

## **General Terms and Conditions of Purchase**

**of Atotech Deutschland GmbH & Co. KG and  
of Atotech Beteiligungs und Management GmbH  
& Co. KG**

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

1. All of our suppliers' deliveries, services and offers are made/provided solely on the basis of these General Terms and Conditions of Purchase. They are an integral part of all contracts that we conclude with our suppliers or other contract partners (hereinafter referred to as "supplier") regarding the deliveries or services that they offer. They are also applicable to all future deliveries, services or offers made/provided to us, even if they are not agreed to again separately.
2. The general terms and conditions of business of our suppliers or third parties shall not apply, even if we do not expressly reject their applicability in individual cases. Even if we refer to a document that contains the general terms and conditions of business of the supplier or a third party, this does not constitute acceptance of the applicability of those general terms and conditions.
3. These General Terms and Conditions of Purchase only apply in relation to entrepreneurs pursuant to Sec. 310 par. 1, Sec. 14 of the German Civil Code.

### **II. Purchase Orders and Orders**

1. All agreements made between us and the supplier for the purpose of fulfilling the contract are to be set forth in writing in the contract. There are no oral side agreements. Correspondence concerning contractual agreements shall, but for exceptional cases, only occur with our Purchases Department. Agreements with other departments shall require the explicit written confirmation of our Purchases Department.
2. If we do not receive a written confirmation of the order within 14 days as of the date of our (purchase) order, we are entitled to revoke our (purchase) order without any claims arising against us as a result.
3. If the fulfillment of our order requires special expertise or qualifications, the supplier shall provide us with suitable certificates of competence along with his offer, without having to be asked to do so.

### **III. Time of Delivery, Default**

1. Delivery times and periods which have been agreed upon shall be binding. Delivery times and

periods are met if the goods which are in conformity with the contract have been received and if the services stipulated in the contract have been fully provided in each case at the place of performance.

2. If the supplier realizes that an agreed upon delivery date or period cannot be met for any reason whatsoever, he shall without undue delay inform us in writing, stating the reasons for and the expected duration of the delay.  
The legal consequences of a default in delivery or a delayed delivery shall remain unaffected.
3. The supplier is not entitled to make partial deliveries without our prior written approval. In the case of a partial delivery, the delivery documents shall indicate that a partial delivery occurs and the quantities which remain undelivered.
4. If the supplier is in default in the delivery and/or performance, we are entitled to calculate a contractual penalty at the rate of 0.3%, for every working day of the delay or remaining fraction thereof, this penalty cannot however exceed 5% of the total contract sum. If the corresponding reserve of the right to claim is not asserted upon the acceptance of the deliveries, services or subsequent fulfillments, the contractual penalty can still be claimed until the final payment is made. The contractual penalty shall be deducted from the damages for delay/default which the supplier must pay.
5. In the event of a delivery earlier than agreed, we can return the shipment at the supplier's expense. If the goods are not returned in the event of an early delivery, they shall be stored on our premises at the supplier's expense and own risk until the date of delivery agreed upon. In the event of acceptance of an early delivery, the due date for the payment of the purchase price shall be determined according to the agreed upon delivery date.

### **IV. Right to Withdraw**

1. If after entering into a contract with one of our customers it becomes apparent that our claim under such contract is at risk due to that customer's inability to fulfill his obligations under the contract, and if that customer cannot provide a security, we are entitled to withdraw from the contract with the supplier with respect to the products which were to be used by that customer, if we have no other possibility to use these products.
2. In case of a withdrawal according to par. 1 the supplier shall be entitled to an indemnification in the amount of his expenses which have become futile. This claim for indemnification requires that the supplier cannot use the work performed under

their contract with us for other purposes. There shall be no indemnification for lost profits.

## V. Packaging, Transportation

1. The goods to be delivered shall be packaged in a manner that is customary and reasonable in the situation. If the packaging material is not agreed upon by contractual agreement, the supplier may only use packaging material which is ecologically not harmful and which does not impede recycling.
2. If the goods are not due to be delivered at the seat of our company, we shall receive a notice of dispatch.
3. The delivery takes place at the supplier's costs, including the costs for packaging, shipping, freight and insurance to the place of delivery (obligation to deliver, "*Bringschuld*"). The risk of accidental loss and accidental deterioration of the goods shall be transferred to us upon delivery at the place of delivery.
4. Our order number shall be indicated on all delivery papers.
5. Additional expenses for express shipping required in order to comply with a delivery date shall be borne by the supplier.

## VI. Invoicing and Payment

1. Invoices shall be issued duly in duplicates indicating our order number. Invoices are not payable as long as these conditions are not met.
2. Due dates and payment periods shall not begin prior to the complete delivery to/performance at the place of delivery and our receipt of the invoice. Insofar as the supplier has to provide material tests, test protocols, quality documents or other documentation, our receipt of this documentation is a prerequisite for the completeness of the delivery and performance. All payment periods in general refer to the date of receipt of the invoice or the date of provision of the supplier's services, if the services are rendered after the date of receipt of the invoice.
3. We shall be entitled to rights of set-off and retention, as well as to the plea of non-performance, to the extent permitted by law. In particular, we are entitled to retain due payments as long as we are still entitled to claims against the supplier arising from incomplete or defective deliveries and performances.
4. Payments do not constitute acknowledgement that the deliveries or performances are as stipulated in the contract.

## VII. Rights in the Event of Defects, Limitations, Spare Parts and Wearing Parts

1. In the event of material and legal defects - subject to VII. 2. and 3. - the statutory provisions which are in force at the time of the purchase order/assignment shall apply.
2. All claims arising from material and legal defects are subject to the statute of limitations of 3 years, unless longer periods are provided for by law.
3. We may notify apparent defects within five days from receipt of the goods and hidden defects within two weeks from the date of their discovery.
4. The supplier undertakes to provide spare parts and wearing parts for the products supplied to us for a period of at least 10 years after the final delivery.
5. If the supplier intends to cease production of spare parts and wearing parts for the products supplied to us, he shall notify us immediately after the decision to cease production. This decision must be made – subject to par. 4 – at least 3 months before the end of production.

## VIII. Retention of Title

The supplier's retentions of title are only valid insofar as they refer to our payment obligations for the respective products to which the supplier retains title. In particular, expanded or extended retentions of title on the part of the supplier are invalid.

## IX. Product Quality and Product Liability

1. The supplier shall apply a quality assurance program according to the current technical and legal requirements and, if we so require, prove this to us.
2. The supplier shall, during the duration of this contract, maintain a product liability insurance which includes the risk of recall with a minimum coverage of at least 1 million EUR per case of personal injury/property damage. We are entitled to demand that the supplier submit corresponding confirmation of coverage from his insurer.
3. Insofar as we are made liable by third parties based on domestic or foreign product liability laws or based on other legal provisions, the supplier shall, upon our first request, keep us exempt from such claims if and insofar as the supplier is liable for the defect which causes the liability. If we are jointly liable with the supplier, the supplier shall upon our first request keep us exempt in the

amount of our claim against the supplier. The aforementioned obligations shall also apply to all expenses and costs arising from necessary product recalls, including, without limitations, recalls under the Product Safety Act.

## **X. Liability**

We shall not be liable towards the supplier, unless we acted intentionally or with gross negligence or if there is a case of compulsory liability, as in the case of injury to life, body or health, or if there is a case of violation of essential contractual obligations. In the case of a violation of essential contractual obligations, our liability shall, however, be limited to the typically foreseeable damages. An essential contractual obligation denotes an obligation which must be fulfilled in order for the proper performance of the contract to be possible and on the fulfillment of which the contractual partners may ordinarily rely.

## **XI. Intellectual Property Rights, Rights of Use, Confidentiality**

1. The supplier warrants that the contract and its implementation, especially with regards to the use of the delivered goods, do not violate any intellectual property rights of third parties.
2. The supplier undertakes to indemnify and hold us harmless in respect of all claims asserted against us by third parties due to the infringement of intellectual property rights mentioned in par. 1 and to reimburse us for all necessary expenses incurred in connection with the said claims.
3. All documents (e.g., drawings, illustrations, calculations, descriptions), models and tools made available by us in the course of the contract shall remain our property. Any use thereof which goes beyond the contractual purpose (e.g. copying, making available to third parties) shall not be allowed. Upon termination of the contract, the supplier shall, upon request, return or destroy these tools, models and documents, including all copies, with the exception of routine information technology back-ups or the legal obligation to retain the information. The supplier is not entitled to claim any right of retention whatsoever.
4. The supplier grants us a non-exclusive, transferable, worldwide license for the software accompanying the products, including the corresponding documentation, for an unlimited period of time, with the agreed upon features, and in the scope necessary for the use as stipulated in the contract.
5. The supplier may not disclose, without our express written consent, that he is our supplier or

inform third parties about our (purchase) orders. The supplier shall also, in writing, oblige his employees who are working on the processing or the fulfillment of our orders, to keep information confidential, unless the employees have already been obliged to maintain confidentiality through their employment contracts. The duty to maintain confidentiality shall also apply to all knowledge, obtained in the course of the cooperation, concerning our organization, development and other structures and/or concerning the content of our orders, especially as to prices, amounts and conditions. The supplier's confidentiality obligations shall survive the termination or expiration of the contract.

6. The supplier shall transfer to us the right to file for intellectual property rights for all inventions made by him or by persons him in the course of the contract, in order to fulfill the contract. The aforementioned granting of rights and transfer of rights shall be considered as being compensated by the price paid for the goods delivered or the services rendered.

## **XII. Carrying out Work on our Premises**

Persons who carry out work on our premises in fulfillment of the contract must observe the provisions of the valid company regulations.

## **XIII. Code of Conduct, Environmental Protection, Safety**

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.
2. The supplier confirms that he is familiar with the contents of our Code of Conduct and upholds ethical values and principles equivalent to those expressed in this Code of Conduct. In addition, the supplier will do his best to promote these values and principles and to ensure that his own suppliers comply with them. The Atotech Code of Conduct is available in the download area under [www.atotech.com/our-values](http://www.atotech.com/our-values).
3. We reserve the right to perform, ourselves or through a duly authorized representative, audits at the supplier's premises of compliance with the above stated values and principles, subject to written notification. The supplier agrees

to fully cooperate in such audits. We will keep the information disclosed during the audit confidential and use it only for the purpose of the audit.

4. We are entitled to terminate the contract in writing without prior notice, in case the supplier significantly violates the above stated values and principles or unreasonably hinders the audit as provided above and does not implement measures to reduce the impact of the violation. The supplier significantly violates the values and principles particularly in cases of disregard for human rights, for example child labor, discrimination as well as violations of statutory labor law, environmental and industrial safety rules and anticorruption rules.
5. In view of his responsibility for the health and safety of his employees at the workplace, the supplier 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 supplier will establish and evolve a management system in accordance with ISO 14001.
6. In addition, the supplier undertakes to provide us with all relevant information about potential risks of the plants, machines, work equipment, products, chemical substances and production materials that it will supply to us.

#### **XIV. Conflict Minerals, Compliance with Regulations**

1. The supplier acknowledges the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), and in particular its minerals provision (Section 1502). The supplier also recognizes the significant legal and non-legal risks associated with sourcing wolframite, cassiterite, columbite-tantalite (coltan), gold and their derivative metals tantalum, tin and tungsten (the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries ("DRC countries"). The supplier represents, covenants, agrees and certifies for our benefit and the benefit of our customers that
  - (a) the goods delivered to us do not contain any Conflict Mineral from the DRC countries or, if any goods delivered to us do contain a Conflict Mineral, such goods are DRC conflict free according to the Act;
  - (b) it has in place a supply chain policy and processes to undertake (i) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into goods it provides to us; (ii) due diligence of his supply chain, as necessary, to determine if Conflict Minerals sourced from the DRC countries directly or indirectly support unlawful conflict there, and (iii) risk assessment and mitigation actions

necessary to implement the country of origin inquiry and due diligence procedures.

The supplier undertakes to execute such written documentation, including certifications, as we or our customers may reasonably request to confirm and certify the foregoing.

2. In the event that the delivered goods contain chemical substances that are subject to any of the following regulations, as amend from time to time:
  - USA - Toxic Substances Control Act (TSCA)
  - Canada - Domestic Substances List (DSL)
  - EU - European Inventory of Existing Commercial Chemical Substances (EINECS)/ European Inventory of Existing Commercial Chemical Substances (ELINCS)/ Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)
  - China - Inventory of Existing Chemical Substances Produced or Imported in China (IECSC)
  - Taiwan - Toxic Chemical Substance Control Act (TCSCA)
  - Japan - Existing and New Chemical Substances Inventory (ENCS)
  - Korea - Existing Chemicals List (ECL)
  - Philippines - Philippine Inventory of Chemicals and Chemical Substances (PICCS)
  - Australia - Australian Inventory of Chemical Substances (AICS)

the supplier represents that it will take and shall take all appropriate measures to comply with, and to cause his subcontractors and suppliers to comply with, all obligations imposed by the regulations mentioned above and any future amendments thereto. The supplier shall bear all consequences of non-compliance with any of the above mentioned regulations. If chemical substances that are a component of the delivered goods will cease to be sold pursuant to a ban under any of the above mentioned regulations, the supplier shall give us at least six (6) months' prior notice, in writing, of the date such chemicals will no longer be sold.

3. The supplier shall defend, indemnify and hold harmless us and our customers from any breach of the supplier's obligations under this section or arising from any inaccurate or untruthful written information or documentation provided to us or our customers.

#### **XV. Export Control and Customs**

1. The supplier shall comply with all requirements of the applicable national and international customs

and foreign trade laws. The supplier shall notify us in writing no later than 2 weeks after our purchase order, as well as immediately in the event of changes, of all information and data which we require for compliance with the corresponding exporting, importing, and re-exporting regulations and laws, in particular:

- all applicable export list numbers, including the Export Control Classification Number according to the US Commerce Control List (ECCN);
- the commodity code according to the current classification of commodities for foreign trade statistics and the HS (Harmonized System) code; and
- the country of origin (non-preferential origin) and, upon our request, supplier declarations regarding the preferential origin (for European suppliers) or certificates of preference (for non-European suppliers).

2. If the supplier breaches his obligations pursuant to XIV.1., he shall bear all expenses and damages which we incur as a result, unless the breach of obligation was not the supplier's fault.

#### **XVI. Data Protection**

1. Personal data of our employees which becomes known to the supplier during contract negotiations or execution may only be processed within applicable statutory data protection provisions.
2. The supplier must adjust his internal organization in such a way that it meets the legal requirements on data protection. The supplier must take, in particular, appropriate technical and organizational measures to secure the personal data against misuse and loss.
3. Persons who process personal data for the supplier must be made familiar with the regulations on data protection and must be bound by data secrecy.

#### **XVII. Security of delivery chain**

1. The supplier is entitled to the use of subcontractors solely with our prior written consent.
2. The supplier hereby agrees
  - (a) to ensure that all goods which are produced, stored, forwarded or carried following our order, and which are delivered to us or taken after delivery by us:
    - are produced, stored, prepared, processed and loaded in secure commercial

premises and secure loading and shipping areas, and

- are protected against unauthorised interference during production, storage, preparation, processing, loading and transporting.
- (b) that reliable staff is employed for the production, storage, preparation, processing or working, loading and transport of such goods; and
  - (c) that business partners who are acting on behalf of the supplier are informed that they also need to ensure security of the supply chain as mentioned above.

#### **XVIII. Final Provisions**

1. The place of delivery for the supplier's deliveries and services is the respective place of use.
2. The exclusive legal venue for all litigations arising from the contractual relationship with the supplier is our business location in Berlin. We retain, however, the right to choose the seat of the supplier as the place of jurisdiction.
3. The contracts concluded between us and the supplier shall be governed by the laws of the Federal Republic of Germany, with the exclusion of the UN Sales Law (CISG).
4. The supplier may only assign or transfer his rights and obligations arising from the contract to third parties with our prior written consent. This shall not apply as far as outstanding debts are concerned.