge an objection in our name with the creditor seeking execution.
4. If the customer breaches any of his obligations owed to us, in particular if he fails to make a due payment, or if a substantial deterioration in his financial situation should become apparent, we are entitled, in accordance with statutory provisions, to rescind the contract and/or to

demand the return of the components or parts under retention of title. By demanding the return of the components or parts we do not at the same time rescind the contract. Our right to rescind the contract is subject to having unsuccessfully set the customer a reasonable deadline for payment except in cases where such deadline is dispensable pursuant to statutory provisions.

### **X. Acceptance**

1. If formal acceptance is required for our Services, such acceptance shall be conducted immediately on the acceptance date agreed upon, otherwise immediately after our notification of completion of the Services. In case of Systems modifications with changes in the process flow, the customer shall accept the System after completion of a functional test (electro-mechanical acceptance), otherwise after inspection of the Services provided.
2. A protocol will be prepared regarding the formal acceptance.
3. If the formal acceptance requires a trial operation, such trial operation is carried out by the customer's personnel in accordance with our instructions. The customer will bear the cost of his personnel and of the required operating materials and feedstock. He is responsible for the operation of the System during the trial phase.
4. Any production performed by the customer using the Systems before the acceptance protocol has been signed will be at the customer's own risk.

### **XI. Customer's Rights in Case of Defects**

1. If and when our Services are defective, the customer is entitled to the statutory rights regarding defects, subject to the following terms:
  - a) If components or parts are defective due to a circumstance which occurred prior to the passing of risk, we have the right, at our option, either to remedy the defect or to deliver the parts free of defects to the customer (hereinafter "Subsequent Performance").
  - b) We will bear the costs of dismantling of the defective part as well as the costs of installation of the newly delivered part, if the installation was included in the contract.
  - c) If and when the Subsequent Performance fails or is unacceptable for the customer, the customer may either remedy the defect himself and request reimbursement of the necessary expenses or, provided that statutory prerequisites have been met, request reduction of the purchase price. The rescission of the contract concluded with us is excluded.
  - d) Art. XII. below applies with regard to damage claims and reimbursement for expenditures incurred in vain because of a defect.
2. If the Services consist of modifications of a System, our liability for defects is limited to the new components or parts we delivered and installed and our relating modification services; it does not include the entire equipment and its functioning, unless expressly agreed otherwise.

3. We are not liable for defects which result from instructions of the customer regarding the Services or measures which were expressly requested by the customer. This also applies in the event that defects appear on parts or materials, which were provided by the customer or which the customer expressly requested to be used. Furthermore, claims for defects do not exist in case of only minor deviation from the agreed quality, in case of only minor impairment of the usability, in case of normal wear and tear, for damage which occurs after the passing of the risk due to improper handling, excessive use or inadequate operating materials, poor construction work, unsuitable subsoil or for damage which occurs owing to other unusual external influences which are not taken into account under the contract.
4. Claims of the customer as to expenses incurred for his own performance of repairs, in particular, but not limited to, transport, infrastructure, labour and material costs, are excluded insofar as the expenses are increased because the equipment or Systems we performed Services on were subsequently relocated to a site other than the customer's place of business, unless that relocation corresponds to the intended use of the Systems.

## XII. Damage Claims

1. We are liable pursuant to statutory provisions for damage or loss and reimbursement of expenses (hereinafter: "Claims for Damages") of the customer based on wilful intent and gross negligence. In case of ordinary negligence, we will only be liable for damages incurred by the breach of a cardinal contractual obligation (i.e. an obligation which must be fulfilled to permit the proper execution of the contract and which the other party to the contract can reasonably expect to be fulfilled) and for damages resulting from death, physical injury or harm to human health. In the event of gross negligence and in case of a breach of cardinal contractual obligations, our liability shall however be limited to foreseeable, typically arising damages or loss.
2. The above limitations of liability are not applicable to Claims for Damages of the customer pursuant to the Product Liability Act or to cases in which we have maliciously concealed a defect or a guarantee of quality had been agreed upon.

## XIII. Limitation Period

1. The customer's Claims for Damages are subject to a limitation period of twelve months following formal acceptance of the Services; if no formal acceptance is required, the limitation period begins upon completion of our Services. However, this limitation period is to be replaced by statutory provisions in cases in which we have maliciously concealed a defect or agreed on a guarantee of quality. This also applies in the event that the deliveries and services we provided were used for an edifice according to their typical usage and caused its defectiveness.
2. The limitation period stated above is also applicable to the customer's Claims for Damages resulting from defective

Services. In cases of Claims for Damages based on wilful intent or gross negligence, damages resulting from death, physical injury or harm to human health and damages pursuant to the Product Liability Act, the statutory limitation periods apply exclusively.

## XIV. Use of Software

1. To the extent that software is included in the scope of our delivery, the customer is granted a non-exclusive right to use the delivered software, including its documentation. The software is provided for use on the equipment or System we performed Services on. Use of the software on other equipment or systems is prohibited.
2. The customer may replicate, amend, translate the software or convert the object code into source code solely within the legally permissible scope (Secs. 69 a et seqq. German Copyright Act). The customer promises not to remove or modify manufacturer's information.
3. We retain any and all other rights to the software and its documentation, including any copies.

## XV. Code of Conduct, Environmental Protection

1. We are committed to the ethical values and principles expressed in the Atotech Code of Conduct. They include in particular, but are not limited to, compliance with statutory provisions and observance of fundamental international standards, environmental protection and occupational safety practices, respect for human rights and the rules of free competition and rejection of any and every form of corruption, whether public or private, active or passive, as well as the avoidance of conflicts of interest. The Atotech Code of Conduct is available in the download section at [www.atotech.com/our-values](http://www.atotech.com/our-values).
2. In view of his responsibility for the health and safety of his employees at the workplace, the customer covenants to undertake continuous and sustained measures to reduce detrimental effects of his activities on people and the environment. As far as his circumstances permit, the customer will establish and evolve a management system in accordance with ISO 14001.

## XVI. Final Provisions

1. The customer may assign his rights under this contract to third parties solely with our prior written consent.
2. Exclusive venue for any and all disputes arising from the contractual relationship with the customer is our registered office in Berlin. We reserve, however, the right to select alternatively the site of the customer's place of business as venue.
3. The contractual relationship is governed by German law, excluding application of international private law and the U.N. Convention on the International Sale of Goods (CISG).